

**ALL THAT IS NOT GIVEN IS LOST: IRISH TRADITIONAL  
MUSIC, COPYRIGHT, AND COMMON PROPERTY.** *Reprint Files*

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"Culture is not an organism, nor a totality, nor a unity: it is the site of a dialogue, it is a dialectic, a dialect. It is being between" (Cairns Craig, commenting on the Gaelic poet Sorley MacLean, cited in Macdonald 1997: 191)

The aim of this paper is twofold. Firstly, I feel it necessary to clarify the nature of the social relationships that are inextricably bound up with Irish traditional musical practice. To do this I shall address issues of gift and commodity, ultimately concluding that grass-roots Irish traditional music transmission rests upon a system of nonreciprocal sharing. And secondly, I believe that it is crucial that we clarify the power relations and the dynamic processes that frame those social relationships. To do this I shall use certain aspects of Common Property Theory, still a very young field, with a view to highlighting the actors and signposting directions. As Michael Goldman has written, "The commons - a material and symbolic reality, always changing, never *purely* local or global, traditional or modern, and always reflecting the vibrant colours of its ecological, political, cultural, scientific and social character - is not at all disappearing into the dustbin of history. To the contrary, we find that the commons are increasingly becoming a site for robust and tangible struggles ..." (14).

## INTELLECTUAL PROPERTY AND COMMODIFICATION

At this stage in history it is almost impossible to separate intellectual property from its role as an instrument of commodification within capitalist systems. In fact, the development of capitalism and copyright has been concurrent. The appearance in the eighteenth century of things of the mind as transferable articles of property matured simultaneously with the capitalist system. It could be argued that the application of intellectual property in any circumstance assumes the *a priori* application of capitalism, where the production and distribution of goods depend on invested private

cultural capital and profit-making. If this is the case, then unlimited participation in a capitalist system, which seeks by its nature the furthestmost penetration of the market, and the unbounded acceptance of intellectual property as a legal solution, impose an unnecessarily individualist vision.

Copyright is the foundation upon which the Music Business rests (Frith, ed. 1993). Over the last two years there has been a growing but notoriously vague awareness in the Irish traditional music scene of a conflict of interest that involves publicans, amateur practitioners of traditional music and song, and the performance royalties collection agency, the Irish Music Rights Organisation (IMRO). This has led public debate which has been clouded in ambiguity and a lack of direction. This has been due to a lack of a shared lexicon or conceptual consensus and to the complications of the philosophical basis of copyright legislation.

A tiny percentage of traditional musicians are members of IMRO. IMRO claims the right to police traditional compositions despite being originally formed to serve the needs of commercial songwriters. IMRO would say that it only has the best interests of musicians at heart. Until recently, however, many sessions (informal traditional music gatherings) were under threat, as many publicans refused to pay performance royalties to IMRO for traditional music, and would rather shut down a session than legally challenge IMRO. Eventually IMRO settled out of court, agreeing on a standard fee. This does not mean that the fundamental philosophical issues at the heart of the conflict have been resolved, and they will most likely surface again in another form.

This was highlighted more than ever when Comhaltas Ceoltóirí Éireann, the national traditional music organisation, was billed for royalties following an All-Ireland Fleadh, a solely traditional music weekend event, based around competitions, which can attract between 40-80,000 people, many, if not most of them, musicians. IMRO was formed to champion the cause of commercial composers and songwriters, and

feels duty-bound to extend its reach on the assumption that all musical practice is commodity exchange, an assumption founded on neo-classical economics and bolstered by the recent introduction of 100% performance royalties for what has become known as ‘trad. arr.’, or the ‘arrangement’, i.e. any performance, of an IMRO-designated ‘traditional’ tune. Let it be said now that for IMRO ‘traditional’ is synonymous with ‘anonymous’ or ‘public domain’, as it is for most PROs.

As Irish traditional music has increasingly entered the commercial arena, collectors of traditional songs and tunes, and performers of traditional tunes are personally claiming copyright on works presumed to be in the public domain, but whose composers can often be sourced, and many of whom are still alive. The reluctance of traditional composers to copyright their tunes, thus leaving their work vulnerable to piracy, stems from a complex web of social relationships, and a recognition of a “tradition” that incorporates past, present and future generations. Erroneous copyrighting of these tunes and songs means that neither the original composers nor traditional music development organisations will benefit from royalties, and they may eventually be deprived of the free use of the music.

A recent study by economic anthropologist Carles Salazar entitled *A Sentimental Economy: Commodity and Community in Rural Ireland* (1996) stated,

“We have seen that the farming communities of the west of Ireland are deeply integrated into the world market economy, and they undoubtedly participate in the individualistic and profit-maximising ethos that characterises all capitalist societies, but they still have a substantial sphere of noncommodity transactions” (1996: 126).

I would argue in no uncertain terms that the same can be said of Irish traditional music and of the musicians that practice it. I would go further to suggest that the noncommodity aspect of Irish musical practice, with both its amateur and

participatory aspects, is the lifeblood, the “cultural glue” that holds the whole system together.

### IRISH TRADITIONAL MUSIC AS GIFT (NON-COMMODITY)

Undoubtedly the most popular form of Irish traditional musical activity is the ‘session’. This musical practice, involving at least three people who play jigs, reels, hornpipes, planxties and so on in heterophonic union, with the odd solo thrown in, takes place for the most part in pubs, the site of an obvious cultural lubricant. It has become an extremely widespread phenomenon, allowing at best (deliberate moral overtones) the shepherded involvement of younger or less experienced players by older and respected musicians, and is the site of most musical transmission.<sup>1</sup> Many musicians involved in sessions are also professionals, many of them full-time, and most likely members of IMRO, but once embraced by the aura (Walter Benjamin forgive the pun) of the session the hierarchies are of a traditional not a commercial nature. In speaking of the session, I would like to paraphrase political economist C.A. Gregory’s analysis of gift and commodity in Papua New Guinea,

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<sup>1</sup> The following description of musical practice from Green and Pickering’s article ‘The Cartography of the Vernacular Milieu’(1988) could easily have been written about the ‘session’;  
 “... performance occurs in small groups and ... is rooted in shared, immediate, everyday experience. Within the group it can be said that ‘all members know each other, are aware of their common membership, share the same values, have a certain structure of relationships that is stable over time, and interact to achieve some purpose’. Members of such groups today are of course more articulated and orientated to other external social and cultural frameworks of reference than ever before, and this must not be forgotten. Conversely, the decline of the family and community in social life has augmented the value of their symbolic celebration.” So far as the group’s own dynamics are concerned, the cultural and aesthetic mode we are discussing differs from mass communication in the following major ways. It is generally two-way and participatory; it is usually confined to amateur performance, and where professionalism is involved it is generally at a low economic level; it is situation-specific and contextually local as a communicative event and process, and therefore its impact is only on those involved who at the time of the event ... bear a low relation to industrial and business structures; it involves little technological equipment and little division of labour; and as we have already indicated, it gives very low priority to the extraction of surplus value from the labour of its performance. That labour is unproductive in terms of market structures and relations, and thus holds a valid potentiality, at least, of subverting or reversing the alienation of the commodity form.”

“The gift economy of [the Irish instrumental session] has not been destroyed by [commercialism] but has effloresced. The labour-time devoted to the production and exchange of things as gifts has risen rather than fallen, a change that has occurred simultaneously with the introduction of [paid sessions, commercial recording, and regular concert opportunities]. To understand this process, it is necessary to abandon the concept of dualism which classifies this part of the economy (e.g. urban sector) as 'modern' and that part (e.g. rural sector) as 'traditional'. The fact of the matter is that the whole economy is 'modern'. The gift exchange practised in [Irish instrumental session culture] is not a pre-colonial relic but a contemporary response to contemporary conditions. ... The essence of the [Irish musical] economy today is ambiguity. A [tune] is now a gift, now a commodity, depending upon the social context of the transaction. ... It is because of this ambiguity that the concept of dualism, with its clearly defined traditional sector, must be abandoned” (Gregory 1982: 115).

One of the top traditional musicians in the commercial scene has commented to me that there is no greater thrill than hearing one of her own tunes at a session with no-one knowing who composed it. Authorship takes a back seat as a designation of respect and cultural capital rather than ownership. But the tune in this situation has been placed in that site of ambiguity mentioned above. For IMRO the tune undoubtedly walks, talks and quacks like a commodity. For the musicians engaged in the session the tune cannot be separated out from the social and historical context of the non-commodified musical moment. There is also the widespread practice, as Gregory has identified in general terms, of de-commodification, of tunes having been written as commercial, commodified money-making ‘works’ with the cow-bell of copyright draped around their neck, only to be transformed in the context of the session into gifts, to be distributed freely among musicians in a context of tradition and community.<sup>2</sup>

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<sup>2</sup> In fact, to talk of the domain of gift in the context of the writings of Mauss, Sahlins, Strathern, and many more, is to assume the presence of reciprocity. I am attracted, however, in the Irish context, to an article by social anthropologist James Woodburn entitled, “Sharing is not a form of exchange’: an analysis of property-sharing in immediate return hunter-gatherer societies”(1998). In this article Woodburn outlines

## COMMON PROPERTY STUDIES

Common Property Studies has developed considerably since the 1968 publication of Biologist Garret Hardin's article, "The Tragedy of the Commons," which described the collapse of an unmanaged commons comprised of self-interested individuals.

The *Ecologist* magazine of July/August 1992 reads;

"Despite its ubiquity, the commons is hard to define. It provides sustenance, security and independence, yet (in what many Westerners feel to be a paradox) typically does not produce commodities. ... Systems of common rights, far from evolving in isolation, often owe their very existence to interaction and struggle between communities and the outside world. It is arguably only in reaction to invasion, dispossession or other threats to accustomed security of access that the concept of common rights emerges."

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the sharing practices of the Hadza, which can be transposed fairly successfully into the Irish context. Sharing, as John Price has written, is "the most universal form of human economic behaviour, distinct from and more fundamental than reciprocity" (Cited in Woodburn 1998: 50). For Woodburn,

"[T]o treat this type of sharing as a form of exchange or reciprocity seriously distorts our understanding of what is going on. ... My argument is that to treat such sharing as a form of exchange or reciprocity is inappropriate when donation is obligatory and is disconnected from the right to receive. To describe such sharing as exchange or reciprocity does not accord with local ideology or local practice among the Hadza and most other hunter-gathering societies with immediate return systems" (1998: 50).

Although space does not allow me to elaborate on this point, I hold that the Irish context of musical transmission works very much along the lines of 'sharing' as opposed to 'reciprocation'. An in-depth analysis of the ceiliing practices in Glassie (1995) would bear this out.

"Sharing here is, as we have seen, not a form of exchange. We must correct our models. Some societies operate with both ideologies and practices which repudiate reciprocation. It makes no sense to construct analyses of human social life which are based implicitly or explicitly on the notion of a universal necessity to reciprocate. Of course in day-to-day interaction Hadza do at times reciprocate. They show affection to those who show affection to them. They help those who help them. They are friendly to those who are friendly to them. But in their use of food and of other property, the expected behaviour is non-reciprocal sharing" (Woodburn 1998: 61).

This literature<sup>3</sup> generally distinguishes four property regimes: open access, common property resources (also referred to as CPRs), private property, and state property. The two that most concern us here are open access and common property. “Open access is the absence of well-defined property rights. Access to the resource is unregulated and is free and open to everyone”(Feeny et al. 1998: 79)<sup>4</sup>. Common property resources fulfill two criteria. The first is that of non-excludability, which is well-illustrated in Douglas Noonan’s example of the Internet, where “excluding users from the Internet is technically impossible or prohibitively expensive”(Noonan 1998: 189). We have only to think of Mark Slobin’s comment that, “A music can suddenly move beyond all its natural boundaries and take on a new existence, as if it has fallen into the fourth dimension”(Slobin 1993: 20)<sup>5</sup>. The second criterion is that of subtractability or rivalrous consumption, “the source of the potential divergence between individual and collective rationality” where “each user is capable of subtracting from the welfare of other users” (Feeny et al. 1998: 78).<sup>6</sup> As Noonan describes it in relation to the Internet, “Too many users can overload different links in the network chain, reducing the value of other transmissions congested at that point”(1998: 189). Musically speaking we have a number of areas for comparison here. Firstly, there is the question of musical sound acting in support of a particular value system within a particular value system. To what extent is the actual musical sound bound up with the values of the community from which it comes? To what extent do the ‘participatory discrepancies’(Feld and Keil) or the ‘fuzzy edges’

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<sup>3</sup> “For the most part the conceptual analysis of the commons (also described as common property resources, common pool resources and CPRs) has concentrated on the universal principles, conditions or rules that characterize successful regimes and institutions (Ostrom 1990, Bromley 1992, Wade 1987, McGinnis and Ostrom 1993). In the process the analysis has largely circumvented the implications of internal differentiation or asymmetry including the plurality of beliefs, norms and interests involved in interactions between resource users, the effects of complex variations in culture and society, as well as wider aspects of social, political and economic conflict relating to the commons”(Prakash 1998, 168).

<sup>4</sup> Already we can see that the description of an open access system pretty much conforms to the general understanding of the free-for-all concept that embraces the public domain. As has been stated in the literature on the commons, “Many of the misunderstandings found in the literature may be traced to the assumption that common property is the same as open access”(Feeny et al. 1998: 79).

<sup>5</sup> I would like to make it clear at this point that for me the resource in question isn’t ‘tunes’ or ‘musical works’ but the musicking, the amateur, non-commodified musical practice.

<sup>6</sup> “Hence, we define common-property resources as *a class of resources for which exclusion is difficult and joint use involves subtractability*” (Berkes et al. 1989, p. 91).



disclose a sonically ordered worldview? The further the music moves from its origin, the less likely that these 'extras' will be passed on in transmission. Does it matter? I believe it does. Secondly, Marshall Sahlin's offered in his concept of 'kinship distance' (1972) that the further exchange relations move from the kinship centre, the more likely the chance of commodity transaction. I modify this to suggest that the further the music moves from its communal centres of origin, the more likely it is to be commodified. This has certainly happened in Irish traditional music, where an increase in commodity relations certainly changes, if not radically reduces the social function of the music. The question of individuals copyrighting tunes that have been held in common for time immemorial is another site for rivalrous consumption. As Robert Bish has written, "The existence of valuable unowned resources provides an incentive for individuals to try to capture the resource before other potential users can do so" (1998: 66). Irish traditional music fits the criteria for CPRs.

Where CPRs are most useful in this context is in the identification of the process of 'enclosure'. We have already seen how grass-roots Irish traditional music is based on the idea of gift, which supports the characteristically non-commodified common property resource. It is not too difficult to then see the commodifying processes of neo-classical economics, commercialism in music, and of the conceptually bound and conceptually driven agency of the Irish Music Rights Organisation as an example of enclosure in a musical context: "Enclosure cordons off those aspects of the environment that are deemed "useful" to the encloser. ... Instead of being a source of multiple benefits, the environment becomes a one-dimensional asset to be exploited for a single purpose - that purpose reflecting the interests of the encloser, and the priorities of the wider political economy in which the encloser operates" (*Ecologist* 1992). Music becomes product, musician becomes producer in the capitalist process of commodity production<sup>7</sup>. As far as IMRO is concerned, they're just doing their job. As far as IMRO is concerned they pose no threat to traditional music.

So what are some of the lessons that can be learned from accepting that the practice of Irish traditional music constitutes a common property resource? The threat of the “Tragedy of the (unmanaged) Commons” is undoubtedly a real one. What warning signs are there? John Baden has written that, “Tragedy strikes when self-interest and social interest diverge”(1998: 51). Need we be mindful of the commercially motivated actions of professional Irish ‘traditional’ musicians and the potentially harmful effects of their activity? What Noonan has written of the Internet strikes a number of pertinent echoes when applied to traditional music in an Irish context;

“... for the Internet to continue creating new value, it must remain robust and functional - and not fall victim to its commons status. Up to now, the pressures on the Internet infrastructure have been relatively light, but the staggering growth in use leads to justifiable concern about "managing the commons." The Internet currently has ingredients for tragedy: open access, rivalrous use, and rising value and decreasing costs of access to users. ... If nothing changes, some might reasonably expect the Internet to eventually crash. ... Avoiding this requires addressing problems of overuse (appropriation) and undermaintenance (provision)” (Noonan 1998:190).

#### ALL THAT IS NOT GIVEN IS LOST

The Common Property paradigm clearly enunciates some of the pressures that are being brought to bear on the continued practice of Irish traditional music in its amateur and non-commodified forms. If the continued commodification of Irish traditional music is allowed to go unchecked, or is even allowed the force of law through the imposition of intellectual property and neighbouring rights upon amateur and inherently non-commodified musicking contexts, then a very precious, and ultimately humanizing domain of gift will be diminished. One of the reasons that

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<sup>7</sup> Interestingly, C. A. Gregory (1982) comments that Political Economy, and not neo-classical Economics, is the only field in which we can properly analyse concepts of Gift and Commodity, while Jacques Attali (1985) comments that Political Economy is inadequate when dealing with music.

processes such as these have gone without opposition or even without clarification for so long is that the value systems are deeply embedded in the *habitus* of cultural practice, “These communities are ruled by a set of rights and obligations that do not have to be explicitly manifest in each particular interaction, since they are taken for granted”(Salazar 1996: 151). Silence against political processes that are in no way benign invites dehumanization and suppresses individual responsibility to past, present and future. As Folklorist Henry Glassie writes, “Silence is not harmless. It brings disengagement. As surely as the evil tongue, silence threatens the destruction of the self and the community”(Glassie 1995: 35). This is a question of music as community, community as music, the consolidation of personal participation. In Glassie’s words, “True communities are built not of dewy affection or ideological purity but of engagement”(Glassie 1995: 282).

So where to from here? Thankfully in Irish traditional music there are well-established educational and transmissional structures in place in the form of Comhaltas Ceoltóirí Éireann and a network of private teachers. However, the contexts for musical practice that are untouched by the hand of either competitions, tourism-oriented showcases, or commercial performance are becoming few in number. I retain hope in the words of sociologist Craig Calhoun, that “During times when the existing order seems deeply threatened ... such communities may find that they can be traditional only by being radical” (Calhoun 1983: 911), and I find hope in the belief that we can partake of our role as Gramsci’s socially and politically engaged ‘organic intellectuals’, active in the formation of cultural policy. All that is not given is lost.

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