

RESOUND

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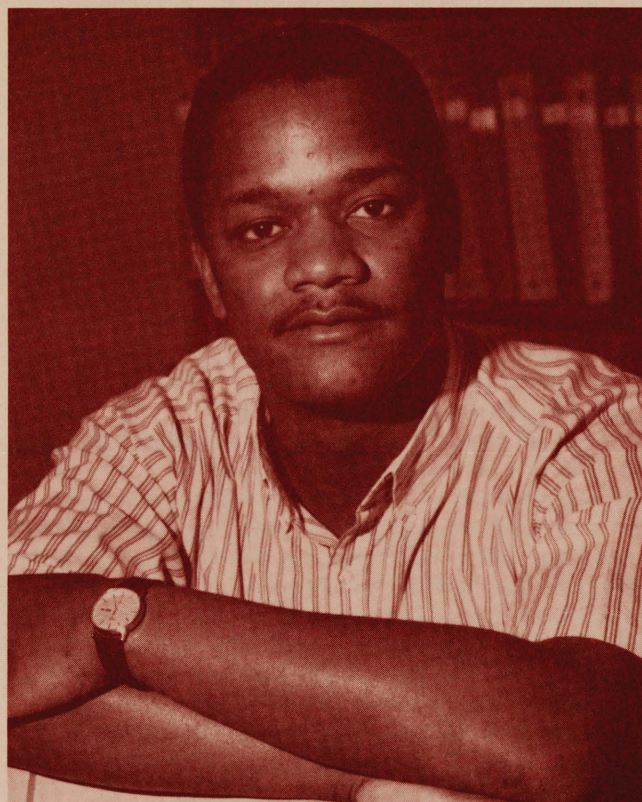
Copyright and the Safeguarding of Folklore

Isaac G. Kalumbu

For the music industry the age of manufacture is now over. Companies (and company profits) are no longer organised around making *things* but depend on the creation of *rights*. In the industry's own jargon, each piece of music represents "a basket of rights." The company's task is to exploit as many of these rights as possible, not just those realised when it is sold in recorded form to the public, but also those realised when it is broadcast on radio or television, used on film, commercial or video soundtrack, and so on. (Firth 1987:57)

Because this position is the one that the popular music industry everywhere in the world has taken, and because this decision impinges upon national cultures, it has become important for the countries of the world to discuss the issue of copyright. First of all, popular music and other forms of popular mass media are largely responsible for the disappearance of folk culture. Secondly, the sustenance of those popular forms has largely depended on the exploitation of folk culture by capital for economic gain. This situation coupled with the so-called *gesselshaft* relationships that have existed in industrialized countries and are slowly obtaining in industrializing nations, have operated in concert to the detriment of the maintenance of folklore. It is for these reasons that the international community, through the United Nations Educational Scientific and Cultural Organization (UNESCO) pledged to take measures to combat the current trend in efforts to preserve folklore. For purposes of presentation to the UNESCO General Assembly, the Special Committee of Technical and Legal Experts on the safeguarding of folklore provided this definition:

Folklore (in a broader sense, traditional and popular folk culture) is a group-oriented and tradition-based creation of groups or individuals reflecting the expectations of the community as an adequate expression of its cultural and social identity; its standards and values are transmitted orally, by imitation or by other means. Its form includes, among others, language, literature, music,



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dance, games, mythology, rituals, customs, handicrafts, architecture and the arts. (*Nordic Institute of Folklore Newsletter*, March 1987)

If for purposes of this discussion on the safeguarding of folklore, we accept this working definition, it seems legitimate to ask the very primary question: whether it is necessary to preserve national folklore. While the significance of folklore is a universal phenomenon, it appears that newly independent countries have a greater use of it than others, given that all these nations strive or ought to strive to break away from the hegemonic relationships with their former colonial masters which have created more complex conditions than in countries that have been independent for a long time. To support this view, and to underline the urgency of protecting a country such as Zimbabwe's

national heritage in folklore, it is necessary to analyze what social, economic, political, and cultural domination have meant to the people of Zimbabwe, and to estimate its effects.

The peoples of Africa were presented in past historiographies that shaped instruction in church, school, and other institutions, as people who never progressed. It was thought that before the coming of the Europeans, Africa was a "dark" continent in which a people without history, religion, industry, or a capacity to reason, co-existed with other wild animals. (Chinweizu 1987:76) C.G. Seligman's statement on this matter epitomizes this viewpoint:

Indeed it would not be very wide off the mark to say that the history of Africa South of the Sahara is no more than the story of the preservation through the ages, in different degrees and at various times, indigenous Negroes and Bushmen by Hamitic blood and culture. The Hamites were, in fact, the great civilising force of black Africa from a relatively early period.... The Hamites...are Europeans; i.e., belonging to the same great branch of mankind as the whites." (Seligman 1966: 8, 61)

With this kind of view of the African, colonial masters found it their responsibility to "civilize" the African, but this was not without its ulterior motives. As Williams points out, the whole social process that one goes through in a hegemonic situation is "... an aspect of contemporary social and cultural organization, in the interest of the dominance of a specific class. It is a version of the past which is intended to connect with and ratify the present." (Williams 1977:116)

Caulfield has shown that in a colonial situation this manipulation was not restricted to tradition. It extended to the exploitation of economic and social structures of the conquered nations. Caulfield sees the exploitation that takes place under imperialism not merely as that of class over class, therefore not merely economic, but rather of culture over culture—a position that echoes Wolf's submission that the contact between the capitalist metropole and the non-capitalist periphery was a great cultural encounter, and not merely an economic one. (Wolf 1969:278) How did this encounter shift African economic and social organization and ultimately, perspectives on African culture?

Because of its interest in the exploitation of land, labor, and natural resources, colonialism had to destroy the existent economic structures it found in Africa. In the case of Zimbabwe, coercive measures were employed to force Africans to leave their homes to go and work in the mines. African access to land was curtailed, and poll taxes were increased (Van Onselen 1980:91) thus allowing a cultural exploitation of the economic sphere. Traditional elites, peasants, and laboring classes were subordinated to the interests of the imperial power. Not only the economic resources were exploited, but also traditional economic organization. A similar situation existed in the realm of social structures. Social roles and statuses changed in favor of the interests of the colonialists; that is to say they were debased and exploited.

While the dominant culture intentionally or unintentionally destroys the dominated culture as it pushes for its economic and political interest, and while the dominated culture may wittingly or unwittingly aspire

to emulate the dominant culture, or resist it by design, the two still remain separate.

It is important to note that despite the distortion and exploitation of African culture, a lot of it still exists today. The problem is how this same culture is viewed by the so-called "enlightened" and "educated" Africans who run public schools, universities, churches, the legal system, local communities, businesses and governments. It is precisely this group of people which has suffered from colonial indoctrination, a process which has been well illustrated by p'Bitek, who relates how an African leader is systematically alienated from himself and his people, past and culture as he grows up. (p'Bitek 1973:10-11)

The young African is recruited more or less at random and is taken to a church school, leaving his brothers and sisters back home. This separation is historical and crucial since it is the beginning of a permanent split in the family. The child that leaves home becomes an exile physically and culturally. He is taken to a church where he sings about Christianity. He is supposed to stand still and not look around, and there are no drums—let alone any dancing in the church. When he goes to his music lesson he learns:

Baa, baa black sheep
Have you any wool?
Yes, Sir, Yes, Sir,
Three bags full.
One for the Master,
One for the Dame,
And one for the little boy
Who lives down the lane.

More often than not, he does not understand what this song is all about. He cannot make the connection between sheep and wool because in his culture sheep are not used for this purpose. He doesn't know who the Master, the Dame, and the little boy are, but when in the evening he returns home, he may sing a lullaby in his vernacular language to his baby brother or sister, and he understands what he is singing. In the evening he may join the rest of the family by the fireplace to take part in story-telling, but often he has some homework to do. During the weekend he cannot join his friends in indigenous dances since he remembers the teaching at the church school: African dances are sinful, and those who take part in them will burn eternally.

When he is ready for high school he needs to go to a big town where there is not much indigenous music, dance, or poetry. Except during the holidays, the young future leader is now fully subjected to a foreign culture. His education emphasizes classical music, English or French drama. He learns by heart poems about snow and may learn a "Scottish tribal dance." By now he is virtually ignorant and ashamed of the ideas and practices of his people and confused about the culture of his civilizers. By the time he goes through university, he is "materially comfortable, but culturally castrated—dead." The height of this alienating drama is that the young leader cannot dance or play the music of his own people—nor can he feel comfortable and deeply and sincerely enjoy the foreign art forms. (p'Bitek 1973:12-14)

One interesting aspect of a hegemonic relationship is the manner in which the relationships of dominance and subordination are sustained by the complicity of the dominated. This is a shameful reality in Africa today, well illustrated by p'Bitek.

The French and American revolutions swept away many social customs, including class distinctions indicated by the wig. But the African revolutions which brought *uhuru* seem to have taken over entirely those costumes and mannerisms which, in feudal Europe, indicated a high place in society. The chairmen of our National Councils are called 'speakers'—and they do not speak much. These are usually elected representatives. Now, in the House of the people's representatives, our speakers wear the most un-African robes. When entering or leaving the Council Halls they are led by a man carrying a huge club called the "mace." The Speakers put on black robes and big wigs, and wear white gloves. Those in the former British colonies dress exactly like the Speaker in the so-called "Mother of Parliament," in other words the National Council of Britain. But why is this? What do the Speaker's robe and wig mean to the people of Africa? What is the symbolism and significance of the mace to the voters? The way the Members of the House of Lords and the House of Commons dress when the monarch of Britain is visiting their national Council reflects the culture and history of the nation. What have the nations of post-uhuru Africa to do with British culture and history?

Come Christmas, and African leaders called mayors and aldermen and councilors put on their robes of

office—gowns and fur caps identical to those worn by mayors, aldermen and councilors in Europe, and switch on the lights on the Christmas trees. In the height of the dry season, we plant these trees in the city square, and put cotton wool on them to remind us of the winter! And, to crown our apemanship, a black Santa Claus dressed in a red robe and a white beard distributes gifts to little black children. What do these things mean to us?

The youth of Africa, like youth anywhere in the world, usually emulate their elders. 'Apemanship' in high places does not help in eradicating 'apemanship' among the young; it does not encourage creativity among the youths. Let the black man use his creativity and initiative to reconstruct his own society and institutions in his own style! (p'Bitek 1973:4-5)

It is this type of leader who even after independence has been unable to rethink and redirect his perceptions and efforts towards what is good for Africa and Africans. Is it surprising then that African nations have failed to come up with viable cultural policies despite years of independence and relative sovereignty? The famous Nigerian singer Fela Anikulapo Kuti tells these African elites that the colonialist has "released you now, but you never release yourself. (Fela 1991: Original Sufferhead LP recording)

This failure on the part of African leaders has meant a failure to assess and evaluate the significance and potential contributions folklore has in the day-to-day lives of their people. As a result, many of Africa's valuable and applicable traditions are being lost by the day since they are regarded as inferior and backward.

Internet Access to ATM Catalog

The online "card catalog" of the Archives, which is a part of the Indiana University library database called Information Online (IO), is now available for public searching via the Internet. Users may address their requests from a Telnet prompt to: 129.79.210.200. At the log-on screen, use GUEST as the user id.

IO may be searched by author, title, subject, or keyword. Archives' holdings are designated by the symbol BT. The author search may be used to retrieve names of performers, performing groups, collectors, and depositors. A subject search is useful for searching by country, culture group, genre (i.e., ballads), musical instrument, and for linguistic materials, language. Titles of songs or commercially-released discs or cassettes may be located using a title search.

Keyword searching is perhaps the most powerful tool for accessing the IO database. Using Boolean operators (and, or, not, and other terms), the researcher may combine two or more terms for more complex search strategies. Or, an author, title, or subject search may be confined to just the Archives' holdings by converting the search to a keyword search and adding, "and BT."

The IO system automatically defaults to a one-screen brief view. Many of our database records cover several screens. Be sure to type "lo" at the prompt to see the long view of a record.

If you have questions concerning our materials in IO, you may address them to RUSSELLM@UCS. INDIANA.EDU. A handout entitled "Searching for Archives of Traditional Music Recordings in Information Online: a Brief Guide" is available upon request.

Preference is now given to the use of radio, television, modern music, and the general systematic borrowing from the nations of the West. The alienation of young people from the traditions of their environment goes on unabated. It is true that most African countries are economically restricted and are faced with various problems due to nature and circumstances. However, it is also true that these countries have a rich and varied folklore in common. This point has not received sufficient stress.

Perhaps it is because of this absence of the valorizing of folklore that many ministries of culture in Africa do not seem to deal with any real cultural issues. Hunt has suggested that folklore is an economic asset just like any other raw material and "the more easily these countries are able to exploit their assets, the sooner they will become economically independent countries." If folklore is socially based and communally owned, as suggested by the UNESCO definition, then it appears to be a legitimate exercise to go about the safeguarding of folklore through such measures as were adopted by UNESCO in 1989. It would be pertinent to discuss the rationale, on a more global level, for such protection, to consider how this protection might be effected, and to examine the problems that might ensue from such designs.

Not surprisingly, the same reason for the adoption of protection measures fronted by Sammy Mackfoy for Africa are echoed by the UNESCO Special Committee of Technical and Legal Experts. Both saw folklore as forming a part of the universal heritage of humanity, and as a means recognizing and asserting the cultural identity of different groups of people. Folklore has social, economic, and political importance and plays a significant role in the history of a people, their cultural heritage, and as an integral part of living culture. Since the traditional forms of folklore were extremely fragile—particularly the oral tradition—and since there was a risk that these may be lost, it was only proper judgement that governments should play a decisive role in the safeguarding of folklore, and that they should act as soon as possible.

(Recommendation NIF 1989/2-3:7) UNESCO, on the basis of the argument set out above, adopted recommendations which among other things urged nations to identify, conserve, preserve, disseminate and protect folklore, and to participate in international efforts aimed at cooperation and exchange.

While the recommendations to UNESCO member states for the safeguarding of folklore were well thought out, far-reaching, and all-embracing, problems arise on the question of the protection of folklore. These recommendations do not offer a solution to the question, and objections that have been raised by folklorists and others to the clause in the American copyright law which states, "No copyright shall subsist in the original text of any work in the public domain...." This presents many problems. While the effort to protect folklore or work in "public domain" is commendable, it is true that "original text" is ambiguous. What is in public domain does not have an "original" text because of the very nature of folklore—its malleability and relativity.

A song may be composed by an individual, but it is not until it is performed for a substantial length of time by a number of generations—so that the sharp points of

personal composition are worn out to the rounded commonality of oral transmission—that it gains the status of an "authentic" item of a particular folk repertory. Still, variances exist and there can be no basis for suggesting originality of folk material. The main problem found in the literary discourse on copyright is the issue of the involvement of mercantile capital in the whole business. Charles Seeger once suggested that "both American and European [copyright law] has been designed to encourage the acquisition and retention of property under rules favoring the more enterprising citizen." (Seeger 1962:93)

Beginning in the 1920s in the United States, the record companies began popularizing folk songs after they had realized the potential folk music had as a money spinner. This popularization led to two particular situations. The record producer was supposed to pay the copyright owner two cents per song for every record sold, and the obvious question that arose was who would be paid for a folk song. Also, in later years, radio and television networks refused to play materials which had not been copyrighted, claiming that they needed "permission" before they could go ahead (Silber 1960:33). As Charles Seeger suggested, the law was designed for enterprising souls. It did not take the record firms a long time to realize that they could manipulate the laws and make more money while at the same time solving the questions they faced. This section of the copyright law was utilized:

Compilations or abridgements, adaptations, arrangements, dramatizations, translations, or other versions of works in public domain...or works republished with new matter, shall be regarded as new works subject to copyright under the provisions of this title; but the publication of any such new works shall not...be construed to imply an exclusive right to such use of the original works, or to secure or extend copyright in such originals works. (Silber 1960:33)

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This led record firms into claiming copyright for themselves and sometimes for their artists on songs in public domain. The bottom line is that any musician who adapts folk songs in a marketable fashion is awarded copyright. He is awarded for making use of what is not his as though it were.

Searching deeper into this issue raises another problem. Where does the artist or record company get its texts and music to adapt and arrange? The main source is through anthologies of recordings made by collectors of folklore. Do these collectors have copyright over what they collect? If so, is it legitimate that they claim copyright? Pete Seeger has an answer:

A booking agent or manager says, 'This is my singer. I discovered him. You cannot hire him unless I get a 20% cut.' Why can't a collector of folksongs say, 'This is my song. I discovered it. You can't use it without giving me a 2% cut.' (Seeger 1963-64:41)

Given the fact that it takes skill, trouble, man-hours, and expense to secure a piece of folk music which may enrich the lives of many, it appears that a collector ought to be compensated. For this reason, well-known collectors such as Alan Lomax have claimed copyright for songs such as "Hey Betty Martin" and the co-authorship of a collection of the folk song book "Leadbelly" on the basis of "new additional material" on almost every song in the volume—including a number which were notated word for word and note by note from recordings made by Leadbelly in the years shortly before his death. (Silber 1960:36)

There is a counter to this argument. Shall Mr. Lomax wait for some rock band to come and use what he has labored for because he is not entitled to the copyright? Another issue compounds this problem. What happens when two or more collectors collect the same song? Who owns what? What is the folk singer wants to record the public domain song himself? Is he entitled to the copyright?

The answers may lie in a point that has not received sufficient attention from folklorists. I say folklorists because it is more reasonable to expect a fair solution from folklorists than from anyone else. Business concerns are generally out for the money, and governments are known not to act on such matters unless advised and pressured by specialists. The central question may be obvious, but the answer is obscure. Who owns folklore? What is meant by "public domain"? If the answer to should come from folklore as a discipline and from its practitioners, then it is time to look within. Have we not referred to folklore as a study of the excellence of the poor or underprivileged classes? Is it not one of the goals of folklore to empower the proletariat? If the answer to these questions is affirmative, then it is my assertion that it is the people who own the folklore, that public domain means material available to everyone, but under protection of its dignity, origin, history and its purpose.

In this connection, it is necessary that copyright of all folk materials be placed in the hands of the people under a kind of trusteeship. To be more practical and to relink with my point of departure, I will apply my suggestions to the Zimbabwean and to the African context in general. The essence of such a trusteeship lies

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The following recordings produced by the Archives of Traditional Music and issued on Folkways as 12" discs in past years, are now available from Smithsonian/Folkways on audio cassettes packaged with the original LP liner notes.

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Songs and Dances of Nepal. Recorded by Caspar Cronk, c1964. **(4101)**

Songs of Aboriginal Australia and Torres Strait. Recorded by Geoffrey and Alix N. O'Grady, c1964. **(4102)**

Kurdish Folk Music from Western Iran. Recorded by Dieter and Nerthus Christensen, c1965. **(4103)**

An Historical Album of Blackfoot Indian Music. Edited by Bruno Nettl, c1979. **(34001)**

The Big Drum and Other Ritual and Social Music of Carriacou. Recorded by Donald R. Hill, c1980. **(34002)**

Music of the Waswahili of Manu, Kenya. Recorded by Alan Boyd, c1985.

Vol. 1: Maulidi **(4093)**

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These Smithsonian/Folkways titles are available for \$10.95 per cassette from Folkways Mail Order, (301) 443-2314, with a credit card. For a complete catalogue, write Folkways Catalogue, Center for Folklore Programs and Cultural Studies, 955 L'Enfant Plaza, Suite 2600, Smithsonian Institution, Washington, D.C. 20560. Catalogues may also be requested by phone (202) 287-3262, or fax (202) 287-3699.

in the structures recommended by UNESCO on the safeguarding of folklore. What these recommendations do not deal with are the legal considerations which answer most of the current and relevant questions to the issues at hand.

Having ceded ownership of folklore to the people, legislation should be effected ruling that a folklore fund be set up from which some of the structural formations necessary to implement the UNESCO recommendations could be financed. This board would be made the sole owner of copyright of materials in public domain.

With the implementation of the UNESCO recommendations, there would be no reliance on the collector for the preservation of folkloric forms: collectors would be employed by the government. In this way, problems of collector and counter collector would be dissipated. Those nationals wanting to collect songs on their own accord would not be denied the right to do so.

Harriet Hunt has suggested that African countries should not allow a situation where "anthropologists manage to use the music and dance they find for little or nothing." (Hunt 1969:93) Foreign researchers should be made to pay a fee to the said fund for using folk materials. While it is known that some researchers have paid their informants well, many do not. Since researchers would be paying into the fund for their use of folklore, it would be up to them and their informants to strike a private deal. This would prevent the co-opting of folk materials into the market economy at grassroots level.

According to these suggestions, payments made to the fund would not be equivalent to purchases of copyright. Copyright would remain in the hands of the peoples' trustees—the Board. Popular musicians and record companies would be allowed use of folk songs and would pay for that use, but the two cents per copy royalty would still go into the fund. This would put a stop to the piracy that goes on where musicians and record companies reap where they have not sown.

It cannot be pretended that the above suggestions are foolproof or that they would not arouse any objections. Nevertheless, just as UNESCO had adopted the recommendations of the Committee of technical and Legal Experts on this matter, so should they adopt a proposition similar to this, because without international acceptance, a law of this nature would be difficult to enforce. As former Jamaican Prime Minister Seaga once said, without international acceptance, "you can only use...legislation effectively within your own territorial boundaries." (Walls and Malm:191)

I have attempted to discuss the issue of copyright with its underlying philosophical question, "Who owns folklore?" in the context of movements towards the presentation and safeguarding of folklore by the world community. Given the significance of folklore as part of a nation's heritage, and the fact that it was this type of heritage that colonialism attempted to wipe away from the people in Africa, I have set out to underline the significance of such preservation in Africa, and to show that this exercise is necessary not only so as the past and all its beauty can be remembered, but also so as inferiority complexes and views of the world holding certain peoples as inferior can be replaced among peoples of the world by self pride, tolerance, goodwill and understanding.

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Laura Boulton Fellowships Awarded

The Laura Boulton Foundation and the Archives of Traditional Music are pleased to announce that **Dr. Michael Taft** is the recipient of the 1992-93 Laura Boulton Senior Research Fellowship. With the goal of placing Boulton within the context of mid-twentieth century cultural studies in Canada, Taft plans to survey Boulton's Canadian collections to ascertain how she worked with Canadian folklorists and institutions, and to conduct comparative research between her collection and the published and archival collections of some major Canadian collectors.

Taft, who is currently an adjunct professor of anthropology at the University of Saskatchewan, will spend the spring semester of 1993 at Indiana University.

Alan Burdette has been awarded the Laura Boulton Graduate Fellowship for 1992-93. Mr. Burdette is completing his second year of graduate study at the Indiana University Folklore Institute. Through an examination of Laura Boulton's field notes, photographs, lectures, and recordings, Burdette proposes to research Boulton's role as a popularizer of world music and as an advocate for the cultures of indigenous peoples.

The Laura Boulton Foundation established both fellowships to promote research on Boulton's extensive collections of sound recordings, manuscripts, photographs, and musical instruments gathered during Boulton's many expeditions throughout the world from 1929 through 1979. The Laura Boulton Collection of World Music and Musical Instruments was transferred to Indiana University in 1986.



Laura Boulton prepares to record French Canadians on the Island of Orleans in 1941.