Introduction: 'soundly organised humanity', law and value

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To talk and write about the ways in which music is implicated in legal and business-related processes is surely nothing new. Yet this intricate web of relations yields continuous debate and search for new practices, in recording studios, courtrooms and the marketplace alike. As a result, the field of music production is in a state of uncertainty, perhaps even an outright crisis of reproduction. Because of recent and relatively rapid changes in communication technology, old conglomerate models and structures of production, dissemination and consumption of music are arguably subject to change. This has also created pressure towards legislative change, especially in relation to copyright issues. In general, the increased importance of immaterial property rights, as opposed to selling physical records, has been acknowledged within the music industries.

In order to address these shifting conditions of music production and consumption, the Nordic branch of the International Association for the Study of Popular Music (IASPM-Norden) invited scholars and other interested parties to share their ideas in the 'Music, Law and Business' conference in Espoo, Finland, at the end of November 2010. The aim of the conference was to provide a forum in which industry professionals, officials, scholars and other agents could engage in a mutually beneficiary dialogue. The goal was furthermore explicitly multidisciplinary, as the purpose was to bring together experts not only from the conventional

areas of music research dominated by humanities and social sciences but also from economics and legal studies.

Alongside conventional academic papers, a selection of which are presented in this volume, there were two roundtable discussions featuring copyright organisation officials, lawyers, music educators, musicians and their managers, promoters, record company executives and scholars. Thus the *Music, Business and Law* anthology represents merely a tip of the iceberg of the topics involved, and the debate is bound to continue further, both in popular, official and academic accounts. To contribute to the debate, let me now offer some personal reflections on the title terms of both the conference and this collection of essays.

Regulating music and money

On the fourth of January 1978 the leading newspaper in Finland, *Helsingin Sanomat*, reported that a British "scrum of rude rascals" were planning to enter the country in order to "bark" and "crow". The boys in question, it was maintained in the newspaper, were "known for their thuggery and weirdness" and they had all been prosecuted for "various narcotic abuses as well as assault and battery". Furthermore, they allegedly intended to produce "snotty and snickering sounds". All this induced the writer to ask whether it was the duty of child welfare inspectors or "environment hygienists" to ban the group from entering Finland. The group in question was, of course, the Sex Pistols (or 'Six Pistols', as the name was once translated in *Helsingin Sanomat*, ostensibly on the basis of Swedish or, perhaps, for some obscure child welfare reason). (Cf. Mällinen, 2008.)

Two days later, the Federation of Child Welfare demanded that the Office for Alien Affairs deny the group's entry to the country, on the basis that their performing in Finland would "unnecessarily propagate fashion that glamorises violence". Also various political youth organisations condemned the group; for the socialist Young Falcons a Nazi iron cross worn by Johnny Rotten was an indication of fascism. The denial of entry was also supported by the Central Organisation of Finnish Trade Unions and the National Board of Social Welfare. On January 12, the Office for Alien Affairs refused the group work permits, due to the members' criminal background. Rock magazine *Soundi* asked for the band's

criminal records from Virgin Records and planned to start a petition in favour of the group. The information about the criminal records revealed four days later that Rotten and Sid Vicious had been imposed a fine once because of drug abuse and violent offence, respectively, but within the next couple of days news of disbanding of Sex Pistols also reached Finland, and the petition was forgotten. (Mällinen, 2008.)

What is clear from this example is that a certain aesthetic expressive practice was perceived as being worthy of regulating through the legal system, and that this (un)worthiness is measured in terms of aesthetic and educational values. The occasional references to fashion suggest that economic values are at issue too but, in the case of Sex Pistols, they were secondary. Here, law outweighed business in music.

Some thirty years later things are different. On August 20 and 21 2010, another scrum of rascals were barking, crowing and producing snotty, snickering sounds in Helsinki for a combined audience of approximately 100 000 people. Roughly half of the people to see and hear the Irish band U2 came from outside Helsinki, some 15 000 from abroad. According to the main organiser, Live Nation Finland, the gross revenue of the event was slightly short of ten million Euros but, as noted in the financial pages of *Helsingin Sanomat*, millions were spent also outside the concert arena. The concert guests "pulled a smile especially on the faces of hotel and restaurant entrepreneurs", as sales as much as tripled in comparison to an ordinary weekend. Taxis in Helsinki and ferry traffic between Helsinki and Tallinn also benefited financially from the event. (Pohjola, 2010; Kallionpää, 2010.)

In the case of U2, then, the regulation of an aesthetic expressive practice depends on business incentives to an extent that surpasses any legal considerations by a wide margin. The requirement for regulation is measured in terms of material conditions and consequences – the number of available seats, impending audience, maximal ticket prices and available assisting work-force – whereas considerations of aesthetic quality or immoral behavioural models appear just that – aesthetic and moral issues. In the letters to the editor of the *Helsingin Sanomat* two days after the concert, one member of the reading audience remarked that U2's finances are attended to in "a Dutch tax haven, so a just pop star thinks he does not have to pay taxes" (Nermes, 2010). While it may be more accurate to say that the band, "[l]ike any other business … operates in a tax-efficient manner", to quote the band's manager Paul McGuinness

(BT, 2009), here business outweighs law. After all, to be tax-efficient is, apparently, quite legal.

What is evident on the basis of these two examples is that there are always legal and economic concerns involved when music is at issue. As Simon Frith and Lee Marshall (2004: 11) put it, "the history of music is a history of composers and artists, as well as their rights, being exploited." Indeed, in expounding the social practices that constitute what is known as the music industry, copyright is of utmost importance, as it embosoms all business decisions in the industry, beginning with the selection of recording musicians and the songs to be recorded, and extending to marketing and virtually all forms of usage (Frith & Marshall, 2004: 1–2). This is unashamedly so in the so-called western world, whose post-industrialised, commercialised, commodified cultural dominant rests to a significant degree on argumentation claiming that "culture, information, creativity and intellectual property are going to be, and/or should be, an increasingly important part of future economies and societies" (Hesmondhalgh, 2007: xiii). These claims are strenuously defended in courts, as demonstrated by recent rulings on the maintenance of peer-to-peer file-sharing networks; in October 2010, within one week in different district courts in Finland, two persons were sentenced to several months' parole and imposed with fines of over 300 000 Euros, on the basis of estimated losses caused by unauthorised distribution. As reported by the Copyright Information and Anti-Piracy Centre, the amount of data shared at the point of gathering evidence was equal to 1,3 million music albums. (AP, 2010.) The actual amount of music data is, however, not revealed, nor the fact that the persons in question did not earn a cent through maintaining the networks.

On the basis of the durations of parole and the punishments stipulated in the Criminal Code of Finland, a copyright crime such as in these cases is equivalent to a petty war crime, ethnic agitation, treasonable conspiracy, bribery, participation in the activity of criminal organisation, violent rioting, dissemination of depictions of violence or obscenity, incest, assault, negligent homicide, driving while seriously intoxicated, kidnapping, business espionage, extortion, money laundering, forgery, fraud, usury, petty counterfeiting of money, doping offence, smuggling, impairment of the environment and narcotics offence, to give few examples. I am not quite sure of what to make of this comparison, but I think it should mean that if I ever lose a child to a kidnapper, I can always ask

for 1,3 million music albums in return. That certainly would revitalise my personal collection.

Disciplining music through law

But I am no lawyer, nor an aspiring legislator, so I hope you will forgive my naivety in these matters, as well as my general lack of a sense of humour. The latter may very well be attributable to my disciplinary background, that is to say, musicology. For the majority of those who are educated within the disciplinary constraints of musicology, questions concerning law and business may not seem very crucial, even in the current ideological climate favouring 'free' markets and competition, deregulation, taxation of consumption rather than labour or capital, movement of manufacturing plants to third world countries and measuring the value of everything in terms of money. The irrevocable connections of the most symbolic and purest form of communication to such mundane and tangible phenomena as legislation and commerce may be acknowledged, accepted even, but, on the basis of the curricula of various musicology departments, the essence of the discipline is formed by studying historical repertoires, compositional styles and musical meanings. Quite often these are examined cross-culturally, under the auspices of ethnomusicology. Inasmuch as this particular branch of music research is defined as the study of music as culture, it usually brings with it various concerns over the broader social and societal context in which a given musical phenomenon exists and is practised. While the history of ethnomusicology can be taken back at least as far as the development of sound recording technology, it is somewhat instructive that there were virtually no ethnomusicological analyses explicitly focussing on music industry before the mid-1990s. So-called urban ethnomusicology, for example, although fruitfully expanding the scope of the discipline from 'alien' non-western contexts to the researcher's 'own' backyards in western metropolitan areas, has centered more on ethnographic questions about musical identities than on the ways in which the formation of these identities is conditioned by legislative and commercial factors.

The regulative and commercial environment of music is not a strange thing to consider for many popular music scholars, however. Given the strong sociological influence in this particular strand of music research,

as opposed to the music-analytical and biographical incentives of musicology and the anthropological bedrocks of ethnomusicology, it is no surprise that the most commended accounts of music's industrial and legal dimensions have been produced by people affiliated with popular music studies, most of them in fact associated with IASPM. But to equate studies of the legal and economic aspects of music with popular music studies runs of course the risk of simplifying the issue, as in a capitalist world-order, no type of music remains unaffected by law and business. For, while legal solutions and statutes are most often established as reactions to changed circumstances, they have their own aesthetic implications. This has become particularly pronounced in recent years in relation to the practice of sampling where issues of licensing and copyright clearance may constitute obstacles for creative expression (cf. Justin Morey's article in this collection). In some cases, one may go as far as to equate the copyright-based mechanism of controlling the usage of music with a means of censorship, whereby not only the artistic output but also the supply of music is restrained (Frith & Marshall, 2004: 5). In studies on censorship of music and other forms of artistic expression it has been in fact suggested that, historically, there has occurred a shift from church censorship to state censorship and most recently to what may be termed "market censorship", referring to the ways in which profit-oriented business relations and the management of intellectual property rights in particular, function, sometimes intentionally, as censorial tools (Jansen, 1988; Cloonan, 2003).

Ethnomusicology is also intricately connected to the rhizome of music, business and law through another route, namely the one pertaining to the category of world music. This raises immediate questions about cultural ownership and appropriation which may be examined more closely in relation to a tension between "aesthetic success" and cultural recognition, on one side, and corporate commodification on the other (Young, 2010; Taylor, 1997). Here, the historical amalgamation between ethnomusicology and sound recording manufacturing is of utmost importance. Occasionally the relationship between the fields has been symbiotic "with ethnomusicologists and record companies working in tandem to capture, promote, sustain or generate musical activity in particular contexts; partners in crime, as it were" (Cottrell, 2010: 4). To be sure, one might do well to remember that many of the sounds that have subsequently become known as world music have been provided through ethnomusicological endeavours, and perhaps even more

of the ways in which these musics are understood (cf. Brusila, 2003: 50). Stephen Cottrell (2010: 8) in fact situates "the starting point for the commodification of world music" to ethnomusicological recordings of Native American musics in the mid-1890s. He further maintains that "the appropriation and recycling of the musical knowledge of others by ethnomusicologists and institutions around the globe bears some similarity to the recycling of musical knowledge by other music industries for the purposes of generating economic capital" (Cottrell, 2010: 20). Thus "ethnomusicology is itself a global music industry, one that is similarly enmeshed in transnational cultural flows that are somehow capitalised upon by both individuals and organisations of one kind or another, in ways that, notwithstanding our best efforts, do not always lead to the full recompense of those individuals and groups whose musical knowledge we have traded in" (Cottrell, 2010: 21).

According to ethnomusicologist Bruno Nettl (2005: 198), the basic ethical questions in ethnomusicology are "who owns the music, and what may someone who does not own it do with it." By 'owning', Nettl is in fact referring to immaterial rights not in terms of economic interests based on contractual exchange but, rather, with respect to identity construction and its associated dynamics of historical change, appropriation, hybridity and respect. Certainly, in these processes questions of economic exploitation surface frequently. This is particularly problematic in the context of so-called traditional music, as pointed out by another renown ethnomusicologist, Anthony Seeger (2004: 157–160, 168). Here, at issue are not only Eurocentric conceptualisations of copyright which all too easily lead to situations that resemble colonial power relations but, also, the fact that, if companies or any other parties hang on to exclusive rights in perpetuity, the public domain shrinks and there is less and less material to use freely in creative work.

Popular loans, ideological interests

Given the predominance of popular music studies rather than (ethno-) musicology as the common disciplinary framework for accounts of music industry, one is impelled to ask what is the relevance of the word 'popular' in this regard. Much, of course, depends on the definition of the concept, which in turn depends on the context. According to vari-

ous scholars, the designator 'popular' can refer for instance to aspects of popularity, success, working-class or subcultural mentalities, opposition to art, low aesthetic values, mass culture, folk culture, everyday practices or affective commitment (eg. Storey, 2003). None of these includes or excludes a certain type of music by definition; any kind of music can be or become 'popular', but is not necessarily so. Certainly, generic conventions play a central role here, and certain instrumentation or rhythmic features, for example, may very well be associated with popular music more readily than other broad generic labels. Yet aesthetic features are not the only and by no means the decisive factors, as much depends also on the ways in which a given piece or type of music is situated in terms of production, distribution and consumption. In this regard, one might note that, until 2004, only two pieces of music had ever reached the number one position on the list of Finnish compositions earning performance royalties abroad. They were the Violin Concerto op. 47 composed by Jean Sibelius and the Second Symphony op. 43, also by Sibelius. In 2004, the pole position was conquered by 'In the Shadows', a rock piece by the band The Rasmus. So, according to this kind of coarse quantitative measurements, both the output of Sibelius and The Rasmus are roughly equally popular. More nuanced analyses of the situation may nevertheless be achieved by considering the following remarks from the daily press:

> In concerts, In the Shadows is performed almost exclusively by The Rasmus, whereas Sibelius' Violin Concerto is played by hundreds of symphony orchestras each year.
>
> However, In the Shadows got more radio airplay in 2004 than the Sibelius piece. On the other hand, In The Shadows has to be played about ten times on the radio before it gets the same amount of air time as one performance of the Sibelius Violin Concerto. (*Helsingin Sanomat* 25 April 2006.)

In other words, while 'In the Shadows' and Sibelius' Violin Concerto may be equally popular in terms of performance royalties, there are distinct differences in the ways in which they are performed and mediated. Furthermore, they are – or at least so far have been – quite distinct from each other with respect to aesthetics, especially when it comes to instrumentation and sound qualities, not to mention stage demeanour. On the other hand, however, it is plausible (and probably quite easily demonstrable to the odd Schenkerian analyst) that the pieces share a great deal

in terms of tonal systems and scales, as well as harmonic progressions and functions. They both represent forms of music commonly labelled as 'western'.

The immanent question here, particularly for those with an ethnomusicological background, concerns the extent to which 'popular music' constitutes a world-wide classificatory category (cf. Manuel, 1988). What is clear is that, regardless of the societal and cultural context, multiple classificatory categories for music are in operation. It is less clear whether or not the designator 'popular' is appropriate in all of these contexts. To be sure, due to expanding processes of cultural globalisation, especially in relation to the changes in media environment and technology, there are very few places on the planet Earth that would be free from so-called western influences. It does not follow from this, however, that western classificatory systems would fit straight-forwardly with non-western practices. But as the planet Earth is a living system, change is inevitable, and sometimes comparisons between contemporary and earlier thought patterns may be useful. Here, one could mention that in the Finnish language, for instance, both 'popular' and 'music' are borrowings from other languages. But of course, before popular music – or music alone, for that matter – was known on the soil now known as Finland, the populace on that soil did sing, as well as play sound-producing objects and hop to those sounds.

Thus, it is apparent that notions such as 'popular' and 'music' have been taken, for various ideological and institutional reasons, to subsume a broader set of cultural expressive practices. Regarding the ideological and institutional factors, a particular dilemma is constituted by 'music', as it has been likewise used to exclude certain types of cultural expression – for example those worthy of the appellation 'popular'. Whether the issue has been burgeoning nation-states with nationalistic agendas or religious communities with their ideas about intimate connections between music and debauched conduct the point is that on the basis of rather arbitrary aesthetic criteria and equally capricious valorisation of social contexts a number of instances of "humanly organised sound", to quote ethnomusicologist John Blacking (1973), are excluded quite deliberately from the definition of music.

But why? What on Earth can be the cause for such exclusions? Why would nationalism or religious belief yield narrow definitions of music?

Maybe the most common dictionary definition for 'law' is succinctly "a rule of conduct imposed by authority", where the authority can be of human or divine origin. Furthermore, the body of rules in question can be recognised and maintained by any kind of communities and thus ensue from formal state-run enactments or unspoken social customs alike. However, 'law' can be conceptualised also "without reference to an external commanding authority", as is the case for example when the term is used as a synonym for customs, habits and general ways of conduct or for that which is considered right or proper. There are also distinct scientific and philosophical uses of the word, most notably the notion of natural laws within physical sciences, but also more widely in the sense of conformity and regularity of given phenomena. (OED, 2010.)

In relation to music, one is immediately reminded of the 'laws' that govern music making in the most grass-root level. In general, these 'laws' may be termed music theory, or at least they have been termed in western academia, regardless of the fact that they come virtually in all shapes and sizes. Quite often they are elaborately formalised and institutionalised, sometimes backed up with ideas of transcendental justification, and occasionally disguised as mere feelings of how to get it right. Indeed, music theory aids one to do the music right, just as any legal system is designed to keep various wrong-doings to a minimum. In this sense, music theory is an educational device that is based on socially constructed and maintained ideas of 'good music'. Thus there is also a clear ethical undertone in the practice of music theory – as there surely is in any legal practice – to do right by its objects and subjects. It not only teaches us how to do music right, but also how to do justice to music.

In this context, the links between education and music and law deserve some additional commentary. Educational institutions hold a central place in perpetuating ideas about what constitutes culturally valuable music, what copyright is all about, and how to make 'good' business (cf. Thorley in this collection). Education is also in an extraordinary position in the sense that it relies to a considerable degree on being free to analyse existing musical texts. However, it is yet indicative of the current marginalisation of the idea of 'fair use' (Frith & Marshall, 2004: 5)

that new students in music departments often ask if they are allowed to use musical examples in their seminar papers and theses. Were they not, there would not be a subdiscipline called music analysis.

Judging people by their covers

Depending on the social and institutional setting, then, one might use music theory (or, in a less Eurocentric formulation, the rules and laws pertaining to humanly organised sound) for creating new music or analysing existing ones. Here one nevertheless needs to take into account the fact that music theory, or the rules and laws in question, are fundamentally based on the extrapolation of existing examples of humanly organised sound. There are at least two important implications. First, every occasion of creating new music is to put the theories, rules or laws to test in terms of conformity and transgressiveness. Too much of the former, and nothing new is created; too much of the latter and the expression is taken beyond recognition. This issue has a direct bearing on popularity and success.

The second implication of extrapolating existing examples of humanly organised sound hinges on the words 'existing' and 'humanly'. In other words, at issue is the ways in which these sounds are historically and socially situated. If there is one thing to be learned from the history of academic music studies, it is that to put different musics in a hierarchical order on dubious evolutionist grounds is to put different groups of people in a hierarchical order. In the words of musicologist Robert Walser (2003: 38), "[u]ltimately, judgements of music are judgements of people." Thus, to do justice to music is to do justice to people.

There appears to be a certain amount of distrust towards the legal, economic and political impact of musicology, in that not many practitioners of it think they can either change the world radically or earn millions from it. Yet their input has occasionally been crucial when there has been uncertainty over the integrity and originality of certain pieces of music. Musicologists may not know how to make big bucks with music, but they may know a great deal about the criteria of music plagiarism, and their expertise in these matters has literally been on trial. Sometimes they may in fact utilise their professional skills in demonstrating that some pieces of music that are treated as cover versions might be quite

different. 'Popular musicologist' and music professor Allan F. Moore (2003: 6) points out that the value of music analysis is precisely in that it is "very good in pointing out differences". But, he continues, the job of a music analyst does not end in mere indication of diversity, as at issue is ultimately the situatedness of any music analytical interpretation and knowledge, whether in musicology departments, court houses, corporate headquarters or outside them. For Moore (2003: 6), the initial question is "how does it sound?". While the education of musicologists may enable them to answer this in terms of various forms of music theory, they should be equipped also to consider "who does the telling [and] on what grounds". This, in turn, should ultimately lead to deliberations about "why does it matter", which for Moore (2003: 6) means addressing the relationship of musical sounds to the uses of other artefacts and experiences. Walser (2003: 33) exemplifies this by referring to alleged violent music:

> Instead of censorship, demonization or hand-wringing about whether it is a good thing for us to have violent music, we might better ask whether it is a good thing to have social conditions to which violent music is an obvious and reasonable response. … [K]nowledge of these conditions of poverty and injustice is absolutely essential, because without it, the analyst cannot possibly understand why this music has taken the form it has.

In such contemplations of social conditions of poverty and injustice, or of affluence and egalitarianism for that matter, aspects of law and business are amongst the most apparent issues.

To think about music in conjunction with law and business, or vice versa, is to examine a particular aesthetic practice in its regulative contexts, both social and material. This is also to acknowledge the inextricable connections between cultural, legal, economic and political spheres of activity (cf. Frith & Marshall, 2004: 14–15). Such an examination is by no means news to ethnomusicologists or popular music scholars, not to mention any music researcher even remotely familiar with Marxism. This entails recognising also that music, business and law are all social activities, constructions and performances that are based on most fundamental questions about the interrelations and valuing of various groups and groupings of people. Thus, remembering John Blacking's (1973) influential definition of music, one might conclude that any violation of music, whether or not for economic gain, is a violation of "soundly organised humanity".

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