

CEDITRAA-Workshop

Comparative Perspectives On Popular Music Production and Regulation Online

Online Workshop 14-15 July 2022

Organisers:

Ute Röschenthaler (JGU Mainz)

Alexander Peukert (GU Frankfurt)

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Workshop Programme (times in CEST)

14 July (Thursday)

- 13.00-13.15 Welcome and introduction
(Rio 8am, KL 7pm, Ohio 7am, Dakar 11am, London 12am, Auckland 11pm)
- 13.15-14.00 **The South African Copyright Amendment Bill: To Stimulate or Stifle the Entertainment Industry?**
[Malebakeng Agnes Forere, Associate Professor of Law, University of Witwatersrand, Johannesburg](#) (same time)
- 14.00-14.45 **Popular music distribution and regulation in the EU digital single market**
[Alexander Peukert, Professor of Law, Goethe University Frankfurt](#)
- Coffee Break
- 15.15-16.00 **Music Distribution, Copyright, and Law in the Internet Age: The Case of Egyptian Youth Music**
[John Schaefer, Associate Professor of Anthropology, University of Miami](#) (Ohio: 9.15am)
- 16.00-16.45 **The Senegalese copyright law revision and transformation processes of its collective management organisations**
[Ulrike Luttenberger, PhD student, University of Leipzig](#) (Dakar: 2pm)
- 16.45-17.00 Summary Day 1

15 July (Friday): (Rio 4am, KL 3pm, Ohio 3am, Dakar 7am, London 8am, Auckland 7pm)

- 09.00-09.45 **Industrial, Regulatory, and Technological Fluidity in India's Digital Entertainment Industry**
[Gregory D. Booth, Professor of Ethnomusicology, The University of Auckland](#) (Auckland: 7pm)
- 09.45.-10.30 **Between Conventional and Unconventional Distributions of Music: K-pop's Journey Amidst Loose Copyrights**
[Jimmyn Parc, Associate Professor of East Asian Studies, University of Malaya](#) (Kuala Lumpur: 3.45pm)
- Coffee break
- 11.00-11.45 **Protection vs Exploitation: Digital Content Creators and Curators' Mediated Discourse of Music Copyright Perception and Protection on TikTok**
[Zhen Troy Chen, Senior Lecturer in Digital Advertising, University of the Arts, London](#) (London: 10am)
- 11.45-12.30+ **The Digitalisation of the Music Industry in Brazil: New Productive Structures, Legal Framework and Challenges for Peripheral Music in the Digital Age+**
[Leonardo de Marchi, Professor of Communication, Federal University of Rio de Janeiro](#) (Rio de Janeiro: 6.45 am)
- 12.30-12.45 Final discussion and summary of workshop

Workshop Topic:

Despite multiple international agreements and conventions to harmonise intellectual property law, including mutual obligations to cooperate and protect cultural production, each country implements the laws related to its various immaterial cultural goods independently. International conventions provide guidelines, demanding minimal consensus. It is hardly surprising that there is a variety of designs, implementations, and interpretations of intellectual property law. At the example of popular music, this workshop discusses the variety of national interpretations for protecting immaterial productions that have emerged with the proliferation of the internet during roughly the past 25 years. It seeks to investigate in comparative perspective how the internet has transformed music production and consumption, the meanings of these developments for musicians and audiences and their opinions about the current situation of accessing and sharing music, as well as for other stakeholders involved in pushing legal amendments forward.

Key questions:

- Rise of the internet:
 - How have online music marketing, consumption and sharing vis-à-vis prior modes of exploitation (in particular CDs) evolved?
- Changes in the relevant copyright framework:
 - Brief overview: protected subject matter (the entire work, soundtrack, lyrics, melody etc.) rights and rightsholders in popular music (including collective management organisations)
 - What aspects of copyright law have changed since the proliferation of the internet? Are there general trends in the evolution of the digital copyright law?
 - Which leeway remains for unauthorised uses (such as sampling and remixing) under existing copyright law (fair use, quotation, parody, pastiche)?
 - What is the legal status of user generated content platforms (such as YouTube)?
- Stakeholders in the music industry:
 - Which stakeholders are involved, what are their roles and interests?
 - How did their objectives and arguments change during the past 25 years? Did they lobby for copyright law amendments?
 - Who owns the relevant entities?
- Perspective of composers and performing artists:
 - What is the perspective of composers, songwriters and performance artists on the changes induced by the internet, the evolution of platforms, and the legal framework?
 - From what do they earn their living, do additional funding opportunities exist?
 - Are there specifically local interpretations of dealing with music in the country (or is it about a conflict of interest between the stakeholders in the music business)?
- Impact of the internet on local music production:
 - How has the legal situation influenced the production of popular music?
 - What other factors can be found that impact on the music industry in the country?
- Outlook
 - Does copyright law harmonise with public perception?
 - Will copyright law be still relevant in the future?

Abstracts of presentations

The South African Copyright Amendment Bill: To Stimulate or Stifle the Entertainment Industry?

Malebakeng Agnes Forere, University of the Witwatersrand

Abstract: The Copyright Act of South Africa was enacted in 1978, predating the internet. With advancements in technology and internet penetration came new modes of content distribution, creation of new rights while introducing enforcement challenges. With regards to content distribution, technology and internet services resulted in the end of physical copies of music and videos, which resulted in the closure of music and video stores in South Africa thereby affecting this particular stream of income. The situation was compounded by economic exploitation of rights, which was in favour of content producers as against artists, as well as the collective management societies' (CMOs) challenges in the management and disbursement of revenue. This state of affairs resulted in the establishment of the commission of inquiry (the Copyright Review Commission) in 2010, which was tasked with looking into the plight of South African artists and to make recommendations thereof. The overarching recommendation was an amendment of the 1978 Copyright Act as a result of which the Copyright Amendment Bill was introduced to Parliament. The Bill has many objectives but relevant to this work are those affecting the survival and/or ease of doing business for the tripartite stakeholders in the entertainment industry – artists, content producers, and CMOs. The implicated provisions of the Bill are on remuneration, assignment of rights and regulation of CMOs. To this end, the Bill adopts the one-size-fits-all approach to remuneration of artists by mandating payments of royalties irrespective of peculiarities of different sectors while limiting assignments to 25 years. Further, the Bill seeks to regulate CMOs by imposing certain reporting obligations on them. From the foregoing, there are two objectives for this paper: the first objective shows how the end of an era of physical copies of music and videos has negatively affected this income stream for the parties involved, and how the demise of physical copies is affecting preservation of South(ern) African culture thus threatening the identity of South(ern) Africans. This objective is especially important given that South(ern) African countries are developing countries where internet access is still very costly and slow. The second objective shifts the focus to the Copyright Amendment Bill and the discussion shows that the indiscriminate imposition of royalties as a standard form of remuneration together with the cap of a 25-year period for assignment will potentially threaten investment in the entertain industry in South Africa. Finally, while acknowledging a need for establishing accountability in the operations of CMOs, the paper shows that onerous obligations imposed on the CMOs will potentially impede efficiency gains.

Short bio: Malebakeng Agnes Forere is a holder of a PhD degree in international economic law from the University of Bern, and she is an associate professor of law at the University of the Witwatersrand, South Africa. Prof. Forere specialises in intellectual property law, with special interest in copyright (rights in music) and patents. She has been very instrumental in the parliamentary debates on the Copyright Amendment Bill in South Africa, and is the author of "[Reforming the Right to Remuneration in the South African Copyright Amendment Bill](#)," available at: <https://digitalcommons.wcl.american.edu/>

Popular Music Distribution and Regulation in the EU Digital Single Market

Alexander Peukert, Goethe University Frankfurt

In my talk, I will give a brief overview of the global significance of the EU music market, major players in the music market, and trends in music distribution and consumption. I will then take a closer look

on the importance and the copyright regulatory status of streaming services (such as Spotify), UGC platforms (such as YouTube or TikTok) and unauthorized file sharing. Finally, I will address legal measures intended to improve the bargaining position and remuneration of authors (composers) and performing artists.

Short bio: Alexander Peukert is professor of civil law and commercial law at the faculty of law of Goethe University Frankfurt am Main. His main research interest is in intellectual property and unfair competition law. For more info visit https://www.jura.uni-frankfurt.de/49451152/English_Version

Music Distribution, Copyright, and Law in the Internet Age: The Case of Egyptian Youth Music

John Schaefer, University of Miami

Egypt poses a central case in the development of regulations concerning music distribution. Among the Arabic-speaking Middle Eastern countries, Egypt is central to multimedia production, including television, cinema, and music, and this has been the case for over a century. Although decentralized distribution wrought by the Internet has challenged its dominance, alongside Egypt being eclipsed by the Gulf in terms of investment capital, Egypt remains a key site to examine how the non-arbitrary rule of law might govern musical forms deemed offensive to the state, despite their tremendous popularity.

Egyptian “Youth Music”—variously called Shababiyya (literally “youthsome”) or Mahraganat (literally “carnivals”)—is a popular electronic folk or dance format that has come to dominate working-class weddings and other festivals across the country. Typically, it fuses hip-hop with very catchy beats and autotuned vocals. Because it’s performed live, there’s a tremendous capacity for improvisation, and no prior restraint on edgy lyrics that might get political. It’s rare that such music makes it into official channels such as the NileSat free distribution network controlled by the Egyptian government, which distributes Arabic-language music channels largely funded by the Gulf. Instead, Egyptian youth music is shared on Youtube and other Internet channels.

In 2020, the Egyptian musicians’ syndicate banned any professional performance of the format. In 2021, Mohamed Ramadan, a top-performing Arabic-language artist on Youtube who also raps, dances, and acts, was banned specifically by the syndicate from public performance. And in 2022 the Egyptian government began prosecuting mahraganat artists deemed to have violated public decency. Meanwhile, artists with broader exposure continue to travel abroad for concerts, as well as circulate their music videos online and on TV channels. A popular 2021 mahraganat song even made it into an episode of the Marvel/Disney TV show Moon Knight and charted briefly on US soundtrack charts in 2022.

The paper begins with a brief review of music contexts in the Middle East, followed by a brief review of Internet-era copyright laws concerning music, with particular attention to Arabic-language media. It concludes that national boundaries can result in the imposition of restrictions on public performance, as well as media networks that are regulated by the state. Nevertheless, since each country presents a new regime of regulation, and global distribution on official channels ruled by international law, it’s possible for banned musicians to simultaneously struggle at home, even as they flourish abroad.

Short Bio: Dr. John Philip Rode Schaefer is an Associate Professor of Anthropology. His research focuses on folklore and public culture in the Middle East, particularly Morocco and Egypt. He received his Ph.D. from University of Texas-Austin. He is currently completing a book manuscript with the tentative title of *The Black Sahara: Gnawa Identity and Spiritual Work in Morocco*. The book derives from fieldwork conducted between 2001 and 2010 among Gnawa musicians in Morocco, who

practice spirit possession and conduct trance healing rituals. He has also published and presented more broadly on such topics as activism in Cairo's Tahrir Square, Moroccan protest music, psychedelic trance festivals, interactional analysis of music, and the use of the Internet in Ghana.

The Senegalese copyright law revision and transformation processes of its collective management organisations

Ulrike Luttenberger, German Historical Institute Paris/Daker

Abstract: This presentation deals with legal and organisational transformations of copyright management in Senegal, which began in the late 1990s and were only completed in 2016. Based on ethnological field research, it is shown that a group of Senegalese artists endeavoured to acquire knowledge about copyright and intellectual property rights, partly by consulting international Western legal experts, and actively participated in the process of copyright law revision. This led to the integration of artists to constitute the board of the newly founded Senegalese CMO called SODAV, to the expansion of its activities to include neighbouring rights and to the dissolution of the former CMO BSDA from the state apparatus. The process was a protracted one, involving many coordination processes, which were particularly complicated at the political level due to two changes of government and frequent changes of ministers of culture.

Short bio: Ulrike Luttenberger is currently a PhD student in African Studies at the University of Leipzig and was from 2019-22 a fellow of the IHA-CREPOS programme "The Bureacratization of African Societies". In her research, she focuses on different stakes of copyright in popular music in Senegal (artists, collective management organisation, links with national (inter-) organisations) with an anthropological approach. Previously, she was the scientific coordinator of the French Studies Centre of the University of Leipzig, worked in a research project on cartography in Africa in the 19th century and gained experiences in German-African collaboration in several African countries and organisations. She holds a bachelor's degree in African Studies from the University of Leipzig, of which six months were spent at the Paris Diderot University, and a master's degree in Intercultural Personnel Development and Communication Management from the University of Jena.

Industrial, Regulatory, and Technological Fluidity in India's Digital Entertainment Industry

Gregory D. Booth, The University of Auckland

Abstract: Sometime in the first decade of the 21st Century, India's famed music and film industries appeared to have merged into a single industry called entertainment. Cultural production continued to be centred in Mumbai (the ubiquitous Bollywood); but over the first 15 years of the century, technological change and the collapse of physical format sales had the effect of erasing the distinctions between music, music video and film that had at least superficially differentiated sectors of cultural production and commerce. In response to an increasingly unsustainable dichotomous logic, companies began to treat songs, song/dance scenes, music videos, and entire films as almost interchangeable products, all of which could be streamed across a host of digital platforms. These changes in industrial structure and practice were enabled by a host of factors; but primarily by the growing accessibility of ever cheaper smart-phones combined with low-cost data-packs that could provide direct internet access to the majority of Indians for the first time. In the latter 2000s, commerce and consumption shifted from various forms of TSP-managed music-download services, private FM radio, and a range of illegal physical format and sharing practices to the wide-spread use

of streaming for the consumption of entertainment commodities (music, stories, films, videos, etc.).

Almost universal access to the internet, low-cost smart phones and personal computers and the very low cost of internet-access and data have collectively accelerated the cultural impact of globalisation on all aspects of music culture and cultural practice, as well as on all levels of Indian society, including those that were, to some extent, insulated from that impact prior to 2008. Despite the globalised nature of available entertainment content in contemporary India, the shift to streaming has simultaneously solidified the location of music, video and film production within industrial-cultural structures of film production. Primary engagement with the digital streaming platform has removed some of the structural and legal tensions that plagued Indian cultural production for decades. This growing internal alignment correlates with the global alignment of film-industry practices with global IP norms, enacted through the most recent amendment to the Indian Copyright Act (2012). In this study, I examine the industrial and cultural transition to a streaming-based culture in India over roughly the first two decades of the 21st Century. I consider the current manifestations of local-global tensions, ongoing genre development and differentiation, the position of performers and composers in the new IP technological and regulatory environment, and the constantly shifting nature of India's music-industry structures.

Short Bio: Gregory D. Booth is Professor of Ethnomusicology at the University of Auckland and has been engaged in the study of Indian music and culture for more than forty years. He is the author of two books, *Behind the Curtain: Making Music in Mumbai's Film Studios* (OUP 2008) and *Brass Baja: Stories from the World of Indian Wedding Bands* (OUP 2005), as well as numerous articles on music and film industry in South Asia. He co-edited the 2014 OUP publication *More than Bollywood – Studies in Indian Popular Music*. He is currently studying India's music and film culture-industries, focusing on a wide range of factors including intellectual property, technology, industrial structures, and the music-film relationship.

Between Conventional and Unconventional Distributions of Music: K-pop's Journey Amidst Loose Copyrights

Jimmy Parc, University of Malaya

Abstract: It has been widely believed that copyrights protect cultural diversity and creativity. This belief is no exception when it comes to the Korean music industry or K-pop, which has recently enjoyed the global popularity of its songs. In this regard, it is interesting to examine the role of copyrights with the case of the Korean music industry (K-pop), which can then provide meaningful implications for countries that seek to invigorate their own music industries. As such, this paper sets out with an overview of Korea's copyrights law and its evolution. The effect of this law on the Korean music industry and K-pop is then examined.

In Korea, the first copyrights law was introduced in 1957 and it was not amended for three decades; in fact, the law was exploited by successive military governments to suppress freedom of expression. It was amended entirely in 1987, shortly before the 1988 Seoul Olympic Games. Although the law has been amended almost every year since 1990, it is based on the conventional view of the music industry which is in favor of established music producers and distributors. This approach ignored the development of new technologies and hindered the emergence of new business models. Furthermore, it neglected the demands among consumers and the growth of "unconventional" distribution through the internet. Interestingly though, this oversight did bring about favorable conditions to international business entities, such as YouTube, which have offered consumers in different parts of the world easy access to K-pop's contents. This has been one of the key factors

behind the broad distribution of K-pop beyond East Asia. Based upon these conclusions, the successful case of K-pop raises a need to rethink the role and effectiveness of the current copyrights regime and their rationale while offering a new approach toward copyrights.

Short Bio: Jimmyn Parc is an associate professor at the University of Malaya, Malaysia. His current research focuses on cultural industries in Asia and Europe, which includes films, dramas, and music which are at critical juncture in the midst of a changing business and trade environment as well as new challenges in the form of digitization. He is also the co-author of *The Untold Story of the Korean Film Industry: A Global Business and Economic Perspective*, which was published by Palgrave Macmillan in 2021.

Protection vs Exploitation: Digital Content Creators and Curators' Mediated Discourse of Music Copyright Perception and Protection on TikTok

Zhen Troy Chen, University of the Arts London

Abstract: China's music industry is going through a copyrightisation process manifested in both the recently amended copyright law and the tightening copyright regulations and filtering technologies by online platforms (Chen, 2021). To respond to such a transformation, content creators and curators on Chinese social media platforms have been more aware of and tactical about copyright infringement and protection in their commercially oriented content production of UGC [User-generated content]. Therefore, these content creators and curators are at the fore front of copyright discourses generated in Chinese online public sphere. In this study, I focus on Chinese TikTok (Douyin), a key player in creating and mediating musical content in China, and mediating the discourse generated around copyright protection and infringement. This offers a rich site for cultural and social analysis of copyright perception and protection in China's changing copyright regime, where this study can offer an important addition to the ongoing scholarly discussion in addition to legal analysis of music copyright protection in the Chinese market. Based on a qualitative content analysis and thematic analysis of TikTok mediated discourses and content, the findings of this study suggest Chinese copyright perception and protection is maturing in terms of users' awareness, strategies, and tactics in not only protecting their own rights, but also avoiding copyright infringement of others, and their self-reflections on creator and platform responsibility and governance.

Short bio: Zhen Troy Chen, PhD (Nottingham), FHEA, Senior Lecturer in Digital Advertising, London College of Communication, University of the Arts London. He is also an Adjunct Research Fellow of the Griffith Centre for Design and Innovation Research at Griffith University. His research interests are in digital media and advertising, cultural and creative industries, cultural and media policy (copyright), journalism, and experience design. He is author of *China's music industry unplugged: Business models, copyright and social entrepreneurship in the online platform economy* (Palgrave Macmillan, 2021). His research papers have appeared in *Journal of Consumer Culture*, *International Journal of Cultural Policy*, *Ethics and Information Technology*, *Social Semiotics*, *Asian Journal of Women's Studies*, *SAGE Research Methods*, and *Global Media and China*.

The Digitalisation of the Music Industry in Brazil: New Productive Structures, Legal Framework and Challenges for Peripheral Music in the Digital Age.

Leonardo De Marchi, Federal University of Rio de Janeiro.

Abstract: The article analyses the digitization of the music industry in Brazil in the twenty-first century. The aim is to understand the way in which this media and music business went through the

creative destruction of its business model in order to make intelligible the new productive structure that results from that process. In a historicist perspective, the digitalisation of the music industry can be divided into three steps. In the first, which coincides with the beginning of the 2000s, there is drastic and systematic decrease in the consumption of CDs and DVDs, causing disorientation among the incumbent agents of the music market. In a second moment, which starts roughly from 2007 and continues until 2015, there is a so-called Schumpeterian phase in which local start-ups sought to develop systems for digital music distribution over the internet, while independent artists used Creative Commons licenses to freely distribute their music over the internet, making live concerts the enterprise that began to organize the music economy. From 2015 onwards, a new stage begins with the global streaming platforms and digital distributors. If it is true that these new intermediaries consolidated the digital music market, they imposed an international *modus operandi* on an extremely diversified and decentralized industry, which creates numerous challenges for the production and circulation of Brazilian music in the digital music market. Adopting political economy of communication as the theoretical framework, I explain how market agents repositioned themselves after the creative destruction of the music economy and discuss how the copyright framework responds to such structural transformations in the industry.

Short Bio: Leonardo De Marchi holds a PhD in Communication and Culture from the Federal University of Rio de Janeiro. He is Professor at the School of Communication at the Federal University of Rio de Janeiro, Brazil. He is the author of *A Destruição Criadora da Indústria Fonográfica Brasileira 1999-2009: dos Discos Físicos ao Comércio Digital de Música* (Folio Digital, 2016). E-mail: leonardo.demarchi@eco.ufrj.br Orcid: <http://orcid.org/0000-0001-5654-8938>