

Title: Valuing Tradition: Mali's jeliw, European publishers and Copyright

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The issue of how copyright works for the musical traditions of Africa has been steadily growing in importance since the 1990s, pushed to the fore by the increasing visibility of African artists in the world music market, the neoliberalisation of African economies that is pushing IP issues into the centre of state creative industry policies, the ubiquity of illegal forms of reproduction, physical and increasingly digital and the processes by which immaterial goods and cultural traditions are becoming reimagined as commodities. Recent scholarly discussions of this issue moves the debate significantly beyond the simple notion of copyright as a Eurocentric imposition on vulnerable African cultural heritage and instead considers how IP issues are addressed differentially in specific local contexts across sub-Saharan Africa. This article examines these issues in relation to how Mali's Mande griots ("jeliw") work with European publishers. Based on a series of sixteen interviews with jeli musicians and European publishers and others in the world music industry, its main finding is that while it is necessary to reconsider what we mean by composition in relation to Mali's Jeliw and their musical practice, copyright can and is being adapted by publishers working with traditional musicians to provide much needed revenue to jeli composers and plays a role in sustaining a vital, but vulnerable, tradition.

Keywords: Copyright, music publishing, griots, jeliw, Mali, Africa, music industry, piracy, creative industries

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Introduction

This article examines how copyright works for the jeli musicians of Mali. The jeliw¹ are the Mande griots of West Africa, members of a class of artisans dedicated to preserving and transmitting Mande oral and musical traditions that can be traced back to at least the origins of the Mande Empire in the 13th century (Charry 2000: 3-4). Jeliw are both “artisans of the word” (Cutter 1968) and custodians of Mande history, and play a primary role in Mande musical life, and therefore also in Mali’s extremely rich, and internationally famous, musical culture (Charry 2000; Durán 2014). Though Mali’s jeliw are the guardians of an ancient oral tradition, and are enmeshed in Mali’s social and political life—a role that though, perhaps, residual continues to this day (Durán, i/v, 14 July 2016)—jeli singers and instrumentalists have also been primary in the development of popular music in Mali. Jeliw participated in national cultural celebrations, like the *Semaines de la Jeunesse* and *Biennalles Artistiques et Culturelles*, and the systems of state orchestras established following Malian independence in 1960 and also as members of the famed fusion bands, such as The Rail Band and Les Ambassadeurs that lit up Bamako nightlife in the late 20th century (Morgan 2014). Jeliw have also been at the forefront of the internationalisation of Malian music, touring and recording around the world, making Mali one of the most successful exporters during the world music boom of the 1990s. Global world music superstars like two-time Grammy winner Ali Farka Toure, Grammy nominee Salif Keita (though neither are jeliw themselves) and Mory Kante (who

¹ Oral historian-musicians are found throughout West Africa. The generic term is griot, which first appeared in reports from 17th century French travellers to the region (Charry 2000: 3). In the Maninka/Mandinka language of Mande cultures—a family of ethnic groups spread across West Africa, from the Atlantic Coast to the Sahara, including Burkina Faso, Ivory Coast, Chad, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal and Sierra Leone—griots are known as ‘jeli’, ‘jali’, ‘djeli’ or ‘dyeli’. This article uses the term ‘jeli’ (plural: jeliw) since it focuses on Bamana-speaking Mande griots of Mali, see Charry 2000: 91, 106-11; Durán 2013.

is from a griot family) have done much to popularise jeli musical practices, by featuring jeli instruments such as the balafon, ngoni, and kora² in their performances and recordings, drawing on jeli musical forms in their compositions and fusing them with African and Western pop. This helped open doors to a generation of more traditional jeli performers, like singer Kassé Mady Diabaté, kora master Toumani Diabaté (another Grammy winner) and ngoni player Bassekou Kouyaté, who have all toured and recorded extensively outside Mali, including with musicians from other folk traditions such as bluesman Taj Mahal. Thus, though Jeliw continue to be connected by family and repertoire to deep cultural traditions many are also popular musicians, alert to shifts of global musical taste and fashion, commercially savvy and active participants in an increasingly globalised cultural economy.

The world music market has brought these musicians into contact with the structures of the contemporary music industry—record labels, music publishers and the copyright system which underpins the economics of contemporary popular music (Frith 1988; Homan 2015). This contact, and the relationships between traditional African musicians, the structures of global intellectual property law, and Western intermediaries, has raised a series of questions and anxieties (Feld 2000a, 2000b; Feld and Kirkegaard 2010). Chief amongst these have been the question of how well copyright, developed in the West, fits with traditional forms of music making, produced in very different circumstances. Scholars have asked if copyright, with its conception of art as private property, is compatible with musical traditions with different philosophies about musical value, and suggested that copyright might be a mechanism by which traditional music and musicians are exploited. This article explores these issues aiming to move beyond the metanarrative of neo-colonial exploitation to look in detail at *how Mali's jeliw use copyright*, why they might need it and how the copyright

² Balafon (bala) is a frame xylophone; ngoni (koni) is a plucked lute; kora is a 21-stringed harp with a calabash body, Charry 2000: 9.

process is being adapted by jeliw and their Western collaborators to produce income for musicians. My argument can be expressed in three propositions: first, despite much evidence of corruption and anxieties about the structural inequalities of the system copyright can, under certain conditions, be made to work for traditional musicians such as Mali's jeliw. Second, despite attempts to create systems of reward and protection for folklore outside the systems of copyright law, in terms of protecting culture and rewarding traditional artists states have proven no more reliable than multinational corporations. Third, this case study suggests that working with European publishers has allowed at least some jeliw to build international careers and to accrue the prestige and knowledge of how copyright functions that in principle could allow them to influence the development of more robust copyright processes in Mali itself.

This article draws on a series of interviews undertaken over a period of two years (2014-6) with Malian jeli musicians. These include Bassekou Kouyaté, Lassana Diabaté, Hawa Kassé Mady, Mamdou Kouyaté and Kassé Mady Diabaté, widely regarded as one of Africa's finest living singers. I also interviewed many world music professionals working with Malian musicians, specifically on issues around copyright, including publishers, producers and record company managers, Joe Boyd, Catherine Steinmann, Guy Morris (Carthage Publishing), Nick Gold (World Circuit Records) and Laurent Bizot (No Format! Records), Ben Mandelson (WOMEX), and a representative of the copyright collection agencies SACEM (Paris). An additional interview with the Malian copyright office, BuMDA, was conducted in Bamako by Violet Diallo, who runs a small NGO and manages a number of musical groups and artists in Mali. (A full list of interviewees is in Appendix 1.)

A key aim of the research was to test the idea that copyright law is "eurocentric" (Mills 1996) and fundamentally incompatible with traditional forms of music, an idea which, though it has been supplanted recently by a more

sophisticated approach to the knotty issues around copyright, continues to circulate within ethnomusicology and in everyday debates around African music. Such arguments can tend to reproduce the notion of the African musician as a passive victim. This paper suggests we view jeliw, though they work in an ancient tradition and under extremely difficult domestic circumstances, as something more; as “savvy” (Duran, i/v, 14 July 2016) “cosmopolitan” (Skinner 2004) and “modern” (as Toumani Diabaté describes himself, quoted in liner notes to the CD Toumani & Sidiki, 2014, World Circuit), able to adapt and navigate the rough waters of international copyright with the help of European publishers, so as to ensure income for themselves and the continuation of their musical tradition. Complexity, ambiguity and the possibility of exploitation are built in to the global copyright system, and there have been numerous examples of corporate exploitation of vulnerable musical traditions that lack the protection of robust domestic copyright protocols (Wallis and Malm 1984). But this is not something that is specific to Africa, and African musicians should not be cast merely as passive victims of copyright. Rather, the ways jeliw, in collaboration with Western publishers, have found to use copyright could be thought of as a form of “strategic adaptation” (Duran, iv, 14 July 2016) that can be made to work for jeliw and, by extension, other music traditions.

The argument runs as follows: I first consider the general issue of applying copyright to music, and highlight some of the difficulties that arise when conceiving of immaterial art as a form of private property. The next section considers the specific issues that arise when applying copyright to non-Western African oral traditions, like those of the Mande jeliw. Here I identify a recent shift within contemporary ethnomusicological accounts that is opening up a more nuanced examination of how copyright works, and could be made to work better, in specific African economies. The argument then moves to Mali and the question of jeli music, and considers what forms of ownership regulated it before

copyright, what conception of originality and composition characterise its practice and how well these fit with those of copyright. I ask how important royalty revenue is to jeli careers, how well jeliw and their European publishers think copyright works for them and how copyright is and can be adapted to better meet the needs of Mali's jeliw.

Music and copyright

There is a substantial literature on the complex issues that arise when applying Western property law to music (eg Frith 1988; Frith and Marshall 1998, 2004; Bently 2009; Fassler 2011). Much of this emphasises how music provides a particular challenge for a property system based on literary works, which usually have a clearly identifiable author and cannot be said to really exist until they are expressed in tangible material form, that is until they are written down. Music, by contrast, is by its nature intangible and time-bound, it does not have to be written to exist, yet copyright only comes into operation once a musical 'work' has been fixed in some form, in a written score or a recording. Simon Frith notes the "peculiarities of the copyright conception of creativity" (1988: 66) that are a legacy of this original concern with print, and specifically points out the difficulties that arise when trying to define originality in relation to musical genres, be it pop or folk forms, where similarity is an inherent (and often valued) component: "Originality [...] can be difficult to define in a business in which similarity [...] is at a premium" (Frith 1988: 64).

Some popular music scholars have argued that copyright's origin in an aesthetics derived from, or developing alongside, that of Western art music means that it unfairly favours certain aspects of music over others more highly valued in pop—melody and lyrics can be copyrighted, rhythm cannot; composition is paramount, interpretation secondary—and its reliance on the idea of a 'work' expressed in a score means it relegates to secondary status performance and

recording which are far more important in popular than in classical music. Legal scholar Lionel Bently (2009) has assessed these claims, and, while finding that some of these criticisms are overstated³, he agrees with Simon Frith (1988) that in differentiating between “music” (on which composer royalties can be claimed) and “performance” (where they cannot) copyright reveals an aesthetic bias that can miss entirely those elements of interpretation, improvisation or expression that “really matter” in popular music (Bently 2009: 187). This is even more problematic when it comes to music from oral traditions which draw on a pool of shared cultural resources where interpretation is valued far more highly than “original” composition. Africanist and music producer Lucy Durán argues that problems of definition lie at the heart of copyright when it encounters music that is primarily oral because so much of what is considered important in such traditions is difficult to codify in legal terms: “to what extent can you say that a feel, or a trope or a rhythm is your intellectual property?” (Durán, i/v, 14 July 2016).

Copyright law, therefore, can be thought of as poorly suited to manage questions of value for non-Western music, which leads some kinds of creative musical expression, especially those derived from African musical norms, unprotected in law: “Copyright law defines music in nineteenth-century Western conventions and is not well suited to the protection of ... improvisational art or rhythmic skills” (Frith 1988: 64). Other popular music scholars have pointed out how poorly the “romantic” notion of individual authorship can be mapped onto the collective musical practice characteristic of so many popular and other non-Western forms: “Copyright is a useful tool for ensuring that the labour of particular individuals does not go unrewarded,” writes the scholar of dance music

³ “Sometimes it feels as if the popular music analysts have simply assumed that copyright concepts are based on those developed in relation to classical music since the early nineteenth century.” Bently 2009: 80

Jeremy Gilbert, "but it is a very bad tool for taking account of the collaborative nature of creativity" (2012:5).

Copyright and African music

The issue of how copyright works for (or against) the musical so-called traditions⁴ of Africa has been steadily growing in importance since the 1990s (de Beukelaer 2014; Röschenthaler and Diawara 2016). The issue has been put on the agenda because of a number of interlocking issues: the popularity of African artists in the international world music market; the modernising processes internal to African economies that is pushing IP issues into the centre of state creative industry policies and leading to a reconceptualization of notion of cultural ownership (Röschenthaler and Diawara 2016: v; Skinner 2012a); and the ubiquity of illegal forms of reproduction, physical and increasingly digital, that is depriving African musicians of income, even as it builds lively informal vernacular markets (Perullo 2011; De Beukelaer 2015; Manuel 2014).

In each of these examples traditional ways of making music, understanding musical value and regulating the circulation and ownership of music come up against the conceptions of creativity, ownership and value embedded in copyright law. Scholars tracking these issues have long recognised that this encounter between often-ancient musical traditions and intellectual property law is one that can be a fraught with complexity and is open to abuse (Wallis and Malm 1984; Mills 1996; Feld and Kirkegaard 2010). Because copyright is only created once a piece of music is rendered as an "embodied expression", because it requires a named composer to generate royalties, and because it only provides a limited terms of protection, musical creations from oral traditions that have no clear evidence of authorship (a so-called "chain of title") and which lack the robust

⁴ The insertion of 'so-called' before the word tradition is inspired by Mamadou Diawara (2016: 266) who uses this formulation to warn against assumptions of archaism when discussing African culture, that can serve to trap Africa in a static past and deny African modernity and contemporaneity.

domestic legal structures and copyright collection processes to protect themselves are open to exploitation (Wallis and Malm 1984).

Many ethnomusicologists have expressed anxieties about the way copyright allows for the exploitation of African resources in ways that echo the colonial exploitation of Africa. This perspective emphasises the origins of copyright law in Europe in the 17th century, the fact that it is born with and develops alongside, Western capitalism with its underlying conception that everything can become private property to be bought and sold (Seeger 1992; Frow 1995; Frith 1988). Thus modern intellectual property law is seen as “at odds with the artistic norms of pre-technological and developing countries which lack the notion of music being a form of private property” (Collins 2006:1) and clashes with traditional music “at the most fundamental level” (Mills 1996: 57). For Anthony McCann this incompatibility is absolute:

The musical practices that support traditional music transmission abide by models of creativity, collaboration, and participation that together add up to *the antithesis* of the text-based, individualist, and essentially capitalist nature of intellectual property regimes. (emphasis added)
(McCann 2001: 90)

This has led to calls for fundamental reform. McCann, for example, calls for a “*sui generis* system of protection for [...] traditional musical expression, one that grows from the nature of traditional systems as they are, rather than one imposed on them” (McCann 2001: 90). Such thinking was the impetus behind the WIPO World Forum on the Protection of Folklore, at the inaugural meeting of which in Phuket in 1997 delegates agreed that “there is no international standard of protection for folklore and that the copyright regime is not adequate to ensure such protection” (WIPO 1997). This process led to the formation of the

Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), which after 33 sessions has struggled to define what it means by folklore and wrangled over how to draft an alternative to commercial copyright law as a way to protect traditional forms of expression. Because WIPO is an office of UNESCO it ultimately works for the members states of the UN, and though its suggested provisions, outlined in a series of model laws which members countries might incorporate into their legal codes, may help to protect traditional culture from exploitation by foreign commercial interests, it instead delivers the control over these cultural resources to governments. The dangers of this have been detailed by John Collins in relation to Ghana (2006), which, in 1995, became the first country to incorporate the WIPO Forum principles into their domestic law. A new law of 2005 introduced a permit system so that even Ghanaian's had to pay the government for using their own ancestral works. In an email Collins told me GHAMRO, the Ghanaian collection society set up in 2012 one that had collapsed mired in scandal, was failing to collect royalties from the country's 250 radio stations, and that "copyright is not working at any level" (p/c, 20 June 2014). This virtual nationalisation of Ghanaian traditional music has, according to Collins, had a catastrophic effect on local music production and reveals that in terms of protecting culture and rewarding traditional artists states are no more reliable than multinational corporations.⁵ It seems that ethnomusicologists determined to do away with copyright should be careful what they wish for.

Recent ethnomusicologists, like Collins, take a pragmatic view focussed on the interests of the musiciands. While recognising the awkward fit between copyright and traditional music⁶ this new tone acknowledges the positive role copyright

⁵ "These totalitarian clauses in the new bill will create a terrible situation for the future well-being of Ghana's culture" (Collins, 2006: 10)

⁶ This work acknowledges that the application of copyright to African music raises fundamental questions: "If songs are composed collectively who owns the rights to the

could play in stimulating and supporting local music scenes in Africa. Alex Perullo's work on popular music in Tanzania (2011, 2014⁷), Andrew Eisenberg's investigations of music making in Kenya (2012, 2014) and Ryan Skinner's fieldwork on Mali's musical economies (2004, 2012a, 2012b, 2012c) recognises that African music, whether folk or pop (the distinction between these categories is inherently blurred), is always both "work and commodity" (Perullo 2011: p.xi) and inextricably caught up in struggles over value and reward, where questions of culture and tradition meet the understandable desire to make a living. Here the emphasis is less on how African music might be exploited by external forces and more on how copyright regimes have developed internally in Africa, particularly following the WTO Trade Related Aspects of Intellectual Property (TRiPs) agreements, which embedded the terms of the Berne Convention into international trade agreements, which many African countries joined in 1995 (Eisenberg and Perullo 2014). Here the problem is not external exploitation but internal dysfunction. These authors recognise that copyright, flawed as it may be, might be a mechanism that can provide viable revenue streams for African musicians if only trust-worthy collection processes could be sustained and copyright knowledge could be shared. Unfortunately, in each case the story is one of state failure.

Eisenberg and Perullo, writing comparatively about Kenya and Tanzania, find that neither country has managed to develop a musical property rights administration that works to the satisfaction of the artists whose creative labour it is meant to reward. They give the reasons for this as a "high level of corruption, the difficulty rights holders routinely encounter in receiving royalty payments, and high rates of piracy" (2014: 161). According to Ryan Skinner the

music? If a song uses a traditional rhythm, do you have to add the traditional ethnic group as composer?' (Eisenberg and Perullo 2014: 153)

⁷ Alex Perullo has written a book specifically aimed at informing African artists about copyright: *Artistic Rights: Copyright Law for East African Musicians, Artists, Writers, and Other Authors*. 2012. US State Department and Kwetu Press

same is true for Mali, which has “succeeded neither in securing the legal and pecuniary interests of musicians nor in stemming the unauthorized reproduction of musical works” (Skinner, 2012b: 65).

A recent edited volume, *Copyright Africa: How Intellectual Property, Media and Markets transform Immaterial Cultural Goods* (Röschenthaler and Diawara 2016), similarly moves the debate forward by resisting a single narrative of cultural imperialism and taking a close look at a variety of local African situations where the “globalised norms” of copyright come up against “local normative standards and concept of rights”, from Nigerian Nollywood to South African pop. The editors acknowledge that copyright is a “cultural construction” (Röschenthaler and Diawara 2016) that may conflict with older socially embedded ways to understand and regulate music and creativity, but they refuse the idea of one-way exploitation and look instead at the complex relations between ancient and modern ways of regulating music and rewarding creativity in different African milieu. Though the chapters in this collection find much to be concerned with in African musical economies, from the ubiquity of musical counterfeiting in Cameroon to struggles over the ownership of the Vuvuzela in South Africa, and continue to voice concerns about the neo-colonial biases of global IP, they do make a strong case for Africa to be considered as a valid contemporary player. “We are far,” writes Mamadou Diawara, “from so-called tradition being abused by modernity” (Diawara 2016: 266).

For Lucy Durán “there are examples of exploitation right across the board in the music industry”, including musicians being deprived of royalties by record labels and band leaders and authorship of traditional pieces being claimed by unscrupulous actors, “but that applies to all kinds of musicians”. For her, this does not necessarily mean that copyright itself is incompatible with traditional music: “I think it would be a pity to throw out a system that potentially

recognises the individual creativity of musicians in an oral tradition just because there are cases of exploitation" (Duran, i/v, 14 July 2016).

The music of the jeliw

"Music," says cinematographer and former Malian Culture Minister Cheick Oumar Sissoko, "is the most important part of [Mali's] heritage" (cited in Morgan 2013: i), and at the heart of this are the jeliw. The musical tradition of the Mande jeliw stretches back eight centuries and has played a central role on the region's complex socio-cultural landscape providing a "connecting link between cultural values and political life" (Cutter 1968: 38) and producing generation after generation of highly trained singers and virtuoso instrumentalists (Durán 2011).

Jeliw are an artisanal occupational caste, one of four groups of *nyamakala*, "workers in metal, wood, leather, clay, words and music" (Charry 2000: 49). Jeliw are "professional oral custodians of the past" (Diawara 2016: 248) somewhere between troubadour, poet, historian and town crier (Hopkins 1997: 47), and the jeli repertoire comprises one of three foundational musical traditions in the Mande world, alongside drumming and hunter's harp music (Charry 2000: 11).

Jeliw serve an important social and political function, acting as custodians of knowledge, mediators, praise-singers and peace-makers. As balafon player Lassana Diabaté describes it, the jeli's job is to "bring people together, if there is conflict they are there to resolve it, and to be present at all the rites of passage" (i/v, 4 June 2015). For Hawa Kassé Mady "the jeliw role is vital, when they practice their art there is less conflict" (i/v, 4 June 2015). This role comes with exclusive rights; to play certain instruments—the kora, balafon and ngoni (Charry 2000)—to raise their voices in public meetings (something even chiefs are prevented from doing, Hopkins 1997), and to criticise the powerful: "Even if you are a dictator the jeli has the right to criticise" (Lassana Diabate, i/v, 4 June 2015). It is a role that comes with power and responsibility, as well as a certain degree of social isolation, because of their privileged

access to the esoteric power of words and the “dangerous” knowledge they hold (Charry 2000: 49; Durán 2015: 55). Lucy Durán describes jeliw as “handlers of unseen energy” (Durán 2015: 55).⁸ Though these “traditional” social functions of the jeli remain important they should not be reified; jeliw are also citizens, parents and workers subject to the same stresses of “precarity” that are a feature of creative employment in the cultural industries under 21st century neoliberal capitalism (Skinner 2012b; Oakley and O’Conner 2015).

Who owns the jeli repertoire?

Discussions about copyright often overlook or deliberately downplay the fact that systems of regulation and ideas about ownership over culture are not the creation of European copyright law; long before TRiPs and the Berne convention, the 1709 Statute of Anne or even the invention of the printing press “concepts for the regulation of ownership and copying existed almost everywhere” (Röschenthaler and Diawara 2016: 11 and see Seeger 1992). But it is true that it was the introduction of recording and the copyright law that regulates recording revenue, in the last decades of the 20th century, which has brought the issue of ownership to the fore in Mali, and promoted debate within Malian society about who owns the tradition (Diawara 2016). Ngoni player Bassekou Kouyaté, for example, says that the question of who owned the music his family played was never discussed, until very recently when musicians started to copyright their own compositions (Bassekou Kouyaté, i/v, 4 November 2014).

The jeli repertoire is described by Eric Charry as “exceptionally diverse and sophisticated” (2000: 3), composed “of pieces associated with each of the jeliw instruments, with geographical regions, empires, family linages, and kinds of people (e.g. warriors, leaders, merchants, or generous patrons)” (Charry 2000:

⁸ According to Violet Diallo, many griots can still inspire a degree of fear: “In Mali there is a fear that information may be used to harm individuals (as normally expressed: “to work on you” [ie use sorcery] and the griots hold information”(i/v, 20 October 2014).

12). The music itself can be broken down into two core elements: the song and the accompaniment. Lucy Durán explains:

The accompaniments always follow a very strict structural pattern—it's usually 4 bars or 8 bars or 12 bars maximum, but they are more like templates. There are many different kinds of accompaniment, but many are related to each other (Eric Charry calls these families). The repertoire is far broader than 12- or 16-bar blues, but it is comparable. Each instrumentalist will have his (it's almost always men) own way of playing his accompaniments, his variations and improvisations, but it's the song or singing that gives a piece of music its identity, not the accompaniment. (Duran, i/v, 14 July 2016)

There are a relatively limited number of accompaniments in the repertoire (Durán has said 200, but admits this is a guesstimate) but thousands of songs. The question in relation to our concern with copyright is, who owns this repertoire? There are a number of different possible answers. Eric Charry writes that every piece of music has its "owner" (*mari*), but this indicates the person to whom the song is dedicated and is not ownership in the sense of having the right to buy, sell or gain financially that we understand in relation to copyright (2000: 12). Another way of thinking about this is that the music belongs to the tradition, to all jeli families but no one else, since this is a closed musical system, based on family affiliations: You cannot become a jeli, you have to be born into it (Jatta 1985). Both Lassana Diabaté and Bassekou Kouyaté suggested that their music belongs to "jeli cultural heritage". No individual or family "owned" the music, although it was the property, because of the special status accorded to jeliw (Diawara 2011), of those who had been born and raised in jeli families. This does not mean that the use of the music was unregulated or a free-for-all, but that instead of being regulated by legal procedures it was regulated by "custom and use" (Diawara 2016).

One of the defining features here is the family structure of jeli life, through which musical skills are passed down the generations.⁹ Such rules, though they are at their most manifest in jeli musical culture, are part of a larger system of what Diawara (2016) calls “the rules of art” in Mali, which guide cultural production, where repertoires are associated with specific villages, activities and social occasions with specific genres to accompany them. Key in the rules of knowledge transmission, in regulating the use of music that is communally owned, is the relationship between teacher and pupil, a kind of apprenticeship (similar systems exist across Africa, for example in the Xhosa culture of South Africa, Musangi 2016: 237). In the jeli families learning and reward is regulated by complex systems of generational deference and respect, which also guides an understanding of who has rights over the repertoire. Bassekou Kouyaté suggests that if certain songs or interpretations became closely associated with a specific family or musician this informal ownership would be recognised. Such extra-legal notions of ownership and rights are not confined within strictly jeli spheres. Diawara (2016) provides the example of the non-griot singer Mariam Bagayogo, who learned the repertoire that made her famous from a variety of village-based experts. There was no legal obligation for Bagayogo to recognise the origin of the songs she learned or the primacy of those who taught her, but a strong social obligation to “pay tribute to those women to whom she owes her repertoire” (Diawara 2016: 248), to offer them acknowledgement and respect in perpetuity. This system that manages the circulation of knowledge is reinforced by social stigma—carrying the powerful threat of social shame—if rules are breached. Durán cites the case of the famous jeli singer Siramori Diabaté, Kasse Mady’s aunt, whose distinct compositions began to circulate as arrangements by dance bands. There was nothing to prevent this—and as Diabaté (2016) argues, before copyright arrives in Mali in the 1980s raising the prospect of making money from recordings, such borrowings were

⁹ The structure of such training can be rigid; Lassana Diabaté says that he had no choice but to start learning the balafon when he was five, it was compulsory for all boys in the family, i/v, 4 June 2015

routine and uncontroversial—but social rules still applied. Since, as Durán describes it, “everyone would know” who originated the song, it was important for the dance bands to acknowledge their debt to Siramori, by retaining the original song titles and acknowledging the composer in performance or recording. Not to do so, as in the case of the “cassette girls”, who copy their songs from tape recordings of established singers (and thus fail to learn the crucial art of variation), and pay no homage to their teachers, is to face social disapprobation and censure (Diawara 2016: 257-9).

Although copyright is actually a group of rights, conventionally described as a ‘basket’ or ‘quiver’, that can be accrued both from authorship and from performing and recording, the primary right and the main focus here is on composition. The person who writes/composes a piece of music acquires rights over how it is used and the right to collect royalties whenever it is used, performed, reproduced or broadcast. Composer royalties are potentially the most lucrative.¹⁰ Given that jeliw are working with musical raw materials some of which date back centuries and whose ‘original’ authors are unrecorded or lost in the mists of time, how do we understand the issue of composition in jeli music? Under what conditions can a jeli claim to be the author of a piece such that they could legitimately claim composer royalties? This cuts to the heart of the lack of fit between Western copyright law and oral traditions. When looking at jeli music we need to adjust our understanding both of what is meant by composition—and the idea of originality that underpins it—and what we mean by tradition.

The jeli musical tradition may be ancient and concerned with the preservation of memory and history, but it is not fixed or static. It is continually being changed, adapted, updated and extended. Two ways in which this happen are new words being laid over older instrumental accompaniments, and the alteration of these

¹⁰ Unlike other rights which do not start to pay off until production costs have been recouped composer royalties are payable from the very first sale (Homan 2015) and because they are payable whenever a song is recorded or performed by anyone else. (If you want to make real money from music, said Earth Wind and Fire’s Ralph Johnson in a recent interview, make sure you get a share of the writing, Earth Wind and Fire interview on Sky Arts, broadcast 6/11/15)

accompaniments themselves (Charry 2000: 150). In an interview recorded as part of the *Kronos Quartet: Fifty for the future* project (Durán 2016) Lassana Diabaté explains how working as band leader, rather than in the more traditional role for the balafon as accompanist, and gaining access to a mobile phone have led him to a new appreciation of himself as a composer:

Lucy Duran: How did you begin to be a composer?

Lassana Diabaté: I have my own way of playing balafon [...] When you play traditional music the griot [...] makes improvisations, and does arrangements. But we were always behind others, we didn't have the chance to show what we could do. You have your own way of playing, you have your phone next to you, you record whenever you get a new idea, it becomes a new composition.

LD: You don't write music?

FLD: Not just me, all griots—we're born into music, we don't write down our music. Now, we just record it. All griots are composers in some way. With Trio Da Kali I've had the chance to develop my own compositions and arrangements. That's how I'm learning to recognise the value of my composition (Durán 2016, transcription by Durán).

Durán explains her conception of composition in an oral tradition.

In any music that is transmitted by oral tradition every performance is, or can be, a new way of presenting that music, a new composition. Every time a Mande jeli performs a piece they will perform it differently.

(Duran, i/v 14 July 2016)

These ideas about composition are embedded in the language jeliw use to describe their practice. To express a notion of composition as performance that rests on a deep cultural tradition Jeliw employ the Bamana verb form “ka x da” (“to lay x down”) as in ka dònkili da, to “lay a song down” or Ka fasa da “to lay down praise”. It follows from this that *dònkilidala* means both a singer and a vocal composer: performance and composition are indivisible.

To describe his improvisatory practice on the balafon Lassana Diabaté uses the term *bolomanboli* the literal translation of which is “to make the hand run”, though Diabaté, (perhaps revealing a reflexive sense of himself as an artist) translates it as to “ask the instrument questions” (i/v, 4 June 2015). These terms embody the notion that musical ideas are like raw materials that the performer combines in new ways for new circumstances, adding their own individual ideas composed on the spot. Indeed a jeli is judged on how successfully he or she can adapt familiar material in new ways for new circumstances, and craft new lyrics to mark particular people and events. This could be a matter of inserting praise to a new patron or to mark a new occasion, or updating ancient lyrics that would have little relevance for a contemporary audience. Camara, Charry and Jansen (2002) point out how such adaptations complicate the notion of composition:

[Jeliw] are able to place international events in a local context by invoking widely accepted values. This aspect also helps to explain why one cannot claim that a particular artist has “written” a song. Even when contemporary artists perform their hits live, they adapt the text of their hit song to reflect the indigenous milieu and the audience.

(Camara, Charry and Jansen 2002: 306)

This would seem to confirm the argument that there are some rather fundamental incompatibilities between copyright and traditional music, yet, jeliw working with publishers have found ways to work around this problem.

The art of re-naming

The story of one particular song will help to clarify the complex issue of how jeliw can claim authorship of apparently traditional songs, and some of the moral and legal complexities raised when notions of “symbolic ownership” come up against legal designations of property rights (Johansson and Berge 2014). ‘Koulanjan’ (also spelled ‘Kulanjan’ or ‘Koulandjan’), named for the Marabou Stork, is one of the most important songs in the jeli repertoire, celebrating the skill of the hunter (Durán 1995). It is a song closely identified with the village of Kela and with Kassé Mady Diabaté, the most famous and revered of Kela’s jeliw, who has his own distinct way of singing it (possibly learned from his father). It is a form of ownership that is widely recognised: “Everyone knows that is his song” (Lucy Durán, i/v, 14 July 2016). Kassé Mady recorded ‘Kulanjan’ for his 1990 album *Kela Tradition*, recorded in Paris (Styllart records in France, released by Sterns Africa in the UK). On that album ‘Koulandjan’ was credited as a traditional song with no identified author, so Kassé Mady will have received no composer royalties. In 1999 Kassé Mady was part of the group of Malian jeli musicians who accompanied bandleader Toumani Diabaté to the Athens Georgia studios belonging to REM, for a recording session with American Bluesman Taj Mahal. The sessions, organised by Joe Boyd and Lucy Durán, focussed on the creative interaction of two folk traditions, jeli music and American blues. The resulting album, titled *Kulanjan* (Hannibal Records), was released in 1999 to much acclaim. (Its status and sales received an unexpected fillip almost a decade after its release when then Senator Barack Obama selected it as one of his favourite recordings.¹¹)

¹¹ <http://www.nonesuch.com/journal/toumani-diabate-receives-accolades-from-naacp-barack-obama-2009-01-07>

This recording features a version of the song 'Kulanjan' which, though it has a spoken introduction in English by Taj Mahal, is recognisably the arrangement identified with Kassé Mady, who sings the lead. But this version is credited as a Toumani Diabaté composition, and it is he alone who accrues composer royalties. On previous recordings, such as the album *Kaira* (1987) Diabaté had not claimed authorship of traditional songs, but according to Durán, by the late 1990s he had "realised that there was money to be made in copyright":

Toumani went into that deal saying 'I will work with other Malian musicians but I will claim the copyright on everything.' Even though Kassé Mady was singing on his own version of a song he had already recorded, he has no legal claim on the authorship registered by Toumani for 'Kulanjan'. (Lucy Duran, i/v, 14 July 2016)

There are a number of complexities here. In the first instance it seems that it is illegitimate to claim authorship of a song from the tradition, especially one that had already been recorded. According to copyright law this song should reside in the public domain, and cannot be registered by an individual. Indeed Durán notes that Toumani Diabaté's claim of authorship of 'Kulanjan' has been controversial, an example of how copyright claims can cut across customary ways of recognising author rights of the kind Diawara discusses, that has occasioned some disquiet amongst other jeliw. But the view that Toumani Diabate's claim of authorship is unjustified stems not from the fact that Diabaté has claimed authorship of a song that already exists in a tradition, but that this interpretation and arrangement of 'Kulanjan' is so strongly identified with Kassé Mady who, through its association with his village and his family's way of reproducing the song, in principle would have at least an equal claim to composition rights. Durán and other publishers and jeliw we spoke to do not believe that it is in principle wrong for jeliw to claim authorship of songs from the tradition, only that

alongside ownership claims made via copyright, other informal ideas of “symbolic ownership” be recognised and respected.

There are several reasons for this. The first is that jeliw, like Basskou Kouyaté, feel that they deserve to be compensated for their work in maintaining and extending the jeli tradition and that registering composition is one way of doing this (i/v, London, 4 November 2014). If no jeli ever registered copyright on any of their music no jeli would ever receive composer royalties. A second reason is that there is no legal mechanism for returning value to the tradition itself (and the example of the WIPO IGC process suggests how difficult this is to achieve). To register a song as “traditional” on a recording does nothing in itself to support that tradition in material terms, because doing so means no composer royalties are payable at all to anyone. According to Joe Boyd, who worked as a music executive briefly in the 1960s setting up the UK office of Electra records, not to claim composer rights on a song, a cost that record companies have already budgeted for, merely “leaves money on the table” (Joe Boyd, i/v, 11 June 2014), allowing a greater share of any profits to go to record companies rather than musicians.

There is a way of partially addressing this in copyright law, by using the rubric ‘Trad Arr.’, ie traditional arranged, which allows musicians to claim a portion of composer rights on traditional songs that have been sufficiently changed from “the original” (a vague concept with regard to oral traditions, as we have seen) based on the way it has been adapted. This is something that Boyd saw widely used by American folk musicians in the 1960s and, partly due to him telling UK folk musicians he knew like Martin Carthy and Dave Swarbrick, the use of ‘trad arr’ became common practice in the UK thereafter.¹² But this strategy raises new difficulties, as it means the collection society through which the registration is made has to compare the new version with some other “original” version in order to establish what proportion of composer rights will be granted. For those, like many Malian artists who record in France and register

¹² See for example the 1967 Martin Carthy with Dave Swarbrick album *Brigg Fair* (Fontana), on which the majority of the tracks are credited as Trad Arr.

via the French collection society SACEM, this entails producing a written transcript of the new version so SACEM staff can compare it with previous versions in their archives, a laborious and complex process, especially for those working in musical tradition where musical scores are never used (Jean Claude Chamoux, SACEM, i/v 29 January 2016). Thus while 'traditional' and 'Trad Arr' are used on recordings of jeli music, it is also common to find new versions of ancient songs, with different names, registered as new compositions. For example on Kassé Mady's 2003 album *Kassi Kasse* (released on the Mexican label Discos Corason), though all the songs are in some way drawn from and part of the jeli tradition, seven of the tracks are listed as original Kassé Mady compositions, three are credited to other composers (Kalilou Traore, Franklin Boukaka, Bala Diakite), and four are credited as 'Trad Arr', with a named arranger. In 2014 Kassé Mady released the album *Kirike*, on the Paris-based No Format! label. This included a new version of 'Kulanjan', with new musicians and some differences in accompaniment, but recognisably the same song and the same arrangement as his previous versions including that on the Toumani-Taj Mahal *Kulanjan* recording. But this time the song was titled 'Simbon' (Master Hunter), one of the lyrics of Kulandjan, and the composer was listed as Kassé Mady Diabaté.

In order to claim composer rights music has to conform to the stipulation of copyright law that it be "original" (Bently 2009). We have already seen how this notion might be thought to clash with ideas of originality embedded in jeli culture, but there is ambiguity in copyright law in relation to originality in general—hence the recourse to the courts, at least where there are sufficient financial rewards at stake.¹³ This grey area is an effect of the lack of clarity in copyright law itself, which continues to be unclear when applied to songs that are based on or adaptations of more ancient antecedents, or are collaborations (Bently 2009: 189). In the West, as with the recent cases involving 'Blurred Lines' and Led Zeppelin's 'Stairway to Heaven', the final arbiter of these issues is often the courts, but such practices in relation to the music of Malian jeliw have

¹³ Summed up in the music industry saying 'where there's a hit there's a writ' (Peter Jenner i/v, 14 January 2015)

never been tested in court because the financial stakes are just too low to justify litigation. Without legal clarification such claims remain a grey area where the justifiable desire of artists to be recognised and rewarded can fall foul of unscrupulous practices (Durán, p/c, 10 December 2015).

Those with experience working in between copyright and traditional music, like Laurent Bizot boss of No Format! Records and World Circuit's Nick Gold, argue that when a song has been sufficiently changed by the work of the interpreter it makes sense to rename it, and it certainly clarifies the royalty claiming process. The re-titling of a traditional song can, in Nick Gold's words, be a "neat" solution to the issue of how contemporary artists can ensure they are rewarded for their interpretation of the canon, though of course this is only true of those with access to international markets and experienced publishers. For Lucy Durán:

It's a strategy, one of the ways in which Mande jeliw, who are very savvy, are working out how you claim copyright on your own performances and arrangements. If the jeli has their own way of performing a song, then it's perfectly legitimate. (i/v, 14 July 2016)

The key issue here is that through this adaption of copyright, achieved with the support of experienced European publishers who know how the system works, jeliw are able to get access to reliable revenue streams. But why might these be so important to them? What about traditional forms of performance income, and why work with European publishers rather than those in Mali? To understand this we need to investigate the ways jeliw have traditionally earned money, what has happened to those income streams and how contemporary copyright works, or does not, in Mali itself. This is the focus of the last section.

How jeliw make money

In pre-colonial Africa jeliw across the Mande world were attached to the ruling courts as advisors and spokesmen for kings and noble warriors. The songs of praise of the jeliw linked their patrons to the lineages and deeds of the warrior-king Sunjata Keita who founded the Mande empire in 1235 and other Mande heroes from the past, reinforcing the social status and political legitimacy of their patrons. Though jeliw are professional musicians, who have historically relied on this patronage for their income, this relationship was not conceived of as one of subordination or employment, but as a gift economy, as Sidia Jatta points out:

Contrary to what some Europeans might believe, jalis are not paid for their performance. That is why in Mandinka we say: *Ka jaloo so* (to give to a jali) not *Ka Jaloo joo* (to pay a jali). (Jatta 1985: 21)

Though such gifts are voluntary, and are not conceived as wages, they represent “a significant source of income” for jeliw, and making generous gifts is a way to demonstrate generosity and gain prestige (Hopkins 1997: 51).

The defeat by French forces of Samory Toure the last of the pre-colonial warriors in 1898,¹⁴ began the period of colonialisation that saw Mali consolidated into French Sudan. Colonisation disrupted the feudal settlement that regulated the griot economy. Many griot families lost their privileged positions and patronage and were forced to secure their own livelihoods, or look for emergent elites who required their services to shore up their own legitimacy claims. As the links of patronage loosened jeliw offered their services more widely, to whoever could pay (Schultz 1997: 448-451).

Following independence in 1960, under the socialist presidency of Modibo Keita (1960-68), jeliw became caught up in the state’s desire to craft a national narrative linking the new nation to indigenous political and cultural traditions (Schultz 1997: 451; Diawara 2016). President Keita established a network of regional orchestras and the

¹⁴ A battle celebrated in the jeli song ‘Kemeburima’ (Durán i/v, 14 July 2006)

Semaines Nationale de la Jeunesse, annual musical events in Bamako celebrating indigenous arts that continued under his successor Moussa Traore (1968-91), renamed as Biennales, in which Mande music and jeliw were prominent. Kassé Mady Diabaté, for example, was the lead vocalist in Badema National (formed in 1976) who performed at a series of state-sponsored events characteristic of this period of socialist-nationalist cultural revival through competition (Morgan 2014; Diawara 2016). During this period many musicians became in effect state employees, drawing a salary but accruing no royalties for their performances or recordings which belonged to the state and were considered, therefore, to belong to all (Skinner 2012; Morgan 2014; Diawara 2016). During this period the Mande jeli repertoire was somewhat repurposed, as songs which had been used to celebrate individual and family achievements became ways in which to celebrate the nation (Diawara 2016: 253).

During the 1970s Bamako's lively nightclub scene exploded; exclusive bars and hotels such as the *Motel du Bamako* and *Hotel de la Gare Du Bamako* catered to the new political elite's taste for international sounds, with the underlying cultural authenticity provided by jeli music. American soul and funk, rumba, son, afro-beat and Mali's indigenous styles were woven together by the popular house bands sponsored by wealthy and influential politicians and military men (Diawara 2005; Morgan 2014). Eric Charry cites the career jeli musician Keletegui Diabaté as emblematic. Diabaté is "grounded in the bala tradition" but has also played electric guitar in state orchestras in the 1960s, violin with Les Ambassadeurs in the 1970s, balafon in Salif Keita's band in the 1990s, and even occasionally pulls out a trombone to play jazz-oriented solos with his own ensemble (Charry 2000: 25). This was a period of lively experimentation, during which "traditional musics are put into modern contexts mixing diverse instruments with new arrangements" (Charry 2000: 27). This was the milieu that produced international stars like Ali Farka Toure and Salif Keita, who found global success adapting traditional 'hunter' songs for a new international audience (making

sure to acknowledge his debt to his teacher, the blind hunter bard Bala Djimba Diakit , Diawara 2016 citing K ita 2009: 30, 99).

A military coup in 1991 was followed by the election of the first democratic government of Alpha Konare and adoption of a new constitution in 1992 that brought the era of one-party rule and central control to an end and ushered in a period of economic liberalisation. Mali's airwaves were deregulated, which saw the emergence of the first commercial and privately owned radio stations, most making heavy use of Malian music especially jeli music (Androgoly Guindo, i/v, 18 December 2014). Though Mali had been slow to develop a music industry of its own during the years of central control this vibrant musical culture, plus the decline of the music production industry in neighbouring Ivory Coast due to political unrest, belatedly saw the Malian music industry "take off" (Skinner 2012b: 70). It is in this context that copyright comes to Mali.

Copyright in Mali

It is above all the advent of mechanical recording, and access to international markets opened up in the 1980s and 1990s, which raised the question of ownership and persuades Mali's jeliw that registration of their copyrights would be advantageous (Diawara 2016: 261). As French colonial subjects, Malian artists had been able to register their copyrights through the French collection agency SACEM (Androgoly Guindo, i/v, Bamako, 18 December 2014). Following independence jeliw had begun to record and travel abroad, such as balafon player Bourama Kouyat  who travelled to Algeria, Kenya and Paris performing with the National ballet, and recorded his first album in Paris in 1979 becoming a member of SACEM in 1980 in order to receive royalty payments (Dur n, i/v, 14 July 2016). Yet registration was relatively unusual in Mali itself, because of the lack of a domestic recording industry and therefore the

absence of the possibility of personal gain through sales, few bothered to register their compositions with SACEM (Diawara 2016¹⁵).

Copyright law proper came to Mali with the passing of Mali's first domestic copyright legislation in 1977, a strengthened law followed in 1984, part of a shift toward economic liberalisation largely in response to IMF-sponsored Structural Adjustments Programs (Skinner, 2012a: 69). The 1984 law instituted stronger definitions of what constituted illicit reproduction and harsh sanctions for those who flouted the law, though these have never been consistently applied. These measures echoed the cultural and political changes occurring across Africa as states including Tanzania, Senegal, Kenya and Ghana moved from tight central control to deregulated free market economies (see Collins 2006; Perullo 2011; Perullo and Eisenberg 2014).

The 1977 legislation had founded Mali's own collection society *Bureau Malien de Droits D'Auteur* (BuMDA), though unlike the European societies, which are independent and not-for-profit membership organisations, BuMDA remained under the direct control of the Ministry of Culture. In 1992 the very first multi-track recording studio was built in Bamako, by a punk rocker from Lyon Philippe Berthier, who subsequently established Mali's first domestic production company, Ou Bien Production (later becoming Malik7), and built its first cassette production factory (Skinner 2012a: 69).

But despite this take off of the local music industry and the creation of a domestic collection agency a huge proportion of musician income was still primarily a matter of cash-in-hand transactions for performance, because domestic copyright collection for sales, performance and broadcast was largely ineffective. The jeliw interviewed for this research—all members of BuMDA—put this down to the failures of BuMDA to negotiate reasonable rates or to develop regular and transparent payment procedures, and the government's inability to tackle Mali's piracy problems.

The case of Bassekou Kouyaté is typical. Kouyaté, from one of the oldest jeli families has gained a reputation as "the Jimi Hendrix of the ngoni", performing with Toumani

¹⁵ "[W]e know that most Malians do not declare their works." (Diawara 2016: 265)

Diabaté and Keletigui Diabaté in the Symmetric Trio, with American bluesman Taj Mahal (he appears on the *Kulanjan* album) and releasing hit records such as his debut *Segu Blue (Outhere 2006)* and the Grammy-nominated follow up *I Speak Fula (Outhere 2009)* with his own ngoni ba ensemble (both produced by Lucy Durán). Kouyaté joined BuMDA in 1997, becoming the first person in his family ever to register for copyright. Up to that point all his income had come from “wedding parties, griot concerts, direct fees in the pocket. No contract, no copyright.” (i/v, 4 November 2014). A local promoter suggested that he needed to join BuMDA, but did he understand how the system worked?

No, I did not understand it well. The promoter told me I had to go and sign for my author’s rights but I didn’t know what I was signing. BuMDA gave me a card and said that they could contact SACEM and the other collection agencies to collect royalties. But I don’t trust them because they are not transparent. I’ve had two or three small payments, the total has not even reached 100,000 CFAs [approx. £126]. (Bassekou Kouyaté, i/v, 4 November 2014)

This is echoed in the experience of Kassé Mady Diabaté who estimates his own lifetime earnings through BuMDA as somewhere in the hundreds of pounds (i/v, 24 November 2015).

Though it is an almost 40-year old organisation and been subject to periodic reform BuMDA has lacked the proper resourcing necessary to effectively track and pay royalties. Current director Androgoly Guindo (as of 2016) told Violet Diallo that records are kept on A4 cards and updated by hand, the organisation has only recently acquired its first computer, and that artists do not receive written breakdowns of payments unless they request them (and perhaps not even then) (Guindo, i/v, 18 December 2014). The lack of resources, inefficiency and (according to many) corruption at BuMDA

is merely a microcosm of the larger failures in Mali's governance and infrastructure where "the whole culture of corruption is rife and endemic" (Durán, i/v, 14 July 2016). For Bassekou Kouyate these things "are getting worse".

BuMDA's specific failures include the inability to collect royalties internationally (or if they do to pass them on to artists), and the failure to negotiate adequate fees for domestic use of jeli music. In 1984, under the terms of article 29 of the intellectual property law, a deal was struck that saw *Office de Radiodiffusion et de Télévision du Mali* which regulates Mali's broadcast TV, radio and telephony, all of which feature jeli music heavily, to pay a fixed annual sum of 5 million CFAs (£6,666) to BuMDA, to be distributed amongst its 2,300 members (i/v, Androgoly Guindo, 18 December 2014). Although since 2002 this sum has been topped up with an annual subsidy from central government (Skinner 2012b), this deal still represents a very poor return for composers and musicians. This deal remains in force despite a campaign by BuMDA to have it increased that was defeated in 2015 by a powerful lobby led by the employers association (Violet Diallo, p/c, 23 June 2015). In simple terms this means that domestically Mali's musicians make next to nothing from the music that is continually played on the airwaves.

The situation as regards royalties for sales of recorded music is even worse. Ethnomusicologist Ryan Skinner cites a senior figure at the distributor Seydoni Mali who claims that more than 90% of music that is bought in Mali is pirated (Skinner 2012a: 740). Unlicensed cassettes and CDs can be bought throughout Bamako, especially at the market known as Dabanani, and periodic police sweeps and crackdowns, and the introduction in 2002 of hologram decals on packaging that was supposed to curtail piracy, have had little effect (Skinner 2012b: 65).

Caution is necessary when using the language of piracy (Harker 1997; De Beukelaer 2015; Tcheuyap 2016). It serves the interests of corporate "stakeholders" to imagine that all infringements of copyright law should be treated as criminal offences including practices like sampling, quotation and bootlegging which arguably make up an

important part of the landscape of culture and creativity (Marshall 2005; Toynbee 2008; Fassler 2011). Many developing countries have lively vernacular cultures, for example the cassette cultures of India studied by Peter Manual (1993, 2014), the meaning and value of which cannot be reduced to the fact that they are not copyright compliant. Some argue that it is important to recognise both the vitality and creativity of such alternative music markets (Perullo 2011: 339), which represent an example of ingenious African entrepreneurialism and create distribution networks they are strong and flexible and stimulate and meet demand for indigenous music (De Beukelaer, 2014: 65). Equally important is to recognise the economic constraints that drive them. Violet Diallo makes the point that "many Malians are unable to afford CDs sold with tax payments (and thus payments to the musicians) at around £4 a piece" (i/v, 20 October 2014).

Nonetheless piracy has a significant impact, both financial and emotional, on Mali's jeliw. Here we are not talking about the unattributed version or sample but the mass production of cassettes and CDs (even in these digital days CDs remain an important musical commodity in Mali and older vehicles still have cassette payers¹⁶) by well-organised and powerfully protected criminal gangs, openly sold in the streets with no payment to the artists. Bassekou Kouyaté speaks of the demoralisation he feels when walking around Bamako seeing his music on sale for which he receives no payment (i/v, London, 4 November 2014). Local musicians have sought to challenge this piracy. In 2005 prominent rappers and jeliw, including the rappers Tasumayomo and King Massassy and Bassekou Kouyaté, joined forces to gather up bootlegged recordings and set fire to them in front of the Ministry of Culture. But despite government promises little was achieved; some protesters ended up in jail, others, like Kouyaté, received threats; an anonymous caller threatened to slit his daughter's throat as she walked to school. Piracy is a lucrative business and those behind it are thought to wield

¹⁶ For more on the persistence of cassette culture in Africa see the interview with Brian Shimkovitz, producer of *Awesome Tapes from Africa*, on the *Afrobeat Music* blog: <http://afrobeat-music.blogspot.co.uk/2014/01/cassette-culture-interview.html>

considerable political influence. Kouyaté feels that despite the good intentions of the then Minister of Culture, Cheick Oumar Sissoko, the pirates were able to intervene and prevent any action: "It always starts with good intentions and ends up with corruption" (Bassekou Kouyaté, i/v, 4 November 2014).

This unchecked market in unlicensed music has led to the virtual collapse of the domestic music industry in Mali. The two legal manufacturers, Mali K7 and Seydoni Mali closed their doors in 2005, following the failure of BuMDA's much heralded assault on piracy. Although MaliK7 technically continues to trade, the economics of legal cassette and CD production is simply not viable (Violet Diallo, p/c, 23 June 2015). In spite of periodic commitments to tackle the pirates little has been achieved by the state, part of a much more widespread failure of governance (Lucy Durán, i/v, 14 July 2016).

Mali's recent political instability has exacerbated the grim situation for musician livelihoods. An Islamist insurgency in the North in 2012, coinciding with a Tuareg rebellion and a political coup (Whitehouse 2012) saw two thirds of the country taken over by Islamist forces for whom music is *haram* (forbidden), and the virtual blackout of Bamako nightlife, a shutdown whose effects are still being felt (Morgan 2013). This has severely restricted the opportunities for live performance and the pay that goes with it. The shrinking of the patronage economy that in the past sustained griot careers compounds these difficulties. According to Lassana Diabaté those paying for weddings and other social events are increasingly turning to cheap audio playback technology (known as 'mini-balafon' or *Balani*¹⁷) rather than paying for a jeli band (i/v, 4 June 2015).

In terms of jeli livelihoods, the opening of international markets which followed independence and received a significant boost from the boom in the world music market (following the modest but remarkably influential Empress of Russia meetings in

¹⁷ The *Balani show* or 'youth dance party' has been a feature of Bamako life for several decades. Diabate's concern is that they are increasingly replacing Jeli musicians even at social events which used to require live music

1987¹⁸) has been vital in providing new sources of income and reigniting interest in this more traditional jeli music in Mali itself. In this respect the 1999 album *New Ancient Strings* featuring duets by the kora-masters Toumani Diabaté and Ballaké Sissoko, and the 2007 release *Segu Blue* by Bassekou Kouyaté, both produced by Lucy Durán (the former achieving sales of more than 60,000 units) were particular milestones in (re) popularising jeli music for a new international and domestic audience. For a new generation of Malian musicians this new visibility suggested that traditional jeli music, rather than the Western popular genres like hip hop which had taken root in Mali since the 1990s and in which many younger jeliw like Toumani's son Sidiki Diabaté were heavily involved, might offer the chance of a viable musical career (Mamdou Kouyaté, i/v, 4 June 2015).

As the singer Rokia Traoré told Andy Morgan for his report *Mali: Music, Culture and Conflict*, "artists that don't have an international career find it hard to live properly, and by properly I mean enjoy a good career and a decent retirement" (2013: 38). Lassana Diabaté is more succinct: "If you don't have an international career, you're screwed" (i/v, 4 June 2015). It should be noted that the majority of Malian musicians do not have an international career and are unlikely to get the opportunity to have one, yet even though it may only be a small minority of jeli musicians who "make it" abroad there are still important symbolic and material ways in which internationally-linked jelis can aid the domestic economy, by demonstrating that traditional musical genres can still find a place in the global music economy and by bringing their experience to bear on the internal structures of the domestic music economy.

Jeliw and European publishers

Mali's jeliw, like any musicians, have an obvious interest in international success and the income and prestige it brings. What are the pull factors for European publishers and

¹⁸ Ben Mandelson argues that the much storied meetings did not invent world music, but did name, organise and promote something that was already happening, see Cottrell 2013; the minutes of the original meetings on the fROOTS website: http://www.frootsmag.com/content/features/world_music_history/minutes/

labels? Obviously as businesses they hope to make money, but the publishers and other world music professionals we spoke to hardly conform to the image of the Western capitalist looking to exploit the cultural patrimony of the global south to generate profits, you might be led to expect from some critiques. Companies like Carthage, World Circuit and No Format! are small (Carthage has no paid employees or permanent office space) and dedicated to the music they represent. Even if one wants to be sceptical of their claims to be simply “idealists who love music” (Joe Boyd, i/v, 11 June 2014) the low economic returns available from representing the rights of world musicians including jeliw, in the context of a world music market which makes up “a very small slice of an ever-diminishing pie” (Boyd, i/v, 11 June 2014), suggests that while these companies are engaged in manufacturing and selling commodities that are drawing on the cultural patrimony of the non-West this commerce is not necessarily the same as capitalist exploitation (Gilbert 2012: 2¹⁹).

Here we can make a distinction between two kinds of exploitation. Publisher Guy Morris insists that the job that publishers do for the song-writers and performers they represent depends precisely on the ability to “exploit” their repertoire, in the limited sense of “make full use of” the compositions in order to squeeze as much value as possible out of them on behalf of their clients. Morris is forceful in repudiating the claim that world music publishers “exploit”, in the sense of use in an unfair or dishonest way, their clients (i/v, London, 10 June 2014).

World music professionals are especially reflexive about their practice, and aware of the complexities of working between two worlds, well described by musician and producer Ben Mandelson:

When two valid cultures bang up against each other and one doesn't fit with the other, that's where you get the tension, and you get the problems. And

¹⁹ Jeremy Gilbert argues for the importance of making a fundamental conceptual distinction between commerce, “the peaceful trading of commodities for profit” and capitalism, “the relentless pursuit of capital accumulation through the sale of such commodities produced through the exploitation of labour” (2012: 2-3)

that's what's happening with copyright. If you have traditional, inherited pieces of music, that are collectively owned and generated where nobody wishes to take credit and all wish to take credit at the same time, it's very hard to fit that on to the basic PRS form. (Ben Mandelson, i/v, London, 9 June 2014)

Yet he recognises copyright is "the system we have", and is a structure through which value can be protected and returned to performers. Part of the job for the world music intermediary here is precisely to act as a go-between, to try and share knowledge about how copyright works with those from very different backgrounds. Mandelson recalls that some African musicians he has recorded with would sometimes thank him for a royalty payment from a recording as if it were a gift, and he would need to explain that it was a legal payment based on a contract and sales, not largesse (i/v, 9 June 2014). The guitarist Martin Cradick encountered similar misunderstandings and has found himself explaining to the Baka people of Cameroon with whom he recorded, who are used to a cash economy, that "recordings are like setting traps for fish or meat: you lay your traps but don't know how many fish you will catch, if any. You record songs and maybe some will earn money, maybe not" (i/v, 30 March 2015). Cradick, working with Guy Morris at Carthage, has found a way to channel royalty payments back to the traditional Baka community he works with, by registering the entire Baka people as composer of the tradition songs he has released, and channelling funds back via a foundation he has established in their name. This required a difficult and time-consuming negotiation with the UK collection society PRS, and, though it suits the needs of a small and cohesive Baka community in Cameroon would not be a viable solution for more disparate and complex musical culture like that of the jeliw. What publishers have been able to do for jeliw is recognise the deficiency of BuMDA and make sure that jeliw are registered with European and American collections societies so they can receive royalties directly rather than via Mali. Vieux Farka Toure, for example,

is a member of BuMDA for sales in Mali, a member of ASCAP for US sales and SACEM represents him in Europe (Jean Claude Chamoux, SACEM i/v, 29 January 2015).

But while noting the specific issues raised by copyrighting African music the publishers we spoke to made it clear that confusion about the mysterious basket of rights that makes up copyright and the alphabet soup of territorial collection societies (PPL, PRS, SACEM, GEMA, ASCAP, BuMDA and the rest) is not a specifically African problem, but is true of musicians from Timbuktu to Tottenham: it is the result not of specific African deficiencies, but of the complexity of copyright which derives in part from how it has developed over centuries as a series of “somewhat incoherent responses to changing circumstances” (Frith 1988: 73). Ben Mandelson’s admission that he has only “fuzzy knowledge” of the complexities of copyright himself²⁰ is echoed by other publishers we spoke to who acknowledged that they “learn a new thing every day” (Laurent Bizot, i/v, 1 October 2014) or sometimes feel as if they don’t understand copyright at all (Catherine Steinmann, p/c, 8 June 2014).

This complexity is precisely why musicians need publishers. Pete Jenner, former Pink Floyd manager and long-time industry observer, makes the point succinctly: “If I was a brutal record company man I’d never pay royalties for Malian music. I’d say ‘where’s your chain of title?’”, by which he means how could an artist legally prove ownership of relevant copyrights? That is what a publisher can do for a jeli, establish their rights and claim on them, using a system that though flawed is a convention that is recognised and protected in law. For all its evident flaws, for publishers like Joe Boyd copyright is “a bit like democracy” in that it is “the least worst system” (i/v, 11 June 2014), one that is recognised across more than 200 countries, and one that might, in a modest way, help support musical traditions:

²⁰ “The lack of understanding just to say it’s an African Issue, I really think that’s unfair. I think there’s a huge amount of ‘no-know’. I mean, I have conversations with my peers about how PRS really work, how PPL really work, how does the cash flow work and how does this work and how does that work. I have fuzzy knowledge too, I’m always having to ask ‘how does it work?’” (Ben Mandelson, i/v, London, 9 June 2014)

Of course we are interested in preserving culture, but I am very aware of our limited capabilities. What is possible is preserving individuals who come from that culture. If we can make Kassé Mady's old age more comfortable, and give a 14-year-old a vision that he can make a living at this then we are helping to preserve a culture. (Joe Boyd, i/v, 11 June 2014)

Lucy Durán is convinced that the work Carthage has done tracking down royalty revenue through the territoriality discrete but linked regions of the international collection system has made a difference:

Take a case like Kassé Mady Diabaté who has finally found a small independent publisher with integrity. As a result his life has been turned around. He finally has a regular income and doesn't entirely depend on those little hand-outs he gets from gigs. (Lucy Durán, i/v, 14 July 2016)

Rights income—moving to the very centre of music industry economy revenue as physical sales decline (Frith 1988; Homan 2015)—similarly offers a lifeline to independent world music labels like No Format! who can no longer rely on sales income:

If I had to rely only on CD and digital sales I would never break even for any of my projects. Publishing is becoming more important than sales, it's about the multiplication of little rivers of revenue.

(Laurent Bizot, i/v, 1 October 2014)

Bizot is also clear that though copyright processes can be hard to understand and complex to monitor, the venerable collection agencies that operate in the West—PRS in the UK, GEMA in Germany and SACEM in France—can be relied upon:

SACEM works very well. It's true that it takes quite a big commission, but it is very efficient. If you follow the registration right and you're careful about every detail it works. I wish that every country could have a similar system.
(i/v, 1 October 2014)

This for Bassekou Kouyaté is what makes the difference. World Circuit, which represented his publishing interests outside Africa until a recent switch to OutThere, provide detailed six-monthly reports on royalty income, detailing exactly what payments are for. This builds an essential bond of trust (i/v, 4 November 2014).

Beyond tracking royalties world music publishers play a key role in education and knowledge transfer. One of the most commonly articulated requests from African musicians is to know more about how copyright works and might work for them (Violet Diallo, BuMDA report, 30 December 2015²¹). Working with European publishers has both allowed jeliw to build international careers, and to accrue the prestige and knowledge of how copyright functions that allows them to influence the development of more robust copyright processes in Mali. On 30 December 2014 Violet Diallo helped BuMDA director Androgaly Guindo set up a meeting for BuMDA members in Bamako attended by more than 100 members (ten times the audience at previous meetings), including prominent rapper Mylmo and the revered griot Bako Dagnon. Participants described this as the first time they had had a chance to understand what royalty payments they were entitled to, and to discuss how to improve collection in Mali (Violet Diallo, BuMDA report, 30 December 2015)

Conclusion

This article has outlined some of the key features of the relationship between jeli musicians and European publishers, and how they negotiate copyright law for jeli

²¹ Anne Schuman's work on the contemporary music market in Cote D'Ivoire confirms this, as she told a SOAS audience in 2015

music. Though it acknowledges the way in which the eurocentric and romantic notions of authorship, originality and creativity as embedded in copyright law can clash with the underlying philosophies of music that is oral, collectively composed and regulated by use and custom, such as the jeli repertoire, it argues that there are ways in which this relationship can be perceived more positively, as one based more on trust than on exploitation. The recognition that the relationship between African traditional music and the Western music industry takes place in a distinctly post-colonial context (Feld 2000a) can too often shade into a representation of the relationship as one that always involves one-way cultural imperialism. This frustrates practitioners like Lucy Durán:

I object to the knee-jerk condemnation of any relationship between Western producers and Malian jeliw as being hegemonic or power-imbalanced. Clearly there are cases of exploitation—in Africa as well as the west—but there are also many cases of individuals and small publishers who work with African musicians who have integrity, who are promoting this music, making it available and trying to make sure the money reaches the musicians. (i/v, 14 July 2016)

In the light of dysfunctional domestic markets and copyright regimes in Mali and the decline of patronage, access to international markets and the guidance and support of trusted allies in publishing, represents an important source of income, prestige and knowledge for Mali's jeliw, which can contribute to the continuation of a very rich, and always evolving, musical tradition. An important note of caution should be sounded here however. The opportunity for an international career is only open to a very small proportion of Mali's musicians. The key to enabling copyright to help a far larger segment of Malian artists will be for those Malian's who do have such a career and have learned about copyright to share

their knowledge and use their status to try and influence the development of more robust and reliable collection in Mali.

However there are considerable problems, both specific to jeliw in Mali and more generally in the music industry. When asked how he felt about the future of the jeli musical tradition Lassana Diabaté declared himself “very, very worried” (i/v, 4 June 2015). This was a combination of the turn to audio playback technology like Balani show that he felt was having a catastrophic effect on income for musicians in Mali and the changes in Malian society that were drawing younger jeliw away from traditional music, exemplified by Mamdou Kouyaté who said that he would not want his children to become jeliw because he’d rather they acquired a more contemporary schooling that would fit them for employment in modern Mali or beyond (Violet Diallo confirmed that this was a common attitude amongst jeliw show had spoken to). It is not clear what the consequences of these modernising processes will be on the jeli music economy.

Arguably an even greater set of challenges faces the music industry of which world music publishing is a small and far from powerful part. Since the world music heyday of the 1990s, when the profits generated by releases like Buena Vista Social Club were attracting the attention of major labels, the cycle of fashion has moved on and world music has returned to its niche. Anxieties about the way that traditional music is appropriated and exploited by global capital are giving way to anxieties about the way in which it is now neglected (Taylor 2004: 83). Profound transformations in the structure of the music industry brought about by the shift to digital are having a catastrophic effect on world music’s bottom line. The world music economic model is not a hits business, but built on selling albums, mainly on CD, to aficionado collectors (an average release is unlikely to sell more than 5,000 copies and many much less than that, according to Nick Gold). As physical sales continue to decline (a process Gilbert, 2012, calls the “de-commodification” of the music industry) and streaming rises to become

the new model of music consumption it is far from clear if world music can adapt. Despite the steep growth of streaming services like Spotify in recent years controversies continue around how streaming revenue is accounted for, how much is actually paid and to whom. For independent labels and publishers with very little in the way of marketing budgets and little clout in negotiations these are very uncertain times.

Amidst this gloom the jeli still stands. It is worth remembering that however deep the history and knowledge of which they are custodians, and the jeli power “to evoke feelings that have not changed in seven hundred years” (Diawara 1997: 26) jeliw like Kassé Mady Diabaté and Lassana Diabaté do not live in the past, they are our contemporaries: “We are modern griots,” says Toumani Diabaté, “we are connected to the world.”²² Jeliw are “cosmopolitan travellers by profession” adept at adaption and retranslation, fixed neither in place nor time but continually moving “in search of practices, ideas and institutions to resituate, advance and preserve their hereditary art” (Skinner 2004: 140). Jeli music “is part of Africa’s continuity, a totally living tradition, still enmeshed in the fabric of Mande society” (Duran, i/v, 14 July 2016).

Though anxieties about the health and continuation of this tradition will persist, it may be that we need to rethink the encounter between African tradition and global markets and recognise that jeliw, like other so-called “traditional” artists sit on the very cusp of a set of intensely contemporary global relations, between rising Africa and the declining west, between tradition and modernity, between what was, what is and what is coming.

Acknowledgements

The research on which this article is based was funded by a small ‘Voucher’ grant from CreativeWorks London, one of four Knowledge Exchange Hubs for the

²² As quoted in liner notes of the CD Toumani & Sidiki (2014, World Circuit)

Creative Economy funded by the Arts and Humanities Research Council (AHRC).
I'd like to thank Catherine Steinmann, of the independent music publisher Carthage, who was my partner on the project. Special thanks are also due to Guy Morris and Joe Boyd at Carthage, who provided valuable guidance and contacts for the research. This research would not have been possible without my SOAS colleague Lucy Durán, not only an academic but a prolific and talented record producer, who kindly allowed me access to the many talented jelis she has worked with and generously gave of her time to discuss these complex issues. Lastly, a sincere thanks to my two anonymous reviewers whose patient scrutinising and many pertinent questions and clarifications greatly improved the quality of this article.

Appendix 1

List of Interviewees

Interviewed by Caspar Melville

(Name/Date/place)

Bassekou Kouyaté*, jeli musician (ngoni), 4 November 2014, London

Lassana Diabaté* (Trio Da Kali) jeli musician (balafon), 4 June 2015, SOAS, London

Mamadou Kouyaté* (Trio Da Kali), jeli musician (ngoni), 4 June 2015, SOAS, London

Kassé Mady Diabate* jeli singer, 24 November, 2015, SOAS, London

Lucy Durán, academic/producer, 14 July 2016, London

Ben Mandelson, musician/producer, 9 June 2014, SOAS, London

Joe Boyd, producer and publisher (Carthage), 11 June 2014, London

Nick Gold, label owner (World Circuit), 24 July 2014, Shoreditch, London

Laurent Bizot, label owner (No Format!), 1 October 2014, telephone

Jean Claude Chamoux, Deputy International Director, SACEM, 29 January 2015, telephone

Peter Jenner, manager and industry analyst, 14 January 2015, SOAS, London

Guy Morris, publisher (Carthage), 10 June, 2014, Blue Mountain office, London

Martin Cradick, musician producer (Baka Beyond), 30 March 2015, email

Androgoly Guindo Director General, BuMDA, 18 December 2014, BuMDA offices, Bamako (Interview by Violet Diallo)

Violet Diallo also wrote an unpublished report on Carthage on the BuMDA members meeting in Bamako, 30 December 2014

Interview by Lucy Durán

Fode Lassana Diabate, filmed for 'Sunjata's Time': Kronos Quartet: Fifty for the Future producer, L Durán, 26 March, 2016, Tlayacapan, Morelos, Mexico

*Simultaneously translated from French and Bambara by Dr Lucy Duran

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