MUSIC & ENTERTAINMENT INDUSTRY EDUCATORS ASSOCIATION

Journal of the Music & Entertainment Industry Educators Association

Volume 22, Number 1
(2022)

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Published with Support
from

Poor Man's Copyright: Intellectual Property and Cultural Depictions of the White Working Class in American Popular Music

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This research was funded in part by a research grant from the Music & Entertainment Industry Educators Association.

https://doi.org/10.25101/22.1

Abstract

The growing literature on cultural depictions of the White working class in American popular music has touched on issues of copyright, compensation, and residual ownership of song rights. This study expands upon existing work by conducting case studies on three influential figures in American music history: Stephen Foster, Woody Guthrie, and Phil Walden. Though each of these figures produced popular music in different historical and cultural contexts, the music they produced depicted—and was marketed to—the White working class. Interestingly, each of these figures also struggled to effectively assert and manage the copyrights in their respective works, both within formal music industry structures and to their audiences. Cultural perceptions and bias played a role in the challenges they faced, as did their own incomplete understanding of intellectual property. By situating male, White working class musicians as simultaneously less privileged than industry elites and more privileged than other marginalized groups, this study can help to illuminate a greater understanding of the ways that race, gender, and class intersect in American popular culture.

Keywords: copyright law, music history, popular culture, popular music, production cultures, Stephen Foster, Woody Guthrie, Phil Walden

The so-called "poor man's copyright" is one of those enduring myths about intellectual property that seems to pass down to each successive generation of creative artists, and especially to musicians. Essentially the idea is that an unknown, or "poor," artist without access to formal structures of protection can secure their original work by mailing a copy of it to themselves through the postal service. A sealed envelope bearing an official stamp of the date received is believed to protect the integrity of their original ideas and serve as legally binding proof of authorship.

A lawyer or copyright scholar is likely to point out that the efficacy of a poor man's copyright is unproven in a court of law.[1] Moreover, while formal registration still conveys certain benefits, since the 1976 Copyright Act took effect, all original work in the United States has inherently been granted copyright protection from the moment it is fixed in a tangible form.[2] In the digital age, a metadata tag on a document, photo, or voice memo is likely to be better proof than a postal stamp for verifying date of creation. Yet, legal efficacy is not the only—or even the most—interesting aspect of the poor man's copyright myth. Questioning such phenomena provides an opportunity to ask why such myths endure, why there are gaps between legal policy and public perception, and how artists negotiate value up towards formal industry structures and out toward their audiences.

This research is not so much interested in establishing the date that the poor man's copyright myth began or whether it would hold up in court. Rather, it is interested in the historical factors that create such myths and obscures knowledge about intellectual property that might directly affect an artist's economic reality. It is also interested in cultural factors that contribute to access to copyright protection and discourses about the efficacy of copyright.

To investigate these issues, this article presents three case studies that span the history of American popular music from its beginning in the early nineteenth century up to its height in the late twentieth century. Stephen Foster was the first American to make a living as a full-time songwriter. He was the composer of some of the most memorable melodies in American music history, but also a deeply problematic figure due to his influence upon inequality in American popular culture. Woody Guthrie is often referred to as "America's Folksinger" and though he wrote more than three thousand songs in his lifetime, "This Land is Your Land" has eclipsed them all to become an unofficial national anthem. Guthrie has also been championed as an exemplar among advocates for an expanded

public domain, but this characterization is complicated by historical evidence. Phil Walden was a music executive who began his career managing legendary rhythm and blues acts. He is most known for his success building the Southern Rock label Capricorn Records and for launching the career of the Allman Brothers Band.

Each of these figures worked in very different historical time periods of American music and played different roles. Foster was strictly a composer, while Guthrie was also a performer and was especially skilled at reimaging traditional and folk melodies. Walden was on the business side of the music industry and was most active at the height of its economic success in the latter half of the twentieth century. Primary sources from historical archives and contemporary journalism help illuminate the ways that each of these figures understood and used copyright—even if at times their understanding was incomplete.

While the differences of these three figures help to show historical time and industry breadth, their similarities recommend them as ideal for a particular type of inquiry. In addition to all being White and male, the White working class were central to the lyrical content of the songs they produced and were also their target audience demographic. This throughline offers advantages for a longitudinal study comparing change over time. As this research will detail, American popular music was at its very beginnings targeted toward the White working class. Though it would eventually spread throughout the social strata and around the world, its historical roots have shaped its content and industry norms in ways that still produce profound effects today.

Centering copyright in such a study helps to foreground questions of authorship, ownership, and creative agency, but also to raise issues of inequality. Copyright, as a property right, was only available to White men at the beginning of American popular music's history. The expansion of those rights to women and people of color has been slow and fraught.[3] This study conceptualizes White working class musicians as simultaneously less advantaged than industry elites and more advantaged than women and people of color. With that understanding in place, let us turn to see what these case studies can show.

Stephen Foster

One of the defining features of copyright law is that it has always been "sluggish in responding to technological change."[4] Music copyright

clearly evidences such lethargy as it was 1831, more than forty years after the ratification of the U.S. Constitution and the first American Copyright Act, before "musical compositions" were even granted explicit protection.[5] There are historical and cultural factors that played into the delay, most especially an early American preference for European cultural works and a corresponding desire to obtain them cheaply by not acknowledging international copyright claims.[6] Yet, the relationship between copyright law and popular culture can be seen even in early America. When the Confederacy rebelled, its leaders took every opportunity to implement policies contrary to the Union side, including recognition of foreign copyrights. This was partly to appeal to the British, whom they hoped would support their side in the Civil War, but also had an air of petty antagonism as "Southern gentlemen…would rather pay quintuple the price for a British edition than buy a pirated Yankee one."[7]

The first uniquely American genre of popular music also began in the 1830s. Blackface minstrelsy's earliest incarnations involved White performers donning makeup and exaggerated accents to cruelly caricature an imagined version of African American culture.[8] Minstrelsy was initially performed by and marketed to working class Whites, though over time its cultural reception widened significantly.[9] Arguably, no artist had more impact upon this evolution, and by extension the growth of the nascent American music industry, than Stephen Foster.[10]

Foster's unique ability to marry catchy melodies with nostalgic lyrics made minstrel music more appealing to upper class sensibilities. It also sentimentalized the racist stereotypes making them less overt but more pernicious.[11] Occupying a liminal space between upper and lower social class was a defining feature of Foster's life. He spent much of his career trying to recapture the social standing his father's financial mismanagement had lost the family.[12] "Oh! Susanna" was Foster's first hit and its success was truly unprecedented.[13] Foster was in his early twenties when it was released, and he understandably made mistakes in handling his copyright interests. For example, as he replied to an inquiry from a publisher about the song's copyright status: "I gave manuscript copies of each of the songs…to several persons before I gave them to [another publisher] for publication, but in neither instance with any permission nor restriction in regard to publishing them."[14]

Kevin Parks characterized Foster's missteps with "Oh! Susanna" as an "object lesson" of what not to do when managing copyright interests.[15]

The exact figure Foster earned for the song is not known, but if it was anything it was a mere pittance compared to overall sales.[16] It did lead to future opportunities, however, as Firth, Pond, & Company, one of the largest publishing houses in America at the time, offered Foster a contract with favorable terms in 1849.[17] One early Foster biographer claimed that "though Foster made little or nothing from his earliest success, he learned two things: that he could write songs people liked to sing, and that these songs would bring money to the man who published them."[18] Yet, there is little historical evidence that Foster ever learned to effectively manage his affairs.

An important dynamic of music industry publishing in early America was the tension between securing copyright to ensure compensation and encouraging demand for sheet music sales by public performance. An example can be seen in Foster's handling of the song "Nelly was a Lady." He had circulated a manuscript to a friend in New York for minstrel performers to use in their acts.[19] His publishers intervened to explain why this left the song vulnerable to infringement: "From your acquaintance with… 'minstrels,' & from your known reputation, you can…introduce [your songs] to the public in that way, but in order to secure the copyright exclusively for our house, it is safe to hand such persons printed copies only" and added "if manuscript copies are issued particularly by the author, the market will be flooded in a short time."[20]

Another example can be seen in Foster's contentious relationship with the minstrel bandleader E. P. Christy. A common arrangement at the time involved displaying the names of popular performers on the title page of sheet music as an early kind of celebrity endorsement. Christy's reputation was such that he demanded his name not be used unless it was the only name featured. Foster had to apologize for violating this policy early in their relationship, claiming a title page was "cut before I was informed of your desire that your name should not be used in connection with other bands." Foster attempted to smooth things over, adding that he "wish[ed] to unite with [Christy] in every effort to encourage a taste for this style of music so cried down by opera mongers."[21] This statement also revealed Foster's class consciousness as his own work was looked down upon by purveyors of highbrow forms like opera.

Foster offered the exclusive endorsement arrangement Christy required in February 1850.[22] Unfortunately by June, Foster had to inform Christy of another mistake, expressing "regret that it is too late to have

the name of your band on the title page" of a new song but promising to "endeavor to place it (alone) on future songs" and "cheerfully do anything else in my humble way to advance your interest."[23] Perhaps this series of missteps led to the decision to allow Foster's song "The Old Folks at Home" (better known today as "Swanee River") to be attributed as "Written and Composed by E. P. Christy" when it was released in 1851.[24]

Though "The Old Folks at Home" is remembered as one of Foster's signature songs today, when it was released its use of exaggerated Black dialect in its lyrics connected it with the lowbrow connotations of Blackface Minstrelsy. The copyright was registered on Foster's behalf but public attribution of authorship was initially given to Christy so that Foster could avoid such connotations and market his personal brand on more respectable parlor music. However, public reception of "The Old Folks at Home" ended up being overwhelmingly positive among White audiences of all classes. This prompted Foster to try again to change the terms of his agreement with Christy, writing "by my efforts I have done a great deal to build up a taste for the [minstrel] songs among refined people by making the words suitable to their taste, instead of the trashy and really offensive words" that the initial, lowbrow version of minstrelsy often used. Foster continued, asking to "reinstate" his name on the title page, even saying he was "not encouraged in undertaking this so long as 'The Old Folks At Home' stares me in the face with another's name on it." Foster offered to refund Christy's initial deposit paid for the naming rights, and then offered a fascinating insight into his artistic motivation: "I find I cannot write at all unless I write for public approbation and get credit for what I write."[25]

As to Christy's thoughts on all this, he encapsulated them succinctly on the back of the letter he received, writing "S.C. Foster - A mean & contemptible – vascillating [sic] skunk & plagiarist."[26] This correspondence demonstrates the intersection of copyright and authorship with social class and popular culture. Steven Saunders maintained that this letter also demonstrates Foster's investment in the "values of the middle class and [that he was] palpably uncomfortable with some of the low, vulgar, and low-class associations of minstrelsy."[27] Still, Foster knew that composing such work was an economic necessity and he had no moral qualms about doing so—as long as his name was not associated with any negative connotations.

Foster's efforts to manipulate public perception through misleading attribution notices ultimately backfired. By not effectively connecting

his name with his most popular work he failed to reap the full benefit of its success. His actions betrayed a fundamental misunderstanding of the value of intellectual property rights. Foster was offered a new contract in 1854 from Firth & Pond that was even more favorable than his previous ones and included terms of up to a ten percent royalty.[28] This contract was written in Foster's own handwriting, which led an early biographer to speculate that he "dictated his own terms."[29] Even if this speculation is true, it glosses over the fact that Foster did not compose work at a rate that would capitalize on these favorable terms during this period, nor did he manage his financial affairs responsibly.[30]

The culmination of Foster's copyright mismanagement can be seen in his fateful decision to release future royalties from his back catalog in a contract that went into effect in 1858.[31] In sum, Foster calculated that he had earned nearly ten thousand dollars from his songs and estimated his future earning from those songs at a shade under three thousand.[32] He ultimately accepted less than two thousand dollars in a one-time payment made in March of 1857.[33] He continued his profligate spending habits and by the time his final contract with Firth & Pond expired in 1860 the advances he had taken out against future royalty payments left him in debt to his publishers by nearly fifteen hundred dollars.[34]

Foster's decline mirrored the nation's own as it descended into civil war. He spent the war living in Manhattan's lower east side selling songs to whomever would buy them and receiving only "a paltry sum for what other composers would demand and receive a fair remuneration."[35] Foster died in January 1864 at thirty-seven, either drinking himself to death or intentionally taking his own life.[36]

Woody Guthrie

The market for American music that contracted during the Civil War eventually rebounded and continued to expand throughout the latter half of the nineteenth century.[37] Publishing dynamics stayed largely the same as long as sheet music sales and public performance were the basic industry commodities. By the turn of the century, new technologies were already presaging the disruption that sound recording and radio would soon bring.[38] Copyright law struggled to accommodate these new technologies, such as in an infamous 1908 case that initially ruled manufacturers of player piano rolls did not have to pay royalties to song composers.[39]

That ruling was superseded by the mechanical licensing provision in the 1909 Copyright Act, a provision that would go on to have major consequences for the ways copyright law was applied to emerging broadcast media and mass communication technologies.[40] Like Foster, who had little precedent to draw from for his breakout success, musicians outside the privileged circles of publishing centers like Tin Pan Alley had to make decisions about copyright protection for their work with little guidance or frame of reference. Artists in emerging genres like rhythm and blues, country and western, and folk music struggled to build audiences, gain artistic legitimacy, and navigate legal requirements. Perhaps no early twentieth-century musician exemplified this more than Woody Guthrie.

Guthrie was interested in music as a child in Oklahoma and performed publicly as a teenager in Texas, but his career really got going at twenty-five when he and his cousin Leon "Jack" Guthrie got a gig co-hosting a radio show on station KFVD in Los Angeles, California.[41] In fact, it was a song entitled "California!" that was the first he ever registered for copyright. Guthrie had to rely on his second radio co-host Maxine "Lefty Lou" Crissman to transcribe the necessary sheet music manuscript that accompanied the application, as he only played by ear.[42] Using a model letter he found in a book about intellectual property that was forty years out of date, Guthrie sent in the manuscript along with the requisite fee on September 9, 1937.[43] The Copyright Office responded by sending an official registration certificate along with more up to date information about registering future work.[44]

Despite the time and effort involved in registering the song, in a note accompanying "California!" in a songbook sold to listeners of the radio show Guthrie seemed dismissive of the value of copyright. He wrote: "This song is Copyrighted in U.S., under Seal of Copyright #154085, for a period of 28 years, and anybody caught singin it without our permission, will be mighty good friends of ourn, cause we don't give a dern" and then added, "Publish it. Write it. Sing it. Swing to it. Yodel it. We wrote it, that's all we wanted to do."[45] Many proponents of expanding the public domain have cited this seemingly anti-copyright notice as evidence of Guthrie's disdain for intellectual property protection, or even for the idea that creative works can be owned by their creators at all.[46] Yet, historical evidence about Guthrie's evolving understanding of copyright tells a different story.

The copyright story of "Oklahoma Hills" neatly encapsulates Guthrie's evolution. He penned a similarly dismissive notice on an early version

of it that read in part, "I ain't got it protected by no copyrights or patents, so go ahead and do whatever you want to do with it. It's yores [sic]."[47] Despite this audience-facing comment, however, behind the scenes he cared quite a bit about getting credit for his work. The idea of a poor man's copyright dates at least to the late 1930s, as Guthrie included both "Oklahoma Hills" and "California!" in an envelope filled with songs that he mailed to himself to "prove originality of this material and its arrangement in this combination."[48]

It is unclear why Guthrie did not officially register "Oklahoma Hills" for copyright as he had "California!." He did send a KFVD-era songbook that included both songs and several others to Alan Lomax at the Library of Congress and made sure to stress in an accompanying letter that while his cousin Jack was having success performing "Oklahoma Hills," Guthrie's version was "the pure dee original." He went on to express that he did not want any of his songs "published without my wrote down permission, that is the ones that has got my John Henry on them" although he did acquiesce to not "specially car[ing] about the profit."[49]

Guthrie would change his mind even on that score when in 1945 he heard Jack's version of the song playing on a jukebox and discovered his cousin "had stolen the song by filing its copyright in [Jack's] own name."[50] Guthrie knew the evidence was in his favor and demanded that Jack give him the credit and royalties he was due.[51] After some back and forth, "ultimately they agreed that it could be published with both names as composers."[52] The initial back payment for royalties was a thousand dollars and money continued to come in for years afterward.[53]

Guthrie continued to care about getting credit for his work and to push back against the cultural norms of the folk genre that diminished individual authorship. He moved from California to New York in the early 1940s and often performed with an ever-changing rotation of folksingers known collectively as The Almanac Singers. Lomax had advised the group that "giving individual credit was the only way to head off copyright battles in the future, but the others were strongly opposed" to this arrangement.[54] Woody demurred to group attribution for his song "Rueben James" but later regretted it and vigorously objected when future attribution conflicts arose.[55]

Guthrie's voluminous correspondence with his second wife Marjorie Mazia provides further evidence of his thoughts and actions about copyright. By 1942 he expressed his intention to "get [his] songs all writ-

ten down, words and music, and send one good clean copy…to be Copyrighted." He had also learned that it was "cheaper to copyright a whole collection than to copyright each song separate."[56] He still believed in the efficacy of the poor man's copyright, as he conveyed to Mazia in all caps:

> TO COPYRIGHT ANY SONG:
> DO THIS:
> WRITE WORDS & MUSIC PLAINLY, IN INK, ON GOOD PAPER (OR TYPEWRITER) –
> PUT $1[00] WORTH OF STAMPS ON ENVELOPE, ADDRESS TO MR & MRS. W. GUTHRIE, OUR ADDRESS, DROP IN ANY MAILBOX.
> WHEN IT COMES BACK, **DO NOT OPEN** ENVELOPE, LAY IT AWAY & SAVE FOR FUTURE PROOF.[57]

By the late 1940s the language Guthrie was using about copyright was dramatically different than that used early in his career and had evolved to meet industry norms such as this notice on a book of children's songs he cowrote with Mazia: "No portion of this book nor these songs may be used for commercial purposes, nor reproduced in any form, without the written permission of the copyright owner."[58]

Guthrie's efforts to copyright his work eventually paid off. The Weavers, a folk outfit made up of former members of The Almanac Singers, gave Guthrie a ten thousand dollar advance to license a cover version of "So Long (It's Been Good to Know You)" in 1950.[59] The Weaver's manager Harold Leventhal enquired about the song's copyright status in October of that year.[60] This resulted in Guthrie making some "urgent calls" to producer Moe Asch, who recorded Guthrie's original version a decade prior. Asch reassured him that "we had copyrighted the SO LONG song before… THE WEAVERS, DECCA, could as you put it 'swipe' it from you" and added "you darn well know that a copyright is never lost as long as it is registered in the Library of Congress even if you lost your copy, and Marjorie has more than enough business sense to know this."[61] Guthrie must have enquired at The Copyright Office about the song as well as they sent a duplicate certificate of registration in November.[62]

By far, Guthrie's most famous song is "This Land is Your Land." Its earliest version, initially titled "God Blessed America" was written on

February 23, 1940 and did not yet include the famous "made for you and me" refrain.[63] Though he did write "Original copy of this song" on the first lyric sheet, the song was not registered for copyright at the time.[64] It would not be officially registered until 1956 and by that time, Guthrie's mind had all but succumbed to Huntington's Disease.[65] As much as he could, he was an active participant in the transfer of his copyrights to a trust established for the benefit of his children.[66] As it became clear that "This Land" would achieve the rare level of enduring popularity it has he wrote to Mazia "You can use alla me and my moneys there Marjorie just any old way you please…I know that God'll pay you more moneys for 'This Land' than He did for 'So Long.'"[67] These are not the words of an artist who is anti-copyright, but rather one whose understanding of copyright and estimation of the value of their work evolved significantly throughout their career.

Phil Walden

The opportunities made possible by sound recording and radio began to be exploited by popular music in the early twentieth century, but the burst of American prosperity post World War II brought an unprecedented influx of income to the industry.[68] Yet, by the 1970s copyright law still labored under the logic of the 1909 act and updates were needed. The Sound Recording Act of 1971 provided federal copyright protection for sound recordings that had previously been subject only to state and common law.[69] This was an important, though imperfect, part of the solution, but many in the industry felt that there was more reform work to be done.[70]

One of the problems copyright reform needed to address was piracy. The illegal duplication of sound recordings for illicit resale grew exponentially in the 1960s and 1970s.[71] Alex Sayf Cummings went so far as to use the history of music piracy "to trace the arc of American political thought about copyright" in general as it "gradually accepted a new rationale for property rights based on the value of a firm's investment."[72] Piracy was unsurprisingly robust around industry centers in New York and Los Angeles, but also thrived like kudzu in the American South. In fact, the reason that "bootlegging" is a synonym for music piracy is that many former bootleggers simply switched from moonshine to music as the market for illegal liquor dried up.[73] A southern music executive who was at the center of reform efforts to address music piracy was Phil Walden.

Walden's music career began as a college student in his early twenties managing legendary rhythm and blues acts like Sam & Dave and

Otis Redding. Walden's recognition of Duane Allman's potential while Allman was just a session player proved to be a turning point for both their careers.[74] When the Allman Brothers Band released *At Filmore East* on Walden's Capricorn Records label in July 1971, that potential was fully realized.[75] Walden's profile was raised to such heights he told *Creem* magazine in November 1972 that both the Nixon and McGovern presidential campaigns had sought his endorsement.[76] Walden would back neither, but he would soon throw his political support behind the sitting Georgia Governor—Jimmy Carter. Walden and Carter had a mutual acquaintance in Carter's executive assistant Cloyd Hall, who introduced them during Carter's "Stop and Listen Tour" in the summer of 1971.[77] An article by Art Harris in *Rolling Stone* reported that soon after this meeting Carter "lent his weight to a strict antipiracy bill" in Georgia that Walden lobbied for. The article also claimed that at the time "piracy of records and tapes, hawked cut-rate at truck stops across the state, has been costing the industry $10 million a year."[78]

Walden worked at both the state and federal levels to reform copyright law, as a trove of unpublished documents abandoned when Capricorn went bankrupt in 1979 reveal.[79] On December 2, 1974 Georgia Senator Sam Nunn wrote to express his appreciation for Walden's advisement on "the differences between counterfeit and pirated tapes" and to share his concern about the millions of dollars in revenue lost to piracy.[80] The other Senator from Georgia, Herman Talmadge, wrote a few days later to confirm receipt of correspondence from Walden about copyright reform and to express his own commitment to fight the southern piracy problem.[81]

Governor Carter wrote in early December as well to relate that passage of the state-level anti-piracy law was imminent. He assured Walden that, although his term would expire before the bill was signed, Carter would see that governor-elect George Busbee received all the information about why it was necessary.[82] Busbee signed the bill into law on February 27, 1975.[83] Cloyd Hall, who by this time was working for Walden as Vice President of Corporate Development at Capricorn, was quoted in the *Atlanta Journal* as saying he "believe[d] this new law [would] help eliminate the pirate in Georgia," as well as "problem[s] in neighboring states by closing down the factory operations in Georgia."[84]

Once the Georgia legislation was signed, Walden and Hall turned their focus toward federal reform. James Fitzpatrick, a Washington lawyer consulting on what would become the 1976 Copyright Act, wrote to

Walden expressing appreciation for "Hall coming to Washington to help out on the mechanical royalty problem" and "a series of very productive meetings with members of the Georgia delegation."[85] Senator Nunn was working behind the scenes for Walden as well. On July 10, 1975, Nunn wrote to the chair of the Senate Judiciary Committee, James Eastland, on behalf of "one of his constituents in the recording industry." The fact that this letter was kept in Walden's files, along with Nunn and Walden's previous correspondence, suggest that Walden was that constituent. The concern that Nunn expressed on Walden's behalf was over "the impact of the proposed rate increase in Section 115 of the bill." Draft legislation at this stage looked to raise the mechanical royalty from two cents to three, a change that "could amount to nearly $100 million a year more that consumers would have to pay for the records they buy."[86]

Fitzpatrick wrote on August 6 to Hall and the team at Capricorn on how to get Senator Talmadge to show as much support on the "mechanical rate issue" as Senator Nunn had. While Fitzpatrick conceded that, unlike Nunn, Talmadge was "disinclined to write a letter" to the Judiciary Committee, Fitzpatrick wanted Walden to "urge [Talmadge] to express Capricorn's concerns."[87] Back in Georgia, Lieutenant Governor Zell Miller wrote a letter sent statewide to law enforcement noting that "many persons seemingly are not aware" the state anti-piracy had gone into effect and urging officers to "enforce it in [their] communities."[88] These surviving sources evidence targeted, strategic efforts by Walden and his team to use their political connections to influence copyright reform regarding music piracy and mechanical rates.

Press coverage of Walden and Carter in the lead up to the 1976 presidential election brought the relationship between popular culture and politics to the fore. Richard Bergholz wrote for the *Los Angeles Times* about a meeting that Walden arranged for Carter with Hollywood music moguls in June 1975. Bergholz noted Carter's need to be "considered as a serious contender instead of a faceless also-ran" as he sought to raise his national profile ahead of the presidential primaries. The article ended with a quote that revealed the shared interest Walden and Carter had in showing the rest of America that "the people in the South ha[d] come a long way in the last 15 to 20 years."[89]

There were strong insinuations of scandal in Walden and Carter's relationship by reporters, which was not surprising in the post-Watergate era.[90] In the aforementioned *Rolling Stone* article from December 1975,

Carter did admit that his state senate "floor leader" worked on the Georgia anti-piracy law, but he insisted that he "never had any conversation with Walden on that bill." Walden also insisted on a lack of nefarious motive, saying "A lot of people around Carter have wondered what I want…I can honestly say I don't want anything."[91] The available historical evidence supports Walden and Carter's denial of any unethical dealings in their relationship, but reporters were understandably suspicious as the level of popular music involvement in politics during Carter's campaign was a relatively new development.

Larry Rohter at the *Washington Post* noted this turn of events in a piece about Walden and Carter. He wrote that while only a few years earlier politicians were seen as a "parade of graysuited grafters, the choice between cancer and polio," by the bicentennial election the industry was "lining up behind various presidential and senatorial contenders, offering endorsements and throwing fund-raising benefit concerts for the candidates of their choice." Walden was quoted in the article about the many benefit concerts Capricorn acts had put on for Carter's campaign, calling the events the most "effective fund-raising tool you can use right now, federal election laws being what they are."[92]

Jim Jerome profiled Walden and Carter for *People* magazine. Jerome wrote that "though he may be twice-born spiritually, Carter owes his political salvation partially to the power Walden wields in the musical-political complex, which has outmobilized the military-industrial in this year of campaign financing reform." Jerome quoted Walden as invested in changing the "stigma—the racist Southerner 'Johnny Reb' thing—that we weren't as competent or smart as other people." Walden also went on the record about his motivation for supporting Carter: "I have only two motives—Jimmy's my friend, and I want to have a cleaner, better government in Washington. [Carter] asked me…what I would expect if he wins, and I told him 'absolutely nothing.'"[93]

President Ford signed the 1976 Copyright Act into law on October 19, two weeks before he lost the election to Carter.[94] Journalistic focus largely turned away from Walden and Carter's relationship, partly because the campaign was over and also because of the sensationalized emphasis on Carter's infamous "lust in my heart" comment to *Playboy* magazine.[95] When Walden and Carter did appear together in the press though, copyright was still in the conversation. Writing this time for the *Washington Post*, Art Harris described a September 15, 1977 meeting between Carter,

Walden, and other music executives in the Roosevelt Room where Carter "listen[ed] attentively to industry concerns about tape piracy, copyright dilemmas and the visa problems musicians with shaggy beards and Medusa curls must sometimes endure at border crossings."[96]

Discussion

From Blackface Minstrelsy to Folk Music to Southern Rock, American popular music has always sung about and been sold to the White working class. Publishing and distribution interests were at first owned exclusively by upper-class White males. The power and agency they held only trickled down to other classes, races, and genders through prolonged struggle and policy changes. Examining case studies of cultural depictions of the White working class in American popular music can serve as a kind of midway point from which to view these intersections. Putting copyright in the center of these case studies helps to ground historical inquiry in the material evidence of registration and business records, while also interrogating the "metaphysical" intersections of the law and creativity.[97] The history revealed in these case studies shows that specific actions by historical actors had real world consequences, both in their own time and upon future generations.

Stephen Foster's copyright mismanagement not only cost him dearly, it was arguably the origin point for cultural stereotypes that brand creatives, and especially musicians, as unprofessional and bad with finances. Class sensibilities drove much of Foster's behavior. In his worldview, "the upper-middle class…of which Foster considered himself a member, if sometimes a precarious one" were those whose sensibilities he wanted to appeal to while his "'others' [we]re the white working class."[98] He internally devalued his most popular songs because, in his mind, they were written for those of a lower station than the one he rightfully belonged to. Interestingly, copyright and lowbrow entertainment have played a role in Foster's enduring popularity. When early mass mediums such as film and television, and especially Warner Bros.' popular Looney Tunes animated shorts, needed score music they found that audiences still enjoyed Foster's melodies, which were conveniently free to use as they were in the public domain.[99] That historical happenstance has kept Foster's songs in the popular vernacular and the racism they have helped to covertly carry through American popular culture is as prevalent today as it has ever been.[100]

Woody Guthrie's early career comments that dismissed the value of copyright must be understood in context. When early folk and country musicians said anything publicly, they were obliged to play the role of uneducated hillbilly because it is what music industry executives wanted and what they believed audiences expected.[101] Guthrie had a way of turning that stereotype on its head and often came across as a kind of working class sage.[102] He played up the hillbilly character especially hard when he wrote contracts or negotiated financial matters.[103] As Guthrie's career progressed, and as his audience expanded, he learned more about the value of copyright protection. His views, and perhaps more importantly his actions, evolved accordingly.

Phil Walden can be viewed as the culmination of the White working class struggle for legitimacy in popular music. Walden had a keen eye for talent, but his business savvy was what really set him apart. Rather than settling for just recording hit records for big-city parent labels, Walden built a local, vertically integrated network of companies that brought in unprecedented revenue to his community in Macon, Georgia and allowed for a high degree of autonomy in creative decision making.[104] Walden's claim that bootlegging was killing Capricorn's profits and that fixing copyright would solve the problem was a major oversimplification—a fact that Walden himself would have been well aware of.[105] Acts like the Allman Brothers Band who improvised at live shows may have even had some net benefit from the fan loyalty built through trading bootleg recordings.[106] But Walden was also savvy enough to realize that the optics of southern music piracy provided an opportunity to expand his influence, and he used his industry contacts and his political connections to do just that.

These case studies further support the findings of previous work on the White working class and popular culture. Jonathan Arac coined the term "hypercanonization" to describe resistance to engage with problematic racial representations in scholarship on Mark Twain.[107] Jennie Lightweis-Goff adapted Arac's critique and applied it to counter a widespread "conversion narrative" in Foster scholarship that papered over the racist content in his most popular songs by claiming, with scant evidence, that he eventually evolved beyond such views.[108] Further applying the hypercanonization frame to Foster's copyright use helps to push back against unfounded characterizations of him as "America's first professional songwriter" and instead reveal how his unprofessional behavior affected his

own career and set the tone for how the publishing industry would view and value future songwriters.[109]

Hypercanonization also arguably played a role in why the narrative of Guthrie as anti-copyright has been widely accepted despite a lack of evidence. That narrative spread in response to a 2004 case in which an early internet content creator developed a political parody video set to the famous melody of "This Land is Your Land."[110] While scholars and pundits rightly criticized the publisher's attempts to use copyright to censor the video, in the fervor of turn-of-the-millennium optimism about the internet's democratizing potential Guthrie's actual copyright activities were obscured, and even ignored. Narratives that pushed to paint copyright as *only* a tool of corporate power and to tout an unrestrained expansion of the public domain placed Guthrie as their figurehead. Yet, in Guthrie's case his heirs use the copyright claim in "This Land" primarily to restrict its use by commercial interests and neo-fascist groups seeking to co-opt its meaning.[111] Remembering such artists as the legends we want them to be, rather than as people they actually were, doing the things they actually did, will never be a basis on which to build historical narratives that lead to meaningful future change.

Kathryn Brownell's conception of "showbiz politics" has illuminated the connection between popular culture and politics.[112] Focusing on copyright brings this connection into especially stark relief and can extend the time period that Brownell explored back to the beginning of American popular music. Foster's pro-Union political songs composed during the Civil War are arguably the first time an American songwriter ever lent their celebrity to a political cause. These songs would be forgotten today were it not for the few copyright and related business records that have survived.[113] Copyright as proxy for partisan politics continued after the war as well. While the Confederacy recognized international copyright as an advantageous way to simply do the opposite of whatever the Union did, "in the postwar years, native anti-intellectualism as well as political distrust of the North…ma[de] the South a hotbed of political opposition to any similar action by the United States Congress" and "a curious alliance of disparate personalities and interests continually thwarted international copyright legislation, until at last Benjamin Harrison signed a new act in 1891."[114]

Indeed, popular music and politics have been inextricably bound together throughout American history. Guthrie's career is an excellent exem-

plar of this. He was such an effective union labor organizer that he drew the ire of Senator Joseph McCarthy during the Red Scare of the 1950s.[115] Guthrie certainly believed that popular culture was *more* powerful than legislation—he once wrote "Let me write the nation's songs, I don't care who makes their laws"—but during his career he learned to appreciate the power of the law as well.[116] He similarly learned much about racial equity as his career progressed, and eventually became nearly as outspoken about racial politics as he was about organized labor.[117]

By the time of Walden's ascendancy in American popular music the connection between it and politics had become fully overt, embodied in his connection with President Carter. Carter would even go so far as to say that support from Walden's most famous acts "basically put us in the White House."[118] Walden was far from a paragon of personal virtue, but particularly through his relationship with Carter he did make sincere efforts to change perceptions of class and race in popular music and in the wider American culture.[119] These efforts are best understood as a rare bright spot between the introduction of President Nixon's "Southern Strategy" and President Reagan's ultimate execution of its goals.[120] In many ways, Foster's genteel veneer over the racist pulse of Blackface Minstrelsy foreshadowed a conservative political shift from the overt brutality of Jim Crow segregation to more covert forms of reproducing inequality. When that inequality is considered in historical work on popular culture, it is vital that romantic, nostalgic notions of artistic archetypes do not predetermine a narrative unsupported by evidence.

Conclusion

Charles L. Hughes concluded his book *Country Soul* about the connections between race, class, and American popular music by emphasizing that "first and foremost, musicians 'work together,' and that a full appreciation of their accomplishments requires us to frame the story around their working experiences." This study has sought to answer that call by considering copyright as a vital, multi-faceted aspect of creative work. Hughes continued that we must "interrogate the conventional wisdom about what makes music racially progressive and what makes it reactionary" and "reconsider the ways that race has been expressed and lived in the United States."[121] This study has sought to question such conventional wisdom and instead return to primary sources by and about artists to center inquiry

from their perspectives—even if those perspectives are often flawed and incomplete.

For Foster, Guthrie, and Walden, copyright represented multiple things. Compensation for their work was certainly an important aspect, but it was often not the primary motivator. As Guthrie once wrote, "I want to create, not count money."[122] As much or more importance was attached to the legitimacy of authorship and certification of ownership that copyright conferred, an especially prized commodity for an individual from a lower social class vying for upward mobility. An important part of the poor man's copyright myth is the romantic notion of a starving artist with only their raw creative genius to support them. When the power and protection that only elite gatekeepers can provide is inaccessible, it can be easier to valorize marginalization than it is to find the motivation necessary to create change. Historical scholarship on popular culture must resist valorizing and romanticizing marginalization to instead emphasize the moments when change is created.

Foster's status as a former elite that disdained his recently acquired lower class status directly contributed to the creation of negative cultural archetypes about creative artists. Guthrie embodied the starving artist archetype but examining the material evidence of his copyright activity belies many of the romantic notions attached to it. Walden embraced such archetypes to ultimately transcend them. And while Southern Rock's heyday may have passed, modern country music has picked up the torch of White working class cultural depiction and carried it to new heights of profitability, though at times to new lows of racial representation.[123]

Like nearly all aspects of American culture, race, gender, and class intersect with popular music in complex ways that are often overgeneralized and misunderstood. The only way to untangle the complexity is through historical inquiry rooted firmly in historical evidence. For cultural depictions of the male, White working class, copyright and related records provide an excellent thread to trace trends and unravel long-held assumptions. Because women and people of color were not allowed to own property, including intellectual property, at the beginning of American popular music such records would not provide the same utility for tracing those stories. That does not mean that they should not be told, however. If anything, they are even more interesting, and are certainly more important to understand in terms of social effects.

While the antebellum White working class male was the initial target audience for American popular music—the group to be entertained by and pay for it while upper-class White males reaped the rewards—White women, when they were mentioned at all, were relegated to domestic obscurity.[124] Enslaved people were subjugated further to be the object of its ridicule. Yet, through nearly two centuries of struggle, Black artists and Black creativity have inspired every single genre of American popular music from blues to bluegrass to rock 'n' roll to hip-hop.[125] The struggle for Black legitimacy in the music industry follows a much longer and more dramatic arc than the White working class, but Black music is fully ascendant in both popularity and profitability today as artists such as Sean "Puffy" Combs, Jay-Z, Beyoncé, Kanye West, Drake, and The Weeknd show.[126] Recently, Black artists—and in particular Black women artists like Mickey Guyton, Brittney Spencer, and Adia Victoria—are reclaiming the impact of Black creativity on spaces historically viewed as the exclusive purview of the White working class like folk, Americana, and classic country.[127]

It is also worth pointing out that, despite being replete with inequality, popular music is one of very few public spheres where any sort of sustained racial integration has taken place in American history. Faith traditions, with all their complexity and contradiction, are another. From the 1920s onward, all American popular music can trace its origins to the inter-racial Pentecostal tent revivals in the American South around the turn of the century.[128] The excellent journalistic and academic work cited in this study evidence the efforts of those spheres to push back against injustice. In fact, it is in resistance to inequality that artists—like spiritual leaders, journalists, and academics—often produce their best work. It is absolutely vital to celebrate the successes and condemn the failures in these institutions if their ultimate goal is to create a more just, equitable world.

To take but one example, in late 1968 Wilson Pickett, a Black vocalist, and Duane Allman, a White long-haired guitarist, were in a recording session at FAME Studios in Muscle Shoals, Alabama. The rest of the band wanted to break for lunch but neither Pickett nor Allman were welcome at the local restaurant. They stayed behind during the break, and Allman pitched to Pickett the idea of covering The Beatles' "Hey Jude" with an extended guitar solo at the end. That recording is universally considered as the moment the genre of Southern Rock was born.[129] Such historical events show that while existing cultural dynamics may constrain impulses

toward equality, cultural creativity remains one of the most effective forces for change.

Endnotes

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1900 Belmont Boulevard
Nashville, TN 37212 U.S.A.
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The *MEIEA Journal* (ISSN: 1559-7334)