LAW TALK

By Richard Gee

This is what I hope to be the beginning of a dialogue between the music community in Southern California (or wherever else this may be read) concerning the legal issues facing all of us in folk, acoustic and traditional music. I would love to get your questions and comments for future articles. You can reach me at rgee@gee4law. Of course, you should note that none of the opinions set forth in this article are intended to be legal advice, and that you should seek the advice of a qualified attorney to pursue any issue I may write about in this column.

Can I get a copyright in an arrangement of traditional (i.e., public domain) music?

The short answer is yes. Under copyright law, an arranger may claim a copyright on an arrangement of an otherwise public domain work. This would include, for example, an arrangement of tunes together, such as is found in much of Celtic and old-time traditional music. However, to be effective, the arrangement must be "minimally creative," meaning that it must include some minimal originality. Copyright will not protect mere arranging of the sequence in which tunes are played. Some minimal variation on the public domain tune must exist in order to protect the arrangement under copyright.

Once copyright protection is available, it only applies to the rearrangement itself. In other words, the copyright does not alter the legal status of the original tune as being in the public domain. Thus, anyone else may arrange the public domain work or play the public domain work without infringing on your copyright, so long as the arrangement is not substantially a note-for-note copy of your arrangement.

This can be particularly tricky with traditional music and the collection of mechanical royalties for the copyrighted arrangement. Unless it is a note-for-note rendition of your copyrighted arrangement, mechanical royalties may be hard to come by. For those who are not familiar with the term *mechanical royalties*, these are royalties earned by the arranger for the use of the arrangement on an audio recording. The mechanical royalty is a feature unique to American and Canadian law and the amount of the royalty per song (or side, as the industry puts it) is set by law at a default rate (currently $0.085 per song in the U.S.)

Nevertheless, the copyrightable arrangement of an otherwise public domain work gives you certain rights to receive income on your arrangement (which the music industry calls "exploitation" of your music) that you would otherwise not have. For example, your copyrighted arrangement gives you the right to license to others the right to *synchronize* the arrangement in a motion picture, video or television program. If you have recorded the arrangement and own the master, you will also have the right to license the *master use* of the recording embodying the arrangement. Integrated music companies

(companies that have both a recording and a publishing side) frequently negotiate two separate fees for the use of music in a television program or motion picture: the synchronization (or "synch") license and the master use license. So can you.

What's all the fuss all about with file sharing? Who is the RIAA and why are they suing file sharers?

Essentially, every time you copy a recording for someone else, you are infringing on the rights of the owner of the master and the song to collect income for reproducing their respective works. That doesn't just include file sharing; it also includes "burning" copies of CD's or MP3's for friends as well as cassette copies. I've seen entire albums copied, along with their J-cards (i.e., the jacket around the cassette or CD with all of the liner notes, graphics, etc.). Unless specifically approved, or the use is for educational purposes, this is an infringement under the copyright law.

The RIAA or Record Industry Association of America is the trade group for record labels, including both Green Linnet and Shanachie. The file-sharing fuss arises from the fact that the files people are sharing contain copyrighted material. I haven't seen or read anything that would lead me to believe that this is a big issue in the folk music community, although I see no reason why it couldn't become so. The RIAA strategy is to try to change the mindset of those who do not believe that file sharing is a violation of copyright law by going after the most egregious offenders and making examples of them. While not pretty, the tactic seems to have had some effect; in recent surveys the number of Americans that believe file sharing is not a violation of copyright has gone down dramatically. Further, the legal digital download market is growing at an exponential rate. There are, of course, several other explanations for this, which we can discuss in future articles.