

Monash University

From the Selected Works of Marcus R Wigan

Spring November 23, 2015

Making Music More Open: Copyright, Conservation and Access Issues

Marcus R Wigan, *Oxford Systematics*



Available at: <https://works.bepress.com/mwigan/20/>

IP and Media Law Conference, Melbourne University 23 November 2015

Making Music More Open Copyright, Conservation and Access Issues

Marcus Wigan
www.mwigan.com

Research Masters Student in Musicology
Sir Zelman Cowan School of Music

Adjunct Professor, Institute for Social Research,
Swinburne University of Technology



MIFOH





Why do it? Case Study: MIFOH Recordings

- MY own major commitment to MIFOH 1976 - as Recorder
- My late wife (Jane) sang in the Ormond Singers 1976-81
- She died just before the MIFOH Vivaldi Gloria Concert at St Mary Star of the Sea in May 1981, dedicated to her
- Ormond Singers and MIFOH organists then gave a concert as her funeral, MIFOH to record it '*as usual*'
- I commissioned a sculpture from Bill Ogilvie in her memory for MIFOH to award for Excellence ----->
- I wish to place MIFOH and its music in context on the permanent record, with the music publicly accessible. This has not yet been done. I will do it.



MIFOH

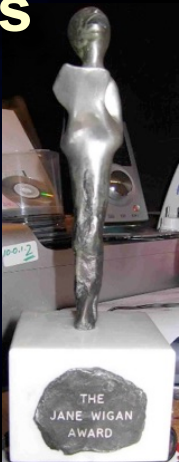
• **The project is dedicated to the memory of Jane Wigan**





Copyright & Music – it's complicated

- **Separate Copyrights reside in:**
 - **Scores**
 - **Lyrics**
 - **Sound Recordings**
 - **Published Editions**
 - **Performances**
 - **Moral Rights, for Composers and Performers**
 - **Recorders have rights in the Objects that they create**
 - **Metadata may also attract copyright in some cases**
- **ALL these need to be considered before making recordings of musical performances available**
- **No Wonder Universities have been so gun shy!**





MIFOH 1972-2005

- Epoch 1: 1972-89 Authorised Recorder rights
- Epoch 2: 1989-2005 Moral rights apply retrospectively
- Ideal – Make the original recordings available online to the public under an open license (e.g. cc0)
- Completely Improvised performances are included
- 2nd Best option – make recordings open for listening but without reuse rights (includes streaming)
- Last resort – preserve in a lasting format either hidden from the world or discoverable but open to academia (e.g some State Library collections)
- **Why? Not one ABC recording of MIFOH has yet been digitised - and 12 tapes have already been erased**



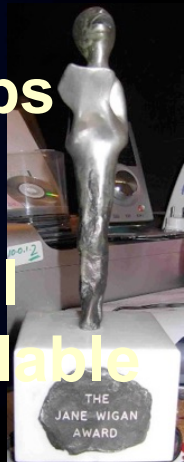
MIFOH





Copyright and the MIFOH Music

- A Mixture of
- Out-of-Copyright Classical and early Music
- Some subject to Copyright
- Some improvised performances that might create new copyright in the musical variations captured in the musical recording
- Some are variations left open for performers by the composer: not usually challenged
- Others are completely fresh improvisations perhaps based on a old theme: requires permission
- Could we seek permission for in-copyright musical works? No blanket licence currently available available from APRA to make recordings available on line



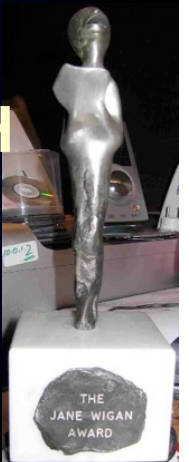


Material example: MIFOH Sound Recordings

- Copyright in sound recordings up to 1989 was owned solely by producer – usually the recorder
- Partial ownership of sound recordings by performers 2005 (a side effect of the ‘certification’ post signature US pressures of the AusFTA)
- Several authorised people made MIFOH recordings under direction of MIFOH. All are keen to preserve this archive in a form available to the public
- The 3 Vinyl recordings from concert performances records had copyright explicitly retained by MIFOH
- The large holdings of MIFOH recording done and held by the ABC are NOT digitised and are being progressively erased and overwritten (12 so far)



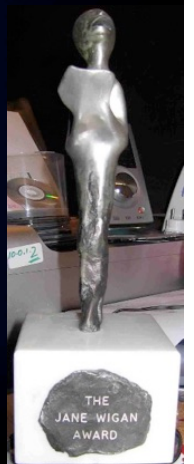
MIFOH





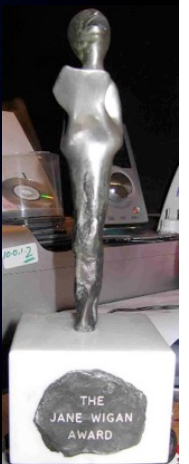
Performers rights

- Introduced in Australia in 1989
- Not retrospective so pre 1989 recordings need no reference
- 2005 AusFTa, introduced (retrospective)moral rights for performers
- Program notes are available and part of the Records, so full attribution is possible
- Right of integrity – will performers object? Not happy with outcome? This is a risk management issue applicable to MIFOH Epoch 2 (1989-2005)
- The full Improvisation player (Prof Planyavsky, Vienna) has already agreed to unlimited usage



Ethnographic performances and recordings

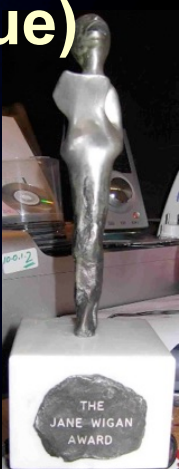
- Usually sound, some video (the latter is more complex, not addressed here)
- Real example Prof. Kartomi's 1970's Indonesian materials in the MAMU in Wordpress now at: <http://artsonline.monash.edu.au/music-archive/>
- Complex due to jurisdictional issues and profession (Berne signatories, effective Dates etc etc)
- Traditional music: these are **not** orphan works, some just traditional and in expired copyright domains NB originality of current interpretation
- Interpretation of traditionally improvised materials





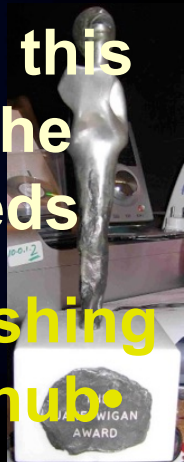
Copyright in the digitisation process itself?

- Is there ‘intellectual spark’ (*Ice TV* after *Feist*) in the skill and labour of converting cassette and record to digital? Possible: see works.bepress.com/mwigan/5/
- Analogy with photos of 2D artwork or paintings out of copyright – is there copyright in a photo of the Mona Lisa?
- Is it any different to scanning out of print books? What if badly damaged and require restoration? Equivalence to DRM? (TPP could make this an issue)
- *Hyperion* case in UK, a music editor was granted separate musical score copyright in his musical annotations and corrections to massively out-of-copyright early music



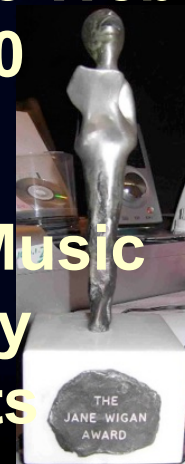
Metadata extensions required for archives

- Metadata is complicated – full details of performers, works, composers etc.
- Who includes copyright status audit trail in metadata? You should - but is this a moral rights or ethical issue or have any 'Archival' application in copyright law?
- Will an institution take a risk to digitise when there are so many copyright uncertainties and complexities?
- Substantial time, cost, specialist skills and resources to make archives available. Copyright complicates this - and could create a fresh right for the archivist? The techniques of digitising raise further metadata needs
- MIFOH archive one of many music projects **languishing** for a simple copyright exceptions or permissions **hub**.



Models for Open Music Holding and Delivery

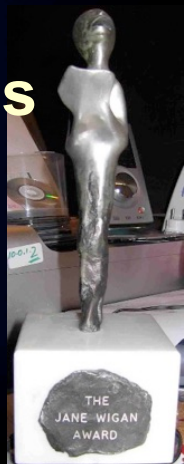
- **Goldberg Variations project on KickStarter**
 - Funded and performed explicitly to allow Open Access
 - The scores used from MUSECORE open source group
 - can play and print MusicXML, MIDI
- **The Well-Tempered Clavier project over-reach promises**
- **Braille Versions Of both projects, MIDI Files, A free Web service to convert MusicXML to Braille, And 50,000 scores on MuseScore.org into Braille**
- **The added value to the community of truly Open Music is all too evident from these successful community initiatives, set up explicitly to avoid IPR constraints**





Recent developments at a formal level

- **FigShare: cooperative development Monash and Melbourne will hand over shared code**
- **Individuals can load up to Monash (& shift to their own personal FigShare registration) to adjust entries**
- **A Creative Commons level must be set (CC0 default)**
- **Monash staff and students can load up permanently to Monash Figshare but lose adjustment access after losing a Monash login.**
- **Accounts can be shifted to a private account at this point (policy)**
- **The policies and risk assessment issues are still being worked out as this Open Access model develops. It bodes well to host material for reuse**





Acknowledgements

This material has been discussed with my colleagues at Monash, academic and otherwise, legal and ICT, and I wish to acknowledge this constructive and continuing engagement.

For those interested in this project, considerably more detailed discussion on MIFOH, the undigested performances held by MRW and ABC, Open Music Repository options and experiences, and metadata can be found at <http://works.bepress.com/mwigan/3> expanded from the presentation at the Digital Humanities Conference in Perth in 2014

