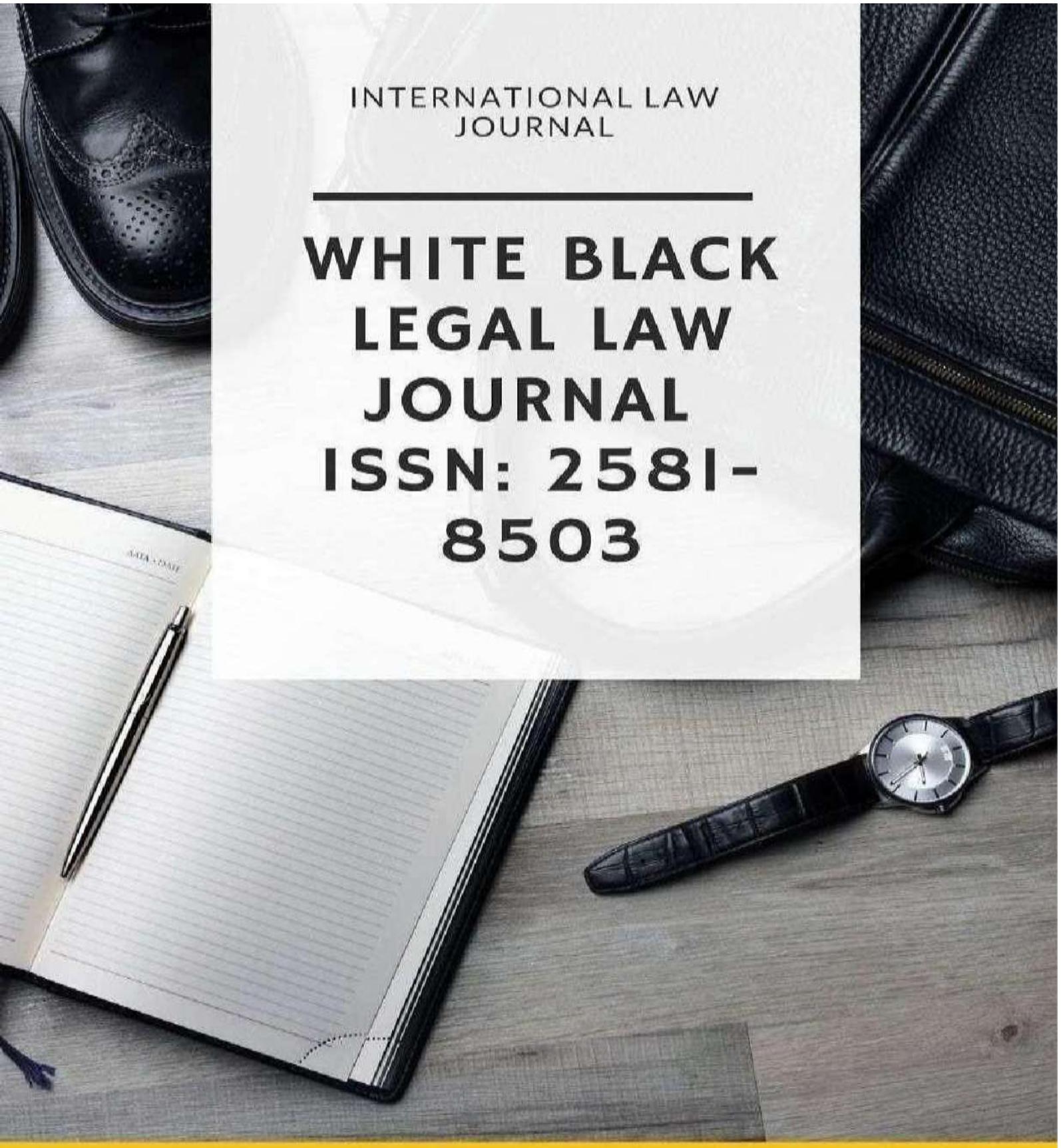

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COMMODIFICATION, COPYRIGHT AND IRISH TRADITIONAL MUSIC: A SOCIO-LEGAL OVERVIEW

AUTHORED BY - TADGH QUILL-MANLEY
STUDENT AT KING'S INNS

Keywords: *Ireland, UK, ITM, Copyright, Music*

Abstract:

This article looks at the conflicts between modern copyright law and the communal spirit of Irish traditional music (ITM), which has always been passed down orally, changed, shared, and given credit to others instead of being owned by one person. In Éire and the UK, modern laws like the Copyright and Related Rights Act 2000 (as amended), the UK's Copyright, Designs and Patents Act 1988, and EU directives such as 2006/115/EC and 2019/790 put economic rights, authorship, and arrangements first. However, a lot of the traditional repertoire is still free to use commercially. Utilising socio-legal perspectives, this overview underscores significant developments, as well as cultural transformations induced by globalisation, commercialisation, tourism, and digital platforms. It scrutinises the commercialisation of ITM, comparing private property claims to collective heritage norms based on UNESCO's 2003 Intangible Cultural Heritage Convention, theories of commons governance, and ideas of "heritage as resistance." The piece contends that legal modernisation safeguards individual creators and enhances enforcement; however, it fails to adequately address the social, cultural, and adaptive values that underpin this tradition, thereby exposing enduring tensions between proprietary frameworks and communal stewardship.

INTRODUCTION

Irish traditional music has long endured as a communal, orally transmitted art form governed by informal norms of sharing, variation, and mutual attribution rather than formal ownership. However, the globalisation and commercialisation of this repertoire, through recordings, tourism, and digital platforms, have made it more and more likely to come into contact with contemporary copyright law, which puts individual authorship, arrangements, and economic

rights first. In Éire and the United Kingdom, legislative development has modernised protection mechanisms while the majority of the traditional corpus remains in the public domain or outside conventional IP structures. Through a socio-legal lens, this article examines the tensions that arise between private property rights and the ethos of collective heritage, analysing significant legal developments, judicial perspectives, and the wider cultural ramifications of commodifying a living tradition.

MUSIC COPYRIGHT IN ÉIRE AND THE UK

In 2020, the European Court of Justice (ECJ) determined in the case of *Recorded Artists Performers Limited v Attorney General and Others*[1] that Irish law could not stop performers who were not citizens or residents of the European Economic Area (EEA), which includes EU member states and Norway, Iceland, and Liechtenstein, from collecting royalties. The case came about because Recorded Artists Actors Performers (RAAP), which represents performers, and Phonographic Performance Ireland (PPI), which represents record companies and producers, had been in disagreement. PPI obtained money from music played in public and gave some of it to RAAP. RAAP said that all fees collected should be split among performers, no matter where they live or what country they are from. PPI said that payments could be limited based on Irish law if Irish performers didn't get the same royalties in countries outside the EEA. The court maintained that EU law stopped member states from denying non-EEA nationals the right to a fair payment for the public performance of recorded music. It outlined that Directive 2006/115/EC[2] allowed the EU legislature to make rules that were in line with intellectual property rights under the Charter of Fundamental Rights. However, the directive itself did not have any such rules. It required that producers and performers share payments fairly and did not require them to be from or live in a certain State. The court also made it clear that limitations in non-EEA countries did not mean that EU nationals weren't entitled to royalties.[3]

The Copyright and Related Rights Act 2000[4] superseded the Copyright Act of 1963.[5] There was uncertainty on the applicability of the 1963 Act to the field of IT. This was partially

[1] *C-265/19*
[2] *Directive 2006/115/EC*
[3] *'EU Court Rules on Music Royalties Row ' (Law Society Gazette2020) <https://www.lawsociety.ie/gazette/top-stories2/eu-court-rules-on-music-royalties-row> accessed 23 February 2026.*
[4] *Copyright and Related Rights Act 2000.*
[5] *Copyright Act of 1963.*

addressed by the European Communities (Legal Protection of Computer Programs) Regulations in 1993,[6] which implemented the Directive on the Legal Protection of Computer Programs[7] into Irish law. In the 1990s, the proliferation of EC Directives concerning copyright necessitated the creation of a new, integrated Act.[8] This was subsequently strengthened by the Copyright and Other Intellectual Property Law Provisions Act (2019).[9] The principal copyright law in the UK is the Copyright, Designs and Patents Act (1988).[10] An exemplary instance of regional Copyright Law is the Directive on Copyright and Related Rights in the Digital Single Market.[11] The 2019 Act significantly expanded the jurisdiction of the District and Circuit Courts to include certain intellectual property disputes. This aimed to enable the adjudication of lower-value intellectual property infringement claims in these courts. The Circuit Court is now authorised to adjudicate copyright lawsuits involving claims above €75,000, while the District Court may address claims valued at up to €15,000. Consequently, copyright owners' infringement cases would subsequently be adjudicated more swiftly and would entail reduced legal expenses compared to processes initiated in the High Court.[12]

In the context of Irish traditional music, however, copyright concerns do not emerge when the played music belongs to a corpus that has been transmitted from a period indicating that any applicable copyright term has expired, and the sources of the music are often nameless. Variation and embellishment are often the defining characteristics of the current rendition of this work. Such embellishments, however, do not establish a new copyright arrangement since they exist just in the performance and not, as previously stated, in any physical medium, such as written documentation or a recording. In such circumstances, it is assumed that artistic considerations emerge only if the aforementioned embellishments are replicated by a third party. However, if recordings of such performances are created, a right is acknowledged in those copies of the performance.[13]

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[6] *European Communities (Legal Protection of Computer Programs) Regulations in 1993*
[7] *Directive No. 91/250/EEC*
[8] *Tom Flynn, 'Copyright Law in the Digital Age '(2007) 4 Cork Online Law Review.*
[9] *Copyright and Other Intellectual Property Law Provisions (2019)*
[10] *Copyright, Designs and Patents Act (1988)*
[11] *Directive (EU) 2019/790*
[12] *Dr. Mark Hyland, 'European Copyright Law – a History of Change '(IMRO) <https://imro.ie/about-imro/from-printing-press-to-digital-european-copyrights-evolution/>.*
[13] *' Traditional Songs and Melodies: What Is the Copyright Position? '(2013) <https://www.songwritingessentials.com/wp-content/uploads/2013/03/Copyright-TraditionalSongsMelodies.pdf> accessed 23 February 2026.*

TRADITIONAL IRISH MUSIC AND COPYRIGHT LAW

An article by Luke McDonagh, published by Cambridge University Press, examines the complex relationship between traditional dance, dance music, and intellectual property law. Because dance is ephemeral, it has seldom been regarded as a commodified object warranting copyright protection, whereas high-profile disputes over songs such as '*Blurred Lines*' illustrate how 'popular' dance music can become the subject of litigation. McDonagh explores how certain musical traditions function largely outside formal legal structures, relying instead on unwritten norms of reciprocity, sharing, and attribution, using Irish traditional dance music as a case study. Drawing on the concepts of "heritage" and "property", he refers to the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage,[14] ratified by Éire in 2016, but argues that the traditional music community places limited emphasis on international heritage recognition. Instead, diasporic and tourism-oriented narratives, cultural nationalism, and the lived social practice of passing music from person to person continue to sustain the tradition.

In discussing "property", McDonagh engages with copyright law and debates within the World Intellectual Property Organization (WIPO) concerning traditional knowledge. While new compositions and arrangements attract copyright protection, much of the repertoire remains in the public domain and is treated as a shared communal resource governed by mutual recognition and attribution. Echoing James Leach's notion of the "gift form" and Elinor Ostrom's theory of collective governance, he suggests that informal norms, rather than WIPO-driven legal frameworks, continue to regulate the tradition despite periodic tensions arising from commercialisation. According to McDonagh, Irish traditional dance music is a prime example of "heritage as resistance" - a dynamic cultural practice that, despite the market-oriented societies of the global North, thrives through communal governance and resists further commodification.[15]

[14] *UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003).*
[15] *Luke McDonagh, 'Exploring "Ownership" of Irish Traditional Dance Music: Heritage or Property?' (2022) 29 International Journal of Cultural Property 183 <https://www.cambridge.org/core/journals/international-journal-of-cultural-property/article/exploring-ownership-of-irish-traditional-dance-music-heritage-or-property/7FBDB6A61469E12D7D705F3224D4230F> accessed 23 February 2026.*

THE CHANGING APPROACH TO IRISH TRADITIONAL MUSIC

In the past, Irish traditional music was assigned a low status in Irish society, but it was popular in the US early on because of commercial and cultural forces. This meant that Ireland did not try to change international copyright law to protect traditional or folk music works. Evidence suggests that a renewed appreciation for traditional music in Ireland did not emerge until the 1950s. In contrast, the American recording industry saw the economic value and potential market for Irish traditional music very early on. There was a clear lack of interest in how new technologies would affect copyright in the 1920s and 1950s. This is clear from the debates, which show that officials were not very interested in many aspects of the new communications technologies. Consequently, a significant portion of Irish legislation merely reflected the technological capabilities of its time, resulting in a progressive obsolescence of the laws. The ongoing ability of the regulatory framework to operate became reliant on the creativity of the judiciary, rather than that of the legislature. The Irish habit of adopting new technologies late (which was forced by the economy) also gave administrators a safe place to hide because they didn't have to protect new technologies with laws. The Irish government didn't seem very interested in how new technologies would change the cultural landscape, even when the EBU initiative in the 1950s gave them a chance to be creative and have an impact.[16]

With the marketing of Irish traditional music accelerating in the 1990s, the contentious problems of copyright and ownership gained prominence. What was once a collective art form had since developed into a private market commodity, governed by recording corporations, media magnates, and a multitude of agents, promoters, and marketing experts. Irish traditional music, classified as 'common property' art beyond the purview of conventional copyright law, was simultaneously owned by nobody and by everyone. Although several traditional musicians were folk composers, including Martin Mulhaire and Paddy Fahey, few legally registered their works for copyright protection. Musicians who recorded works by established composers often started their recordings with a courteous phone call or email to request permission. Others were unaware of this procedural discretion. Conversely, intellectual property lawyers were consistently prepared to safeguard the recordings of professional musicians, even those who implemented slight 'creative' modifications to old melodies and songs prior to their commercialisation. Although these modifications may be deemed private property, the practice

[16] *Michael O'Gorman, 'The Copyright Regulatory System in Ireland: Its Development and Effects, 1700 - 1990 ' (2001) <https://doras.dcu.ie/19222/1/Michael_O'Gorman_20130717112746.pdf> accessed 23 February 2026.*

eventually provokes discontent and contests tradition and decorum. In 1990, ethnomusicologist Hugh Shields compared this practice to the 'private enclosure of common property.'[17]

An article by Erick Falc'her-Poyroux discussed the legal aspects surrounding Irish traditional music, particularly copyright law and intellectual property protection. Since 1989, newly composed music in Ireland could be protected by the Irish Music Rights Organisation (IMRO) for seventy years after the composer's death, in line with common international practice, provided the work was formally declared. Although some argued against this development, the author suggested that it could encourage more traditional musicians to register their compositions, something that had rarely occurred. Contemporary albums of Irish traditional music often contained newly composed pieces in a traditional style that were not always attributed to a named author. This reflected the broader understanding within the tradition that Irish traditional music had no individual owners or authors in the economic sense, in contrast to genres such as pop, rock, or jazz.[18]

LEGAL ATTITUDES TO TRADITIONAL MUSIC IN GREAT BRITAIN

Historically in Great Britain, the most basic configurations encapsulated traditional music as copyrighted works, constituting the intellectual property of musical collectors. The copyright protection of arrangements allowed music collectors to benefit financially from traditional music. No evidence suggests that traditional musicians and their communities started litigation in the late eighteenth and early nineteenth centuries. They mostly exhibited a deficiency in legal understanding about the copyright protection of traditional music. Moreover, in contrast to music collectors from the prevailing demographic, traditional artists also lacked the financial capacity to initiate legal action. Consequently, according to the concept and criterion of originality, the most basic arrangements of traditional music were considered creative and secured copyright, enabling music collectors to benefit from traditional music.[19]

The difference between the copyright of the original composition and the copyright of a later 'arrangement' of that piece is crucial in issues about traditional music and copyright. According

[17] *Gearóid Ó hAllmhuráin, A Short History of Irish Traditional Music (O'Brien Press 2017).*
[18] *Erick Falc'her-Poyroux, 'TBC - the Continuing Story of Irish Traditional Music '(2023) <https://hal.science/hal-04255148v1/document> accessed 23 February 2026.*
[19] *Jiarong Zhang, "'Hierarchy of Protection" and 'Hierarchy of Culture": The Effects of Copyright Law on Traditional Music '(2022) <https://theses.gla.ac.uk/83275/1/2022ZhangJiarongPhD.pdf> accessed 23 February 2026.*

to UK law, a distinct copyright may exist in an arrangement of a work, provided that the arrangement demonstrates substantial originality derived from the arranger. The original copyright holder of the piece does not own the copyright for the new arrangement, which is held by the arranger. Copyright may acknowledge rights in several, original configurations of the same piece. The concept of originality is fundamental to this approach. While the Berne Convention does not explicitly mandate 'originality', it provides 'a strong indication' that the idea of intellectual creativity is 'embedded in the definition of a literary or creative work'. The same reasoning applies to a musical composition. Importantly, whether one examines the conventional UK standard of 'skill, labour and judgment 'or the CJEU criterion of 'intellectual creation, 'it is evident that the threshold is not onerous in the musical domain: musical performance and composition are intrinsically creative and therefore readily meet this requirement. Any innovative modification to an existing melody or composition will enough for the arrangement to be protected. The successful utilisation of this new arrangement copyright will be contingent upon licensing conditions, since the copyright in the new arrangement does not supersede or invalidate the copyright of the underlying work. An arranger of a copyrighted work must get a license from the owner of the original copyright to publish the new arrangement, since the right to create 'adaptations' is among the rights held by the copyright owner. The only exception to this rule is when the new arrangement is derived from a public domain work; in such instances, the arranger will own the copyright for the arrangement without the need of obtaining a license.[20]

GLOBALISATION AND COMMODIFICATION OF TRADITIONAL MUSIC

Irish traditional music is fundamentally linked to Irish heritage; nonetheless, the identity conveyed via this music has undergone significant transformation, as have the venues for its performance and consumption. Irish traditional music originated in the rural homesteads of Ireland and, after entering public venues in the twentieth century, has achieved worldwide and commercial success.[21] The concept of Celtic music also continually shifts according to certain

[20] *Luke McDonagh, 'Protecting Traditional Music under Copyright (and Choosing Not to Enforce It) '(City, University of London Institutional Repository 2018) <https://openaccess.city.ac.uk/id/eprint/19955/3/McDonagh%20chapter07_CE%20copy.pdf> accessed 23 February 2026.*

[21] *Daithí Kearney, "'Traditional Irish Music Here Tonight": Exploring the Session Space 'in C Crowley and D Linehan (eds), Spacing Ireland: Place Society and Culture in a Post-Boom Era (Manchester University Press 2013) <https://eprints.dkit.ie/id/eprint/377/1/Traditional%20Irish%20music%20here%20tonight.pdf> accessed 23 February 2026.*

settings. Mass media employed as a communication tool to foster and preserve a genuine culture may present complexities about contextualisation and commercialisation in a globalised society.[22] Irish Traditional Music has been very successful around the world because it has turned into a commodity through large-scale commercialisation. People previously shared songs and tunes, but now they are owned by individual creators, which has led to a lot of criticism.[23]

Adam Kaul contends that globalisation has broadened the spectrum of cultural artefacts and activities subject to economic evaluation. It does, however, warn against the common belief that all business activities will eventually destroy the meaning and usefulness of culture that is made in the area. The author differentiates between commercialisation and commodification, highlighting that the principal distinction resides in control rather than the mere existence of monetary exchange. Commercialisation can happen while artists still have authority over their work, but commodification means that artists lose almost all of that control. In discussions regarding tourism and cultural consumption, apprehensions regarding diminished significance and "authenticity" often emerge. His research article calls for a more nuanced analysis of authenticity, even though critiques of it are valid because it is ideological and unclear. In the end, being able to tell the difference between different types of commercial engagement is important for politics. It lets local communities move beyond just dealing with tourism and instead combine economic success with cultural legitimacy, realising that not all consumption is negative.[24]

CONCLUSION

In conclusion, the development of copyright law in Ireland shows that there is still a conflict between private property rights and the communal spirit that underlies Irish traditional music. Legislative changes, the most recent of which is the Copyright and Other Intellectual Property Law Provisions Act 2019, show a trend toward modernisation, better enforcement, and

[22] *Wong Zhi Xuan and Loo Fung Ying, 'The Development of Celtic Music Identity: Globalisation and Media Influences' (2022) 13 Media Watch 34 <https://journals.sagepub.com/doi/abs/10.1177/09760911221086047> accessed 23 February 2026.*

[23] *Erick Falc'her-Poyroux, 'Cultural Currency: Irish Traditional Music and the Making of Contemporary Irish Identity' (2025) 50 Études Irlandaises 133 <file:///Users/tadghquill-manley/Downloads/etudesirlandaises-21081.pdf> accessed 23 February 2026.*

[24] *Adam R Kaul, 'The Limits of Commodification in Traditional Irish Music Sessions' (2007) 13 Journal of the Royal Anthropological Institute 703 <https://www.augustana.edu/files/2019-10/limits_of_commodification.pdf> accessed 23 February 2026.*

compliance with EU standards. These changes make it easier for people to obtain assistance and safeguard individual creators, but they don't fit well with a musical tradition that has always been based on informal rules about sharing, attribution, and collective stewardship. Irish traditional music has changed from a mostly communal, orally passed down practice to a cultural product that is sold all over the world. This raises difficult questions about who owns it, how real it is, and who controls it. The Irish experience shows that copyright law can protect economic interests, but it can't fully capture the social, cultural, and heritage-based values that keep traditional music alive and adapting.

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