

## Greek traditional music: Creativity, copyright, and the commons

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### Introduction

Greek traditional music (in Greek: *Λημμοτικό* or *Παραδοσιακό Τραγούδι*) is a literary and music genre that draws its material from the oral literary tradition. It includes all the traditional songs and rhythms of the Greek regions, including mainland Greece and the islands, which—with the intense urbanisation of the last century—became a representative part of Greek folklore. Although the terms traditional and folk music are often used interchangeably, the passage from traditional to folk music took place during the post-war decades of urbanisation, when “authentic” music was transformed into folklore.<sup>1</sup> Having originally evolved in the various regions of Greece, as part of local tradition and customs, traditional music, songs and dances, are organically linked to the space, time, people and the conditions of their creation,<sup>2</sup> and, in fact, are often directly associated with local customs, rituals, and historical events. With the passage of time, it has become a code of expression and communication, a symbol of identity, and a vessel of collective memory.

This contribution is concerned with the relationship of Greek traditional music with copyright. Comparing to other music genres, the creative process in traditional music differs. A defining factor in shaping the character of traditional music is the re-use of known melodies, the evolution of lyrics as they are sung, and the capture of the ethos and culture of whole generations within songs. “Borrowing” is essential in the composition of songs – “for the craftsman,

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<sup>1</sup> Lambros Liavas, “From the river of tradition to folklore” (“Από το ποτάμι της παράδοσης στο φολκλόρ”) *To Vima*, 17 August 2013, available at <https://www.tovima.gr/2013/08/17/opinions/apo-to-potami-tis-paradosis-sto-folklor/>. It should be noted here that the post-war decades of intense urbanization had an impact on “authentic” musical raw material as it transformed it into folklore. Traditional, self-taught “folk” performers prevented the disappearance of traditional music, which continues and is regenerated, particularly in areas such as Crete, Makedonia, and Epirus etc. Thus, with urbanisation the traditional song is cut off from place and time and is performed in different conditions and places, usually in the form of “revival” through local festivities and events, music and dance performances as well as sound recordings. In this sense, folklore represents an imprint of the traditional, isolated from the social context in which it was initially created.

<sup>2</sup> Lambros Liavas, “From the river of tradition to folklore” (“Από το ποτάμι της παράδοσης στο φολκλόρ”) *To Vima*, 17 August 2013, available at <https://www.tovima.gr/2013/08/17/opinions/apo-to-potami-tis-paradosis-sto-folklor/>; see in general Markos Dragoumis, *Our traditional music (Η παραδοσιακή μας μουσική)*, Vol. 1 (Centre of Minor Asian Studies, 2003).

borrowing is one of the tools of his originality”, as Greek poet, Kostis Palamas, has observed.<sup>3</sup> In addition, traditional songs are compositions of unknown—often more than one—creators and the result of additions, adaptations, but also modifications, over the years. As a result, each traditional song is the result of the collective creativity of a people, embedding layers of history that can be found in fragments in the musical composition or the lyrics that accompany the song and finding their roots in the Byzantine period, but also in antiquity. This form of creativity, which has resulted in a rich and diverse music genre, does not seem to align with copyright’s concepts of originality and authorship and puts in question theoretical underpinnings of copyright law, according to which creativity and innovation are the result of incentives or reward. This is one aspect that is explored in this contribution: in particular, this chapter is concerned with how creativity of traditional composers has spurred and thrived outside the principles, concepts, and narratives of copyright protection. An important component of the discussion is hence the kind of creativity involved in the composition of traditional music and an illustration of how this creativity tends to fall outside the framework of copyright. Indeed, Article 2 of the Greek Copyright Act<sup>4</sup> does not offer protection to expressions of popular culture, although the adaptation of such expressions is expressly included in the illustrative list of protected subject matter.

The formulation of the Act inevitably raises the reverse question – namely how did the protection of copyright impact on folk creativity and therefore on the evolution of traditional music as a genre itself? This is a second aspect discussed in this contribution and one that is particularly important because, as will be explained below, many artists have retained some proprietary entitlements over traditional music by recording adaptations; indeed, there have been cases whereby collecting societies requested licensing fees from traditional singers to lawfully perform traditional music—not the protected adaptation—in public. This has resulted in controversy as traditional music is expressly outside the scope of copyright, whilst adaptations, arrangements and other alterations of expressions of folklore and popular culture can attract copyright. Despite the controversy, the relevant case law, and the requests to amend the scope of Article 2,<sup>5</sup> the relationship of Greek traditional music with copyright law remains underexplored;

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<sup>3</sup> Kostis Palamas, *The twelve lays of the gypsy (O dodekalogos toy gyftou)* (Lawrence & Wishart Ltd 1969).

<sup>4</sup> Law 2121/1993. The full text of this Act in English is available here: <https://www.opi.gr/en/library/law-2121-1993>

<sup>5</sup> For instance, the Pamfontian Federation of Greece has reportedly sought the revision of Article 2 before the Minister of Culture. See Vasilis Kariofillidis, “The Music Committee of the Pamfontian Federation of Greece on the Intellectual Property Rights of Traditional Songs from Pontos” (“Η Επιτροπή Μουσικής της ΠΟΕ στο Υπουργείο Πολιτισμού για τα Πνευματικά Δικαιώματα των Παραδοσιακών Ποντιακών Τραγουδιών” *Pontos News*, 3 April 2017, available at <https://www.pontosnews.gr/384542/pontos/i-epitropi-mousikis-tis-poe-sto-ypourgio/>; a letter of the Pamfontian Federation of Greece urging for the revision of Article 2 is available in Greek at <https://www.pontosnews.gr/files/2017/04/pnevmatika-dikaiomata-sto-horo-tis-paradosiakis-moysikis.pdf>. The key proposal made is that with regards to traditional music the law should expressly state that traditional music can neither be the object of copyright as such nor its adaptation (article 2 of Law 2121/1993), nor be the subject of authorship

the very few academic studies on the legal protection of folklore<sup>6</sup> discuss music peripherally, without focusing on specific issues that emerge from the encounter of traditional music with copyright doctrine. In addition, they do not discuss how the particularities of this literary and music genre, for instance in relation to creativity and authorship, relate to copyright law, theory and doctrine.

This contribution hence attempts to address two issues: how did folk creativity emerge outside copyright principles and how did copyright impact on folk creativity and possibly on the evolution of Greek traditional music as a genre? To address these issues, the chapter adopts a socio-legal approach. It is outlined as follows: it starts with an exposé of the historical evolution and characteristics of Greek traditional music; it moves on to explore the particular way in which this literary and music genre has developed and the unique creative processes that are involved in its production; it then identifies key areas of creativity that do not match with central copyright concepts—notably originality and authorship—and explains that Greek copyright does not specifically protect folklore; finally, the contribution sheds light on the legal protection of expressions of popular culture in Greece, with a particular focus on traditional music, and explores the controversy that has emerged due to the copyright protection offered to adaptations and alterations of traditional music.

### **The historical evolution of Greek traditional music: common features, multiple genres**

Greek traditional music includes all the songs and rhythms of the Greek regions, including mainland Greece and the islands.<sup>7</sup> The creators of these compositions are mostly unknown and the songs date for more than a century ago, while the roots of some of them go back to the Byzantine period and antiquity.

Greek traditional music falls under more than one genre, often bearing the characteristics of the area in which it is performed, or from which it originates. Apart from the regions, traditional music can be classified on the basis of its content, for instance, love, marriage, death, diaspora, sea, etc, and the occasion in which it is performed, such as weddings and festivals (in Greek *πανηγύρι*), or their musical, rhythmic, structural characteristics (strophic, seven-syllable etc) and tempos

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(Article 6 of Law 2121/1993) as collective authorship could have only applied to traditional music which is created by the people.

Panos Skouroliakos, MP, urged for the development of a Committee to fully address issues emerging from the ineffective protection offered to traditional music: see Panos Skouroliakos, “Intellectual Property Rights and Traditional Music” (“Πνευματικά Δικαιώματα και Παραδοσιακή Μουσική”) *Avgi*, 8 April 2017, available at [https://www.avgi.gr/tehnes/236536\\_pneumatika-dikaiomata-kai-paradosiaki-moysiki](https://www.avgi.gr/tehnes/236536_pneumatika-dikaiomata-kai-paradosiaki-moysiki)

<sup>6</sup> E.g. Chrysoula Kotzaoglou, *Problematic issues about the protection of expressions of popular tradition and folklore: Gaps in the institutional protection framework and cultural policy proposals* (Aristotelian University of Thessaloniki, 2014).

<sup>7</sup> For an overview see Samuel Baud-Bovy, *Essay for the Greek Popular Song* (Δοκίμιο για το Ελληνικό Δημοτικό Τραγούδι) (Nafplio: Peloponnisiako Laografiko Idryma, 1996).

(Syrtos, Kalamatianos, Tsamiko, Sousta, Ballos etc). Besides feasting and entertainment, the traditional song also had a useful, liturgical and ritual character. It spread to all aspects of social life, was associated with worship and preserved historical memory.

The oldest traditional songs on which we have information recording their origin are the Acritic songs of the 9th-11th century. A continuation of Byzantine music, traditional music traces its roots in ancient Greece and demonstrates other influences (Arabic-Persian, etc.). The sliding dances (σουργός) are mentioned in an inscription of the 6th century BC. Many have their roots in the Byzantine period, but most were created during the years of Ottoman rule and the revolution of 1821. In Greek antiquity and during the byzantine years, the production of traditional songs was usually a combination of music and dance. The traditional songs that have survived from these times are rare, usually preserved in fragments, and often included as quotations in literary texts. The interest in traditional music and their systematic recording begun in recent years, particularly with the development of the science of folklore. Many of the traditional songs created in the Byzantine period have survived to the present day with oral tradition and with adaptations that were created in recent years following the style of the older ones. The music is mainly vocal, but there are also polyphonic songs, mostly in Epirus, on pentatonic scales. Most songs are dance songs, although some songs follow a slow rhythm (“της τάβλας”).

A comparison of the older samples of traditional songs with the newer ones indicates that they follow certain basic rules and share some common characteristics, such the anonymity of the creator(s); the lack of information on the exact place and period of origin; the use of popular expressions through local idioms, simple and dense speech; a representation of the psyche and ethos of the people; the observed existence of variations, the more of which are an indication of how acclaimed a song is; and the characteristic measure, often the iambic fifteen-syllable,<sup>8</sup> which is deemed evidence of links with ancient Greek music. These characteristics are unique to this musical genre and afford it authenticity.<sup>9</sup> Some other characteristics include the principle of isometry, according to which each metric section contains a complete meaning; the use of pointless questions; the principle of the improbability;<sup>10</sup> and the use of personifications, whereby every animate or inanimate can speak and take part in the action.

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<sup>8</sup> Konstantina Valai, “View on the Greek traditional music” (Charles University 2011-2012).

<sup>9</sup> NB: Cross refer to Burkholder’s chapter on types of music borrowing.

<sup>10</sup> This is a technique according to which a song refers to situations that are excessive or impossible to occur in order to emphasize that the opposite or something else is happening.

In terms of their content, Greek traditional music is divided, among others, into the following main categories:

- a. Paraloges (*Παραλογές*), namely multi-line narrative songs on dramatic adventures of life, real or imaginary. The older ones have a great resemblance to the acritic songs. They were widespread in the Balkans and present analogies with traditions, myths, tales and songs of the peoples of Central and Northern Europe.
- b. Acritic songs, the development of which is thought to have started during the 10th century. They have survived through oral tradition and have, of course, undergone alterations. They are the most widespread in all of Hellenism: they spread from Pontus and Cappadocia, where they appeared, as far as Epirus, the Ionian Islands, Crete, and Cyprus.
- c. Songs of the underworld (*των Χάρωντα*) are often mourning songs, associated with the pain associated with death and the loss of loved ones.
- d. Historic songs narrate specific events, national or social, and are often emotionally charged. Almost in their entirety, they were created after the Fall of Constantinople or the Revolution of 1821.
- e. Kleftika (*κλέφτικα*) are one of the richest categories of traditional songs and were developed during the Ottoman rule as evidence for the constant resistance of the Greek nation against the Ottomans. They have a prominent place in the edifice of Greek folklore.

Further categories are developed on the basis of the geographical origin of the songs: Steriana (Epirotika, Moraitika, Roumeliotika, Thracian, Makedonitika), songs from the islands, Asia Minor (Smyrna, Politika), Pontian, Eastern Romulia etc.<sup>11</sup>

It is estimated that there are over 20 thousand traditional songs in Greece.<sup>12</sup> Even though traditional songs are still sung in many parts of Greece, nevertheless their production has declined, because the expressive needs of people are nowadays fulfilled through personal creativity.

### **The genesis of the traditional song: creativity and the commons**

The Greek traditional song is a product of oral tradition and the collective creation of unknown authors. In most cases, the reasons that lead to the creation of songs, as a form of impersonal

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<sup>11</sup> See in general Lambros Liavas, *The Greek song: From 1821 to the 1950 (Το Το ελληνικό τραγούδι: Από το 1821 έως τη δεκαετία του 1950)* (Commercial Bank of Greece, 2009).

<sup>12</sup> Kostas Panagopoulos, "The traditional, popular song" ("Το παραδοσιακό, δημοτικό τραγούδι"). *MusicHeaven*, 6 June 2013, available at <https://www.musicheaven.gr/html/modules.php?name=News&file=article&id=3929>

poetic and musical composition, go back to historical events or purely societal structures. In time, the name of the original creator is forgotten, it is blended with contributions of unknown authors, and the song is transformed into an intellectual product of the community and a facet of tradition. Tradition is literally in Greek (παράδοση < παραδίδομι) the energy of “surrender”, otherwise put the act of trusting and transferring—here: intangible heritage. In this sense, the traditional song becomes a chain that connects generations, shapes the sense of history, and forms an integral part of the collective identity and memory. Authorship has a unique character and is a collective process.

Context is also an important constituent of the authorial process as the song is built in historical layers. Songs undergo a lot of alterations and are reshaped and renewed in light of historical events, social changes, and evolving traditions. They are passed down from generation to generation, shaped, modified, or adapted and are transformed into a synthetic work of entire generations. With the passage of time and oral transports to farther places, many songs observe radical alterations. This is a natural evolution as songs are transferred by word of mouth and often adapted to the phonology of the new place. Social reality reshapes and adapts tradition, as does anyone who sings the song and changes it, either due to insufficient recollection or with the purpose of enriching it with their own sentiment. This explains why a plethora of local variations of songs are preserved. Often, the melody remains unaltered, and it is the lyrics that change – something that in music borrowing is referred to as “contrafactum”. Well-known melodies have, in some cases, remained unchanged over the centuries, with some having ancient origins. Same as Greek language which moved from one generation to the next—constantly evolving—, traditional music has an uninterrupted continuity with music that was developed centuries ago. A key element of traditional songs is the close relationship between speech (lyrics) and music, which are born at the same time: the lyrics are made by being “sung”. The use of ancient metric patterns, for instance, demonstrates such a continuity. The ancient roots are also traced in the very word song: in Greek τραγούδι, which originates from the word tragedy (τραγωδία < ὀδῆ τῶν τραγῶν, i.e. choral song of the satyrs).

Originality of a traditional song is closely aligned with authenticity. In fact, originality is developed through appropriation and creative transformation of existing musical elements. As Emerson notes with regards to originality, “the legend is tossed from believer to poet, from poet to believer, everybody adding a grace or dropping a fault or rounding the form, until it gets an

ideal truth”.<sup>13</sup> This is how traditional music is produced – by being shared, by appropriating known elements and constantly evolving. Appropriation defines the way in which traditional musicians embed their creativity in new music.<sup>14</sup> Creativity is linked to the commons, not only in the sense of collective authorship but also in the sense of appropriation of elements that pertain to traditional music: it necessitates borrowing from pre-existing expression. Borrowing here is understood as creative “loan”, recitation, or quote and results in the authenticity of the output. Each new song is a re-composition of well-known traditional elements, which the anonymous creators adapt and enrich. This kind of creativity falls beyond copyright norms and doctrine and notions of property more broadly, including theoretical narratives that view incentives or reward as a direct corollary to creativity.

Menousis, a well-known Greek traditional song, offers an example of this kind of musical borrowing and cultural narratives emerging from a different time. Narrating a bitter story of jealousy that resulted in a hateful crime of passion, the song captures concisely the transition from a conservative society of the past to a society of modernity.<sup>15</sup> Allegedly based on a true story, the song is alive in folk tradition and still survives in its many variations: the melody and main story remains the same, but there are a number of versions, whereby names and lyrics change. The roots of the song is traced in the acritic songs of the Greek middle ages and the song that we know today has evolved over time and through creative interventions of many unknown authors in various places around Greece.<sup>16</sup> Reflective of the ethos of another era, the song has been more recently taught at schools, has inspired various non-traditional music composers, such as George Katsaros and Vangelis Papathanassiou, has become the central topic of a book,<sup>17</sup> and was even adapted into a film (“O Menousis”, directed by Vassilis Kontaxis, 1969).

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<sup>13</sup> Ralph Waldo Emerson, *The complete works of Ralph Waldo Emerson: Letters and social aims [Vol. 8]*, (1803–1882) (University of Michigan Library, 2006) [6], available online at <https://quod.lib.umich.edu/cgi/t/text/text-idx?c=emerson;cc=emerson;view=toc;idno=4957107.0008.001>.

<sup>14</sup> Having said that it is very difficult to reconcile this kind of creativity with any notion of “property”. See in this regard Victor Stoichiță, “Intelligent thieves: ethics of creativity among professional Gypsy musicians in Romania” (“Les ‘voleurs intelligents’ ou l’éthique de la créativité selon les musiciens professionnels tsiganes de Roumanie” 12 *Gradhiva* 2010, 80-97, available in French at <https://doi.org/10.4000/gradhiva.1856>.

<sup>15</sup> See Eftychia Liata, *Menousis: history and tradition (Μενούσις: Ιστορία και παράδοση)* (National Research Foundation, Institute of Modern Greek Studies, 2011).

<sup>16</sup> Lambrini Kouzeli, “Menousis”: A song with history («Ο Μενούσις: Ένα τραγούδι με ιστορία), *To Vima*, 8 July 2011, available at <https://www.tovima.gr/2011/07/08/culture/o-menoysis-ena-tragoydi-me-istoria/>.

<sup>17</sup> Ibid.

Transmitted orally from generation to generation, Greek traditional music was often not recorded in some form of writing. In that regard, two observations can be made. One is that traditional songs were not fixed in a tangible form before they were recorded in a studio and, secondly, they took a final form only when recorded. Even though there are some manuscripts that survive on Mount Athos that demonstrate the origins of some of the songs, most of the songs remained unrecorded and preserved through oral tradition; they thrived and survived as living creations that were shaped through the use and experiences of the people, receiving new meanings or form every time they reached an audience. The spread of the traditional songs took place in parallel with church music and have been influenced by the Byzantine music tradition. Traditional music was fermented with Greek history, especially during the long period of Ottoman rule and the revolution of 1821, and as such they keep Greece's national memory and national consciousness alive.

### **The legal protection of traditional music in Greece: intangible cultural heritage and copyright**

The Constitution of Greece does not explicitly mention the protection of the expressions of popular culture but there is an indirect relevance in the right of Greek citizens to maintain their identity by virtue of the following fundamental principles: the respect of personality, freedom of expression, and the principle of environmental protection.<sup>18</sup> Traditional music and aspects of it receive protection under Law 3028/2002 “on the protection of antiquities and cultural heritage in general”<sup>19</sup> and Law 2121/1993 on intellectual property.

As early as 2002, the Greek state adopted the term “intangible cultural property” to establish a legal framework towards the preservation of cultural heritage that until then received protection as “traditional and modern popular culture”. The Law on the protection of antiquities and cultural heritage defines intangible cultural goods as expressions, activities, knowledge, and information, such as myths, customs, oral traditions, dances, events, music, songs, skills or techniques that are testimonies of traditional, popular and learned culture. Traditional music falls under this definition. About a year after the Greek law was enacted, UNESCO adopted the Convention for the safeguarding of the intangible cultural heritage.<sup>20</sup> The Convention goes one

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<sup>18</sup> The full text of the Greek Constitution is available at <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>.

<sup>19</sup> Government Gazette 153 / A ' / 28.6.2002.

<sup>20</sup> The full text of the Convention is available at <https://ich.unesco.org/en/convention>



step further than the Greek law, as it gives priority to the bearers of the elements of intangible cultural heritage, namely the various communities. According to Article 2(3) of the Convention, “safeguarding” covers measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalisation of the various aspects of such heritage. Article 2 of the Convention has been interpreted to propose the development of a *sui generis* form of intellectual property protection for intangible cultural heritage,<sup>21</sup> and even though some countries have offered such protection, others—including Greece—have not.<sup>22</sup>

As illustrated earlier, the kind of creativity that is part of the genesis of traditional music in Greece cannot be captured by, or align with, copyright doctrine. Concepts of collective authorship of unknown creators over the course of centuries and originality that relies on borrowing and cultural exchange fall outside the scope of copyright norms. Offer of copyright protection on this kind of music creativity would have to fall under some *sui generis* form of protection.

Article 2(2) of the Greek Copyright Law (2121/93), which introduces additional subject matter to what can be protectable as “work”,<sup>23</sup> offers protection to:

“translations, adaptations, arrangements and other alterations of works or of expressions of folklore, as well as collections of works or collections of expressions of folklore or of simple facts and data, such as encyclopedias and anthologies, provided the selection or the arrangement of their contents is original. Protection afforded to the works listed in this paragraph shall in no way prejudice rights in the pre-existing works, which were used as the object of the alterations or the collections.”

The Law offers protection to adaptations or other alterations of expressions of folklore but not to folklore and expressions of folklore as such. Indeed, according to Article 2(5) expressions of popular culture are expressly excluded:

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<sup>21</sup> Harriet Deacon and Riëks Smeets, “Intangible heritage safeguarding and intellectual property protection in the context of implementing UNESCO ICH Convention” in Natsuko Akagawa and Laurajane Smith, *Safeguarding intangible heritage: Practices and Policies* (Routledge 2018) 36, 39.

<sup>22</sup> Antonia Korka, *Intangible cultural heritage: Comparative study of laws (Άβλη πολιτιστική κληρονομιά: συγκριτική μελέτη δικαιών)* (University of Athens 2019) 127.

<sup>23</sup> Article 2(1) defines work as “any original intellectual literary, artistic or scientific creation, expressed in any form, notably written or oral texts, musical compositions with or without words, theatrical works accompanied or unaccompanied by music, choreographies and pantomimes, audiovisual works, works of fine art, including drawings, works of painting and sculpture, engravings and lithographs, works of architecture and photographs, works of applied art, illustrations, maps and three-dimensional works relative to geography, topography, architecture or science.”

“The protection afforded under this Law shall not apply to official texts expressive of the authority of the State, notably to legislative, administrative or judicial texts, nor shall it apply to expressions of folklore, news information or simple facts and data.”

As a result of this formulation, it is possible for an adaptation of a traditional song to attract protection, but the song as such cannot be subject to copyright. In other words, one can adapt a traditional song or dance and publish it under her name, but there is no need to clear a license to play the music at a party.<sup>24</sup> Article 2(2), however, has resulted in controversy about the protection of traditional songs.

Indicative of this controversy is a judgment of December 2009 by the three-member court of first instance of Kozani, which held that the expressions of popular music do not qualify as original copyright works of specific creators, even where an adaptation of a relevant song may have been recorded and published by a particular artist. In this case, a popular Pontian performer was accused of singing a song from the area of Pontos (“αητέντζ επαράπέτανεν”) in a Pontian centre without the permission of its author (aka the performer who first recorded the adaptation of the song), who allegedly had established rights on the song since 1980. The defendant artist claimed that the song in question is a Pontian traditional song, which is mentioned in books since the 19th century and was recorded on a 45-inch disk in 1950.<sup>25</sup> Through its lawyer, AEPI, a Greek collecting society, claimed that “the song may be 200-300 years old, but Ms Lizeta Nikolaou adapted it as an original, since the Pontian people rendered it as a poem, orally, without music and orchestra”. Among the many supporting documents, the defence produced a score of the song, dating back to 1917. The issue took on great proportions and many members of Pontian unions participated to support the artist either morally or by offering evidence. The great response and solidarity lied in the fact that if the judgment would be in favour of AEPI it would have created case law for further lawsuits to other traditional artists and associations. The performer was acquitted because, according to the court, the expressions of popular tradition cannot be characterised as original intellectual creations of specific creators and be the subject of property rights; these are the creations of anonymous traditional artists and, as such, part of the spiritual heritage of all people. The judgment was upheld on appeal by the appellate Court of Thessaloniki.

The judgment does not come as a complete surprise as the performer in question would perform the traditional song, which is part of the public domain, instead of the copyright protected adaptation. In addition, there were early records of the musical notation. Adaptations can attract

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<sup>24</sup> Even though in practice such rights are often claimed.

<sup>25</sup> Chrysoula Kotzaoglou, *Problematic issues about the protection of expressions of popular tradition and folklore: Gaps in the institutional protection framework and cultural policy proposals* (Aristotelian University of Thessaloniki, 2014) 57.

copyright in their own right<sup>26</sup> to the level that there is an original contribution and insofar as they do not involve mere copying or just follow instructions. Examples of lack of originality in this context include the quantitative abbreviation of a work, such as the removal of chapters from a book, changing the dimensions of a pre-existing work or the transcription of an oral work.<sup>27</sup> With regards to derivative musical works, they can be original when the alteration to the pre-existing work is deemed to be statistically unique, taking into consideration various elements, such as the orchestration. An example of original adaptation is, for instance, “Nisiotikos choros” by Nikos Skalkotas, which is based on the traditional song “Mia Mylopotamitissa” and is integrated within the personal musical idiom of the composer.<sup>28</sup> Another example is “Kleftikos choros” by the same composer, which encapsulates and reimagines elements of various kleftika songs and develops an iconic musical composition. It would be overarching to accept that copyright protection of the adaptation extends to an underlying song, melody and lyrics, which is part of popular culture and should remain free for the people to use and re-use,<sup>29</sup> especially where the underlying song has been preserved in some recorded form, e.g. where there is a record of the musical notation. However, expansive interpretations of the scope of protected adaptations—i.e. as new works that bear proprietary entitlements on the underlying song and not only the original contribution resting in the derivative work have been put forward by collective licensing organisations, such as AEPI. The latter has reportedly stated, through its Director that “many of the songs that people deem traditional are not. Remembrance (of a song) alone is not sufficient evidence. When someone performs or adapts a song, then this song is represented. This is often the case with traditional songs.”<sup>30</sup>

There have been indeed several cases where expansive interpretations of the legal protection pertaining to an adaptation of traditional music have emerged over the last couple of decades. The main allegation was that there was no payment of the licensing fee for public performances of traditional music. Incidentally, all the reported cases were initiated by AEPI, a collective management organisation that ceased to operate in 2018 following an official

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<sup>26</sup> Court of First Instance of Athens (ΜΠQΑ0), 4348/1998.

<sup>27</sup> Georgios Koumantos, *Intellectual Property (Πνευματική Ιδιοκτησία)* (Sakkoulas 2002) 138; Lambros Kotsiris, *The Law of Intellectual Property (Δίκαιο Πνευματικής Ιδιοκτησίας)* (Sakkoulas 2005) 83-84.

<sup>28</sup> See in this regard Haris Vrontos, *About Nikos Skalkotas (Για τον Νίκο Σκαλκώτα)* (Ekdoseis Nefeli 1999) 17 et seq.

<sup>29</sup> An interesting analysis is made by Dimitris Piperidis in his article in Theofilos Kotsidis, “Intellectual Property Rights on Pontian Songs”, *iNews*, 19 November 2010, available at <https://www.inewsgr.com/96/pnevmatika-dikaiomata-gia-ta-pontiaka-tragoudia.htm>.

<sup>30</sup> See statement by Giorgos Mizalis, Director of the AIPi records, in Giorgos Lialios, “They request intellectual property rights from a collective group” (“Ζητούν από σύλλογο πνευματικά δικαιώματα”) *Kathimerini*, 23 October 2015, available at <https://www.kathimerini.gr/society/835962/zitoun-apo-sylogo-pnevmatika-dikaiomata/>.

investigation on its finances by Greece's Organisation of Intellectual Property.<sup>31</sup> In some instances, AEPI was sending letters seeking licensing fees from performers of traditional songs in live performances within Greece e.g. performers of Pontian songs at the 8<sup>th</sup> PamPontian Festival on 13 October 2012,<sup>32</sup> or outside Greece, e.g. the Pontian group "The Argonauts" in Waiblingen in Germany for playing traditional music during the group's parties via the German collecting society GEMA.<sup>33</sup> In other instances, the collecting society initiated judicial proceedings. One such case was brought against the Club of Friends of Music "Arion" that was, however, acquitted by a Court in Edessa for refusing to pay licensing fee to AEPI during the Estudiantina music concert in Aridea.<sup>34</sup> The three-member Court of Appeal of Thessaloniki in 2010 also acquitted the President of the Panhellenic Federation of Pontian Associations because the Federation's radio station broadcasted Pontian songs without authorisation. After the judgment was issued, the President of the Federation remarked: "I consider AEPI's claim that the alleged adaptations presented in Pontian

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<sup>31</sup> It should be noted that AEPI, used to be an independent collective management organisation, since 1930 when music started being sound recorded in Greece. It used to operate on the basis of article 50 of Law 4481/2017 (full text available at <https://www.opi.gr/en/library/law-4481-2017>). There used to be complaints on its operation and on the excessive zeal it demonstrated towards the collection of licensing fees, with the result that the Legal Council of the State ruled that it would be necessary for an authorised civil servant to be present during the imposition of a fine, with a view to certify any violations. -, "The legal council of the state 'empties' the fines of AEPI ("Το Νομικό Σύμβουλο του Κράτους «αδειάζει» τα πρόστιμα της ΑΕΠΙ») *Radiofono*, 25 February 2016, available at <https://www.radiofono.gr/node/25618>. As noted by the Greek Ministry of Culture and Sports, due to the improper administration and management, it was led "to a complete financial impasse, with many collected yet non-assigned rights to its beneficiaries - members, with debts to its beneficiaries - members from previous distribution periods, to third parties, to its employees and to the Greek State." Ministry of Culture and Sports, "Final withdrawal of AEPI's operating license", 15 May 2018, available at <https://www.culture.gov.gr/el/Information/SitePages/view.aspx?nID=2227>; Also affirmed by the Misdemeanor Court of Athens, 391/2020. Following an inspection on AEPI's finance from the Organisation of Intellectual Property of Greece, AEPI had reportedly not distributed collected levies in the range of 42 million euros to the relevant authors for the financial period between 2011-2014. Nefeli Lygerou et al, "Scandal of a century in AEPI: "Hole" of 50 million euros in 4 years" ("Σκάνδαλο ενός αιώνα στην ΑΕΠΙ: «Τρύπα» 50 εκατ. ευρώ μόνο σε 4 χρόνια"), *Proto Thema*, 21 February 2017, available at <https://www.protothema.gr/greece/article/656117/skandalo-enos-aiona-stin-aepi-trupa-50-ekat-euro-mono-se-4-hronia/>. AEPI was hence shut down in 2018 and a Special Service for Emergency Rights Management was put in place. See -, "The Ministry of Culture shuts AEPI down" (Το υπουργείο Πολιτισμού κλείνει οριστικά την ΑΕΠΙ) *iEfimerida*, 15 May 2018, available at <https://www.iefimerida.gr/news/416536/ypourgeio-politismoy-kleinei-oristika-tin-aepi> Ministry of Culture and Sports, "Final withdrawal of AEPI's operating license", 15 May 2018, available at <https://www.culture.gov.gr/el/Information/SitePages/view.aspx?nID=2227>.

<sup>32</sup> Full text of letter available at -, "AEPI is asking Pontian performers to apologise" ("Η ΑΕΠΙ καλεί σε απολογία τους τραγουδιστές του Πόντου!") <http://aepi-free.blogspot.com/2012/11/blog-post.html>.

<sup>33</sup> Giorgos Lialios, "They request intellectual property rights from a collective group" ("Ζητούν από σύλλογο πνευματικά δικαιώματα") *Kathimerini*, 23 October 2015, available at <https://www.kathimerini.gr/society/835962/zitoy-n-apo-syllogo-pneymatika-dikaiomata/>.

<sup>34</sup> -, "AEPI lost trial on intellectual property of traditional songs" ("«Έχασε» η ΑΕΠΙ δίκη για τα πνευματικά δικαιώματα παραδοσιακών τραγουδιών") *Radiofono*, 15 October 2010, available (in Greek) at <http://www.radiofono.gr/node/2355>.

songs with a change of some words in the lyrics are an adaptation in the sense of the law [...] If copyright belongs to some, this should be the Pontian unions and federations”.<sup>35</sup>

Although to some this is a comment that aligns with a common sentiment of justice, it should be remarked that a central reason why expressions of popular culture are excluded from copyright protection emerges from the desire to keep this rich heritage free for all to use without restraints emerging from copyright norms. A way to ensure that adaptations of traditional songs can be shared in ways that conform with the cultural heritage objectives underpinning the very existence of traditional music would be to enable the use of such music in events promoting cultural heritage, without the need to clear copyright licenses. Indeed, there is a copyright exception available under Article 27(1) of the Greek Copyright law that permits the public performance or presentation of a work, without the consent of the author and without payment when this happens “at official ceremonies, to the extent compatible with the nature of the ceremonies”. Case law from the Supreme Court of Greece indicates that not-for-profit musical and cultural events that do not result in personal benefit of the host legal entity are included within the meaning of “official ceremony” according to Article.<sup>36</sup> The case in question concerned unauthorised public performances of musical compositions and songs, and making them available to a wider audience, by members of a cultural institution operated by the Municipality of Athens. The relevant works were subject to exclusive protection in Greece by the Hellenic Society for the Protection of Intellectual Property. The Supreme Court’s approach towards the meaning of official ceremonies of Article 27 to include events held by cultural institutions is a positive development. Indeed, such an interpretation, which takes into consideration broader cultural heritage objectives, could empower cultural institutions and community groups in making culture accessible and could also encourage the spur of new creativity—given that this has traditionally been the generative force underpinning popular culture. It can enable expressive diversity and uninterrupted creative processes that align with the very nature of traditional creativity and can also incentivise contemporary artists to continue engaging creatively with cultural heritage—within and outside Greece, as international cultural exchange initiatives indicate.<sup>37</sup>

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<sup>35</sup> Eleftherotupia, 13 October 2010, republished in: -, “What happened at the courts when IP sought intellectual property rights on traditional songs?” (“Τι συνέβη στα δικαστήρια όταν η ΑΕΠΠ ζήτησε πνευματικά δικαιώματα για παραδοσιακά τραγούδια;”) *AthensMagazine* 27 January 2014, available at <https://www.athensmagazine.gr/article/news/77064-ti-synebh-sta-diaksthria-otan-h-aeppi-zhthse-pneumatika-dikaiwmata-gia-paradosiaka-tragoydia>.

<sup>36</sup> Supreme Court (ΑΠ), 1525/2008.

<sup>37</sup> The international breadth of Greek traditional music can be demonstrated in efforts such as those of the Japanese music band, “Pyramidos”, that regularly adapts Greek traditional songs.

## **Conclusion**

Traditional music in Greece is a code of expression and communication, a symbol of identity, and a vessel of collective memory, dating back to the Byzantine years and antiquity. Creative processes in this music genre are authentic in that authorship tends to be collective and originality is built on the basis of appropriation and borrowing. Greek traditional songs are hence the result of various historical layers and individual unknown contributions. Traditional music in Greece receives protection as intangible cultural heritage under the law on the protection of antiquities and cultural heritage, yet it is excluded from copyright protection, together with all expressions of popular culture. Being outside of copyright, traditional music—a genre that was developed by the people of Greece over the course of centuries—is free to enjoy without the need to clear rights. Contemporary artists can receive copyright over adaptations, to the level that these are deemed to be original. It is submitted that adaptations ought to receive protection over the original elements that their author has contributed but not result in proprietary entitlements of the underpinning traditional song that are preserved in written records. In addition, the copyright exception allowing public performance of works in official ceremonies, could be understood to include events held by cultural institutions, as has been affirmed by the Supreme Court of Greece. This can result in expressive diversity and uninterrupted creative processes that align with the very nature of traditional creativity. It can incentivise contemporary artists to continue engaging creatively with cultural heritage and even expand the international breadth of Greek traditional music.