(Don’t) Stop the Cavalry. Traditional Music, Intellectual Property, Globalisation and the Internet
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Abstract
Last year, I published, with Euan Cameron, a paper entitled Full Fat, Semi-skimmed No Milk Today – Creative Commons Licences and English Folk Music.¹ The title wouldn’t mean much to you unless you were a fan of the 60’s pop group Herman’s Hermits, and even if you were it still may not be that clear. What we were trying to do (and capture in the title) was, in the context of traditional (folk) music, examine the impact on the development of such music of intellectual property regimes (IPR). Traditional music we defined as: “Music originating among the common people of a nation or region and spread about or passed down orally…” The full on IPR (or full fat in the context of the title) we concluded had a negative effect on the development of the folk music tradition and in addition what was more worrying was that it was getting more fattier. All was not lost, maybe the cavalry was coming, the internet and its ability to allow mass communication has brought more liberal intellectual property licence regimes through Open Source and the Creative Commons. These were our ‘semi skimmed’ and we did the same for them as we did for full fat, we considered how well they would foster and develop the traditional and folk music tradition. We started with high hopes as these systems seemed ready made for traditional music – for example the Creative Commons ‘Sharing Licence’ contains the phrase: “This licence allows others: To take a sample from your song and include it in their own.” Unfortunately we concluded that this time this was the wrong cavalry – we commented:

“Folk culture is not merely the mechanical mixing and joining of tunes and lyrics, it is a set of values reflected in a set of processes where the music is refreshed, emphasising variation and selection but with little thought to individual rights.”²

I suppose at this point we should have been true to our title and considered non intellectual property systems, our no milk today option, but we had really said enough and we contented ourselves with making a few general comments. But now one of us has regrouped and is ready to take on the challenge. The Creative Commons and Open Source movements have had striking successes but they suffer from a fundamental flaw in that they have their roots in western IPR based systems. Such systems whilst empowering some endeavours disempower others. Scarily the literature of those promoting initiatives such as the Creative Commons rely on a set of arguments that look very familiar, they are those used to dis-empower indigenous and ethnic minority groups, at times when dominant cultures were trying to force these

² Fn.1, p.270.
groups to ‘assimilate’ to the prevailing cultures and norms of that dominant culture. In this paper I, as the cavalry in now down to its last man, will draw upon the literature relating to ethnic minorities and indigenous peoples and see how that battle, the battle to forcefully assimilate, has been fought and in part won and see, as all good generals do, what lesson can be learnt from this for the coming battle of traditional music, the internet and intellectual property.