

Copyright & Fair Use

The purpose of the Copyright & Fair Use column is to keep readers informed on copyright as it affects the preservation and availability of historic recordings. We solicit your questions of general interest regarding copyright, and will endeavor to have them addressed in these pages by an attorney (we cannot, however, offer private legal advice). Comments and short articles describing your own experiences with copyright matters are also welcome. Please send questions and submissions to Tim Brooks, Chair, ARSC Copyright & Fair Use Committee (tbroo@aol.com or tim@timbrooks.net) For general information and reference material visit the Committee's web page at www.arsc-audio.org.

ARSC Takes a Stand

ARSC has recently embarked on what might be seen as a historic endeavor. After years of sitting on the sidelines and grumbling about how ever-expanding copyright laws were making it increasingly difficult for members to preserve, or even hear, our recorded heritage, your association, for the first time in its history, is actively taking steps to encourage changes in those laws. At present U.S. archives cannot digitally preserve best copies of most recordings (they must already be deteriorating), cannot share preservation copies with each other, and cannot share them with patrons outside their walls. Private individuals cannot legally share protected recordings with others via the internet or CDs, or in some cases even find them if the record companies don't want to make them available, even if the records have been out of print for a hundred years. The record companies won't release them and they won't let others do so either. The laws are creating "dark archives" and making it illegal to access our own history. You can of course break the law (and some do), but how long will it be before aggressive industry lawyers start coming after people like you?

ARSC's goal, simply, is to change the law to allow preservation of copyrighted material by the best state-of-the-art means (i.e., digital), and allow access to and sharing of historic recordings by all. This means by both public archives and private users. At the same time we are committed to protecting the legitimate economic interests of the artists and companies that created the recordings.

Balancing the public and private interests is actually not difficult, and most countries have managed to do so fairly successfully. Only in the U.S. are the laws so lopsided that the public interest has largely been pushed aside. This is principally due to a little known provision that puts pre-1972 recordings under state law until 2067 (Title 17, Section 301c). States laws are very unforgiving to both preservation and access, as

demonstrated by the recent *Capitol v Naxos* decision in New York. We need a single, national, and rational code for preservation and access.

What is ARSC doing? First, in 2002, it was party to the Supreme Court challenge to the Copyright Term Extension Act. This introduced many of us to the legal issues, and to the principal players. Then in 2005 the ARSC Board adopted its first formal position statement on copyright (available at www.arsc-audio.org). Next the Copyright and Fair Use Committee developed five specific recommendations for changes in the law, and in 2008 the Board approved hiring an experienced public policy representative in Washington, D.C., for a limited period, to “test the waters” and get our proposals in front of important legislators who can actually make a difference. Meetings have taken place with the staffs of several key congressmen, as well as with the RIAA. At the same time we have approached several other organizations interested in recorded sound to solicit their support (there is strength in numbers). These include the American Library Association, the Music Library Association, the Society for American Music and the International Association of Jazz Record Collectors; the MLA has already signed on.

This will be a long and hard road, and it will probably take years. Do not expect quick results. There are a lot of well-financed interests trying to influence legislation in Washington, all trying to get their piece of the pie, and until recently ARSC and its interests were totally unknown there (as demonstrated by my recent interview with Rep. Rick Boucher, in the *ARSC Newsletter* 2007;115(Fall):4-5). However that is beginning to change. The good news is we have a strong case; even those who oppose any change in the current regime appear to realize that. Harm is being done by locking up these recordings with no corresponding benefit to the jailors. We need to keep making our case, as forcefully and factually as possible, and get it in front of the right people.

What can you do? Simply reading this column helps. Be aware of what the issues are, what ARSC is asking for, and why (the five recommendations are on www.arsc-audio.org). Tell people within your organization and within other associations about them – the whole “recordings problem” will be news to most of them. We can always use specific examples of harm done by restrictive copyright laws. And of course letters to your congressman and senator help. Direct constituent input can make a difference.

Finally, if any members have experience in this field we welcome their participation via the Copyright & Fair Use Committee. Input from an attorney knowledgeable about intellectual property law would be particularly helpful.

Recent Copyright News

The record industry’s jihad against its customers continues with the first “downloading” cases coming to trial. In a well publicized case in October 2007 a single mom in Duluth, Minnesota, was ordered to pay six record companies a total of \$222,000 for downloading 24 of their copyrighted songs (*Variety*, 5 October 2007). In another case, however, Capitol Records was ordered to pay an Oklahoma woman \$70,000 in court costs when it lost its case against her. Capitol had argued that the woman wouldn’t have incurred the costs if she had simply settled with them, rather than fighting the charges (*Variety*, 21 July 2007).

The Boys Scouts in Los Angeles have introduced a “respect copyright” patch, indicating that the young wearer understands the evils of copyright infringement and has undertaken activities to discourage others from doing so.

In China, the government has introduced avatars – “virtual police officers” – who pop up on computer screens to remind surfers that their activities are being watched, and warn against activities that “incite secession, promote superstition, gambling, fraud or pornography.” Users can click on the avatars to report “suspicious activity” or objectionable sites (*MediaPost*, 4 September 2007).

As expected, record company pressure on the European Union has resulted in a proposal by EU internal markets commissioner Charlie McCreevy to extend recording copyrights there from 50 to 95 years (in line with the U.S., which has the longest terms in the world). To make the proposal more palatable it provides that 20% of the revenues earned from recordings more than 50 years old would go to a fund for the session musicians, and that featured artists could move their recordings to a new label if the original label refused to reissue them. It is not clear whether the rules would be retroactive. If so it would be a disaster for the availability of historic recordings, few of which are reissued by major companies and most of whose artists are dead. If not, it would only harm future generations, not the present. The new rules must be reviewed by member nations, and even if approved – which is uncertain – would not take effect until 2010. Obviously there will be much discussion of the details of this proposal, which should be followed closely in order to protect the interests of those concerned with preservation and access to historic recordings (various news media reports, 14-15 February 2008).

Call for Submissions to the *ARSC Journal*

The *ARSC Journal* is a bi-annual, peer-reviewed publication that serves to document the different aspects of the history of recorded sound and also features original articles on conservation, preservation and the technical aspects of sound restoration. Selected

ARSC conference papers are a regular feature. The journal also includes sections devoted to copyright and fair practice, current research, and reviews of new books, and sound recordings. The *ARSC Journal* publishes in each issue a running bibliography of articles appearing in other specialist publications of related interest.

The editor of the *ARSC Journal* invites submissions.
Information for Contributors is published in each issue of the publication or can be downloaded from the ARSC web site at:

<http://www.arsc-audio.org/journal/submissions.html>

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For an outline of the content of current and back issues of the *ARSC Journal*:
http://www.arsc-audio.org/ARSC_Back_Journals.html#current

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