

TIM BROOKS

---

# Only in America: The Unique Status of Sound Recordings under U.S. Copyright Law and How It Threatens Our Audio Heritage

Sound recordings are an irreplaceable part of the historical record. For the past 120 years musicians, actors, public figures, and members of many ethnic groups and subcultures have committed their words, thoughts, and sounds to recorded media, creating, quite literally, a soundtrack of the past century. Through recordings, the past speaks to us directly, without the filter of second-hand interpretation or inference, whether it is a march as Sousa intended it to be performed, jazz as it was first widely heard, or a speech as actually delivered by Theodore Roosevelt or Booker T. Washington.

Nations around the world recognize the value of historical sound recordings through laws that encourage their preservation and accessibility. National archives preserve and catalog them, and both public and private entities disseminate them (nowadays via the Internet) to scholars and the public at large as they enter the public domain. Except in the United States. In this country the laws have become so skewed toward the interests of present-day “rights holders” that, almost without notice or even intent, most of the recorded past has been locked up for generations to come—perhaps forever. Permission is required to hear it.

Most people are not aware that in the United States sound recordings are treated differently, and more harshly, than any other type of intellectual property. Books, articles, published music, movies, photographs, and other

---

Tim Brooks is chairman of the Copyright and Fair Use Committee of the Association for Recorded Sound Collections, as well as a past president of that organization. He has written widely on the early history of the recording industry, including the award-winning book *Lost Sounds: Blacks and the Birth of the Recording Industry, 1890–1919* (University of Illinois Press, 2004) and notes for the Grammy-winning CD of the same name.

*American Music* Summer 2009  
© 2009 by the Board of Trustees of the University of Illinois

creative works are generally protected for ninety-five years from publication, or for the life of the author plus seventy years—a very long time (some say too long), but at least fixed and predictable. In addition, due to a quirk in the law anything published prior to 1923 is already in the public domain.<sup>1</sup> Your high school band can play “The Stars and Stripes Forever” as much as it wants, and film scholars can screen *The Great Train Robbery* or *Birth of a Nation* without seeking anyone’s permission. Moreover, even if a work was created after 1923 and is still under copyright, the law provides exceptions allowing archives to copy it for preservation purposes and users to quote excerpts from it under “fair use” provisions.

Not so with recordings made prior to 1972. The reason is an obscure provision of the 1976 Copyright Act—Section 301(c)—that specified that the law covered only recordings made after February 15, 1972; all those made prior to that date remained under state law.<sup>2</sup> Previously sound recordings had not been covered by federal law and the idea was to provide a transitional period between the previous state coverage and the new regime of federal coverage. This odd transitional provision was supposed to sunset in 2047, although that date has since been moved to 2067 and some think it will never be allowed to expire.

For a long time no one had systematically studied the sound-recording laws of the fifty states to determine exactly what this bifurcated system—unique in the world—meant in practice. Unfortunately, after thirty years of experience we have the answer. With the rise of the Internet in the 1990s recording rights holders (mostly large corporations) became very aggressive in shutting down what they consider to be unauthorized distribution of their products. They focused mostly on the downloading of modern recordings (30,000 Americans have been sued or threatened with lawsuits for such activities so far, under penalties authorized by Congress in 1998). However pre-1972 historical recordings have not escaped notice.

In 2005 the landmark case of *Capitol v. Naxos* pitted a distributor of 1930s foreign classical recordings (Naxos) against the putative holder of the U.S. rights to those recordings. The judges of the New York State Court of Appeals ruled against Naxos, but they used the opportunity to go much further than that. They declared that since New York State had not passed explicit statutes dealing with recording copyright, it was in fact governed by “common law” (i.e., law declared by judges in their rulings). In their opinion sound recording copyright in New York derived from the laws of seventeenth-century English kings. It was absolute and perpetual. The rights holders have all rights, forever, and the public has none.<sup>3</sup>

Although in the past this draconian ruling might have been limited to New York State, in the Internet age the law of one state can effectively become the rule for all. An Internet site cannot control where its prod-

ucts will be downloaded, and one copy downloaded in New York State would be actionable. Other states would probably follow New York's lead for physical CD sales as well. Naxos discontinued its distribution of historical recordings throughout the United States.

Three recent studies have reinforced this dark view of state sound-recording copyright.<sup>4</sup> They found that, in nearly all states studied, recordings are covered by common law, meaning that it is perpetual, with no public domain. Moreover states have enacted few if any exceptions for such niceties as preservation or fair use of recordings. Much of the preservation work being carried out by archives on older copyrighted recordings is therefore technically illegal. So are academic presentations that incorporate excerpts from copyrighted recordings, no matter how old they may be, unless the scholars have obtained explicit permission.

The practical effect of this may seem rather minor. After all, no archive that I know of has been raided, or academic conference shut down, by rights holders. However, the availability of historical recordings has been very much constrained, not so much by lawsuits as by the chilling effect of such sweeping laws. The Library of Congress, for example, has few historical sound recordings on its otherwise extensive and innovative "American Memory" Web site, which many consider a model for public access to our history in the Internet age.<sup>5</sup> There are no major, legal Internet archives of historical recordings in the United States similar to the Library and Archive Canada's "Virtual Gramophone," or the European Archive.<sup>6</sup> Most intellectual property officers advise their institutions to carefully avoid any off-premises availability of copyrighted recordings, no matter what their age.

Even scholars willing to travel personally to archives' premises may find copyright roadblocks thrown in their path. While researching a book on the earliest commercial recordings by African Americans I located a unique example from the 1890s in the collection of the Library of Congress. When I requested a cassette copy for study, I was handed a slip of paper containing the address of the Bertelsmann Music Group Legal Department and told that no copy could be made for any purpose without explicit written permission. BMG had never actually claimed ownership of this ancient recording, and as a historian I knew that based on corporate lineage any such claim would be dubious. However, a librarian thought that they might and that was enough.

In another instance a distant archive also refused to make a taped copy of a 100-year-old recording for study. However, they helpfully observed, the recording could be listened to in one of the library's listening booths. So a friendly local scholar sneaked a small, hand-held recorder into the booth and held it up to the earpiece in order to make at least a crude copy that I could study several hundred miles away.

Such barriers to scholarship would be ludicrous in any other coun-

try. They clearly benefit no one. The record companies have nothing to gain since such recordings have no economic value and have been out of print for many decades—nor are they likely to ever be reissued. (The record companies have long since destroyed the masters.) Archives cannot fulfill their mission of preserving culture and enabling scholarship. And of course scholars and the public they serve are frustrated.

### *How Long Is Long Enough?*

All countries except the United States recognize that recordings are derivative works and accord them shorter terms of protection than for the music or text they embody. This is based on the lesser length of their economic viability. While a song may be economically viable for more than half a century (e.g., Gershwin or Berlin), specific recordings of those songs seldom are. A detailed economic analysis in Europe concluded that, on average, 67 percent of the revenue that would ever be realized from a recording was realized in the first seven years after issue, and 97 percent in the first thirty years. After fifty years the remaining revenue amounted to only 1 or 2 percent of the total, and that was skewed to a few, already wealthy artists.<sup>7</sup> So why lock up *every* recording for longer than that? In Europe the term of protection for recordings was set at fifty years. Some countries have longer terms, for example, sixty or seventy-five years.<sup>8</sup> None are perpetual—or ninety-five years, as the U.S. term is supposed to eventually become once state coverage sunsets in 2067.

One argument for the United States' long recording terms was that they would encourage rights holders to reissue their early material, but after thirty years of experience we know this is not the case. In 2005 the Library of Congress and the National Recording Preservation Board asked me to conduct a study on the availability of historical recordings from copyright holders and others. The study was based on a sample of 1,500 recordings listed in widely used discographies, and thus was not a study of *all* recordings, but rather of those that had been identified as in some sense important by scholars. It covered the period 1890 to 1964, and was the first rigorous, quantitative study of the subject.<sup>9</sup>

The findings were dramatic. The vast majority (84%) of these historical artifacts had a current owner who controlled the recording today; in light of events since the study was conducted I believe that the figure is actually higher than that. The owners of these early recordings were primarily the major recording companies, which have absorbed many older, smaller labels. In fact the newly merged SonyBMG (successor to the Victor and Columbia labels among others) by itself controls most of America's recorded history made prior to World War II.

Only 14 percent of these historical recordings had been made available by the copyright holders, either directly or through licensing. Moreover

the 14 percent was highly skewed toward more recent periods (see fig. 1). The further back one went, the less was available. While about one-third of listed recordings from the early rock 'n' roll era (1955–64) were available, the percent of available recordings made prior to 1920 was negligible. This does not mean there were no rights holder reissues from earlier periods, but very few.

The story was similar in each major genre of music. The least reissued genre was ethnic music, the music of minorities and foreign-language immigrant groups. Tens of thousands of such recordings were made in the early twentieth century, preserving the music and culture of many immigrant groups, but only 1 percent of that was available today. Surprisingly blues, gospel, and jazz were also poorly served, at about 10 percent available (see table 1).

## Reissue Availability

(percent available from rights holders)

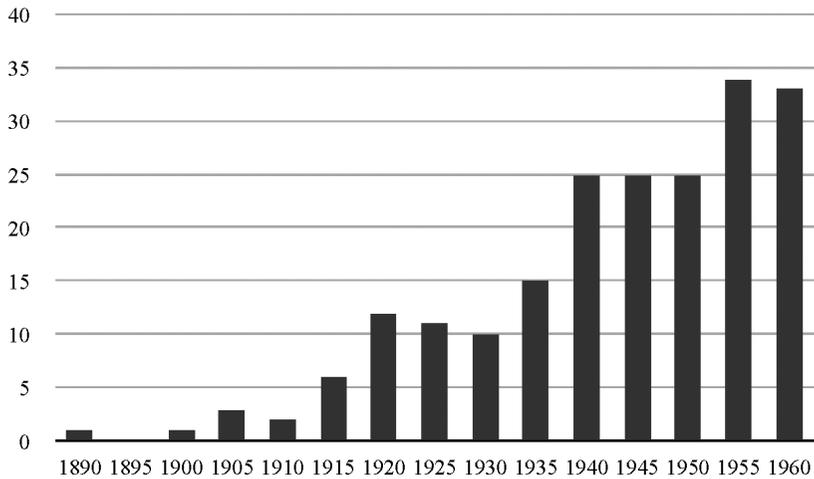


Figure 1. Reissue availability, 1890–1960

Table 1. Rights holder reissues by genre

Jazz/ragtime	9%
Blues/gospel	10
Country	20
Ethnic	1
Pop/rock/R&B	12
Classical	17
Other (spoken word, show music)	28

All of this makes perfect business sense. The business model of large corporations is based on mass distribution, and while they may cater to the mainstream nostalgia market they cannot be expected to operate as would a nonprofit library or archive. That is precisely why the rest of the world has established a public domain for recordings more than fifty or seventy-five years old, so that cultural institutions and enthusiasts can pick up where commercial interests leave off and preserve and disseminate recordings when it is no longer worthwhile for the for-profit sector to do so.

The study also revealed that there was clearly a demand for these historical recordings, even if it was not large enough to satisfy large rights holders. Nonrights holders, including foreign labels not subject to U.S. law, and small, illegal U.S. operations, made available another 22 percent of the recordings studied, more than the rights holders themselves. Ironically in order to gain access to their own audio history Americans must often buy it from a foreign country or break the law.

Copyright debates are usually cast solely in terms of money, but it is important to note that copyright can be and sometimes is used as a means of censorship as well. The law does not require that any reason be given for denying use of a copyrighted work. For example in 2001 the heirs of Margaret Mitchell attempted to use copyright law to suppress publication of *The Wind Done Gone*, a retelling of Mitchell's *Gone with the Wind* from the slaves' point of view, and in 2002 did block distribution of an unauthorized sequel, *The Winds of Tara*. For years CBS Inc. blocked distribution or use of the TV show *Amos 'n' Andy* in any form because of fears of offending someone (much as Disney has blocked access to the Academy Award-winning movie *Song of the South*). The Gershwin estate has imposed racial requirements on stagings of *Porgy and Bess* as a condition of its copyright permission.<sup>10</sup> Whatever one may think of the motives of such rights holders (who are rarely the creators), it is clear that controversy-shy corporations should not be in the position of deciding what we may or may not hear from America's not-always-politically-correct audio past.

### *Recent Attempts to Change the Law*

The situation in the United States has led to increasing demands for change. One major issue has been "orphan works," copyrighted works for which no owner can be found. The number of such works has mushroomed since marking and registration requirements for copyright were eliminated (another favor to rights holders). If you use unmarked material and an owner later emerges, under current law that owner can sue you not only for not only normal licensing fees but also for punitive (or "statutory") damages, which under U.S. law are huge. The fact that you made a diligent search for the owner, or even deposited rights fees to an escrow account, makes no difference. The net result is that orphan

works are generally not used at all, especially by established organizations. The chance that an owner will appear may be small, but if one does it can cost you dearly.

In 2005 the Copyright Office commissioned a landmark study of the orphan works problem and eventually proposed that if a potential user made a diligent search for a copyright holder and couldn't find one, that user should be permitted to use the work without fear of later lawsuits.<sup>11</sup> The search would have to meet strict standards set by the Copyright Office. In the presumably rare case that an owner did later emerge, the owner could reclaim the work and charge a normal licensing fee, but not sue for punitive damages.

Many copyright holders (including publishers) support this legislation because they themselves want to make use of important orphan works, but it has been held up by a vocal minority that has loudly protested that it is a "license to infringe." Photographers and fabric designers complain that their often-unmarked work is hard to trace. They would apparently rather have a system in which no one uses their unmarked work than one in which such works did get used and they might actually get paid for it (either because the users followed the Copyright Office's "diligent search" guidelines and found them, or because they later found the user). It is an example of how emotion and fear-mongering by trade associations ("license to steal!") can sometimes trump reason in copyright debates. Despite these objections the bill has widespread support, and most observers feel that it will eventually become law, although it may be severely watered down.

A second recent initiative has illuminated even more brightly the divisions between rights holders and users, even in an area that might seem to be noncontroversial. The "Section 108 Study Group," convened by the Library of Congress and the Copyright Office, was named after the section of copyright law that deals with the rules under which nonprofit institutions may preserve copyrighted material. The law was written decades ago, before digital preservation and the Internet, and badly needs updating to permit modern "best practices." However the final report revealed sharp differences between rights holders and archives on some issues, particularly those involving access of any type to copyrighted materials (e.g., display and performance, virtual libraries, e-reserves).<sup>12</sup> Rights holders appear to fear digital "leakage," even from archives, and demand extremely tight controls on access, regardless of the material's age or commercial value.

### *Recommendations by the Association for Recorded Sound Collections*

The Association for Recorded Sound Collections (ARSC) was founded in 1966 to promote the preservation and study of historical sound record-

ings in all fields of music and speech. Its membership consists about equally of private researchers and representatives of some of the world's largest public archives. Although copyright has long been a concern of its members, the association has only recently become active in policy debates, as the expansion of copyright restrictions has impacted its members' activities. In 2005 the board of directors adopted ARSC's first public statement on copyright.<sup>13</sup> The organization's Copyright and Fair Use Committee then developed five specific recommendations for changes in U.S. copyright law to promote preservation and access to historical recordings.<sup>14</sup>

1. Place pre-1972 recordings under a single, understandable national law by repealing section 301(c) of U.S. copyright law.
2. Harmonize the term of coverage for U.S. recordings with that of most foreign countries, that is, a term of between fifty and seventy-five years (as opposed to the nominal ninety-five years now in the U.S. code).
3. Legalize the use of orphan recordings, those for which no owner can be located.
4. Permit and encourage the reissue by third parties of "abandoned" recordings, whose owners are known but which remain out of print for extended periods, with appropriate compensation to the copyright owner (i.e., a "compulsory license").
5. Change U.S. copyright law to allow the use of current technology and best practices in the preservation of sound recordings by nonprofit institutions.

As noted there is federal legislation currently being discussed that would address the third and fifth proposals, however it will not affect pre-1972 recordings until the first recommendation is adopted.

ARSC took its recommendations to Washington in late 2007—a very big step for a small, scholarly organization—with no idea what the reception would be. Unlike larger, more established organizations ARSC had virtually no national visibility and certainly no prior presence in Washington. The first step was to arrange an interview with Rep. Rick Boucher (D-Va.), one of the senior members of the U.S. House intellectual property subcommittee, and a recognized expert in Congress on copyright law. Although it took quite a bit of work to get through to him, Boucher proved friendly and interested in ARSC's proposals, and said that he was frankly unaware that pre-1972 recordings were under such restrictions. To his knowledge no one had previously raised this issue.<sup>15</sup>

Realizing that it would need help reaching decision-makers, ARSC then hired professional representation. The origination point for nearly all intellectual property legislation in Congress was the House Judiciary Committee and its Subcommittee on Courts, the Internet, and Intellectual

Property, so ARSC's representative arranged meetings with legislative aides to nearly all members of the twenty-four-person subcommittee. The ARSC team also met with key senators and with the influential Register of Copyright, Marybeth Peters. Most, like Boucher, were unaware of the restrictions regarding historical recordings. The record company lobbyists from whom they frequently heard had not mentioned them, nor had academic and public interest lobbyists, most of whom focused on print, film, television and Internet subjects. To put it simply, historical recordings had never had an advocate.

All urged ARSC to speak with recording "stakeholders" as represented by the Recording Industry Association of America (RIAA), the record-industry lobbying group. Knowing that ARSC had already met with congressmen and others its representatives took the proposals seriously and were willing to discuss possible remedies—tailored as narrowly as possible, of course. Publicly the RIAA has not taken a position of the issue of preservation and access to historical recordings. It indicated that it would like to avoid a fight over this issue and would prefer to negotiate if possible. I believe the industry's willingness to reach a reasonable compromise depends on how widespread the demand for change is perceived to be.

Other important goals were accomplished during 2008. A legislative amendment was drafted that would direct the Copyright Office to study the issue of repealing section 301(c), the first step toward bringing historical recordings under federal law. Two congressmen (a Democrat and a Republican) agreed to introduce the amendment on a bipartisan basis, but the bill to which it was to be attached—the Orphan Works Bill—unfortunately stalled in committee. However, another committee chairman with a personal interest in historic music offered to attach it to one of his bills if Orphan Works did not eventually move and in early 2009 the study was authorized as part of omnibus appropriations bill H.R. 1105.

### What ARSC Learned

A number of facts became clear from these initial efforts. First, the restrictions on historical recordings were practically unknown to legislators. No one had raised the issue. Preservation and access to historical recordings, like any culturally important issue, need an advocate in Washington. Once the issue was raised, legislators quickly "got it" and most were open to change.

Second, there is much fear and resistance to change from rights holders, not because they want to suppress historical materials (or intend to exploit them), but because in uncertain times they are simply afraid of change. Any change. Copyright holders must be heard and assured that their legitimate need for effective protection of commercially viable intel-

lectual property will be respected. Or, better yet, that “there’s something in it for them.”

Finally, obtaining meaningful change will take time, hard work, and money, as does almost everything in Washington. It is a sad commentary on democracy, but money does talk—those willing to spend it, on lobbyists, publicity, and travel, are more likely to be heard. Record companies have large, well-funded lobbying organizations continually making their case. Sometimes they are the only voices heard on matters such as this. Providing an ongoing, active voice is beyond the resources of one small organization such as ARSC, so it has begun to seek allies. To date six scholarly organizations—the American Library Association, the Association of Moving Image Archivists, the International Association of Jazz Record Collectors, the Music Library Association, the Society for American Music, and the Society of American Archivists—have agreed to endorse some or all of the ARSC proposals in principle. The next step has been to organize a more formal coalition of organizations willing to support these efforts on an ongoing basis. This initiative has been dubbed HRCAP—the Historical Recording Coalition for Access and Preservation ([www.recordingcopyright.org](http://www.recordingcopyright.org)).

### What Can Scholars Do?

Preserving our recorded culture, and access to it, is not an abstract issue that can be left to others. International record companies would like to spread the repressive U.S. restrictions to other countries as well, using the United States as a model for the world. They are already trying to do so in Europe. Those in the scholarly community, wherever they are, must make their needs known as forcefully as possible to legislators. Noise attracts attention.

What can individuals do?

1. First simply be aware of the facts regarding recording copyright, and tell others about them. Most scholars (like legislators) are simply unaware of the “historical recordings problem” created by U.S. law.
2. Encourage institutions and associations to take a public position on the issue. Only recently have some, like the six supporting the ARSC proposals, begun to do so. There is strength in numbers.
3. Institutions should be encouraged to use “risk assessment” rather than “most conservative approach” in determining whether to use historical recordings for legitimate scholarly purposes. No matter what the law says, no institution has ever been sued for making available early recordings. The more that do so, in a manner that is obviously pro-social and not harmful to rights holders,

the harder it becomes to justify overly broad laws that operate mostly on fear.

4. Individuals should contact their own congressmen. Until now legislators have heard mostly from industry lobbyists. The needs of the scholarly community should be heard as well. When a congressman hears from his or her own constituents—even a few of them—on a relatively non-controversial, pro-social issue such as this, their concerns often get special attention.

### *Conclusion*

United States copyright law is unique in the way in which it blocks access to the country's rich audio heritage. Nearly every other country in the world recognizes the principle of a public domain for recordings after a reasonable period of commercial exploitation and encourages both archives and private parties to preserve and spread the aural historical record.

The U.S. restrictions on access have grown up over time and are largely a side effect of laws intended to address other issues (e.g., digital copying), rather than a deliberate intent to lock up the past. Nevertheless they have had that effect. They are buried so deep in the law and are so complicated that even many in government are not aware of them. It's easy to blame "big media," with its money and presumed political clout, for this state of affairs, but I think equally or perhaps more to blame is the academic/public advocacy community itself. Where was it when the troublesome "state law" provision was written into the Copyright Act of 1976? Or when the onerous Digital Millennium Copyright Act and the Sonny Bono Copyright Term Extension Act were rushed through Congress in 1998? While there was debate about other forms of intellectual property, the unique status of sound recordings was hardly mentioned.

Things can change. When the international recording companies tried to push through term extension in Britain in 2006 (with the support of the Blair government), and lengthen the term of coverage there from fifty to ninety-five years, the uproar was so great that the measure was soundly defeated. Rights holders then advocated similar legislation in the European Union, and again with politicians on their side, but again faced considerable resistance (12,500 people signed an online anti-term extension petition). Recognizing this, the companies and their allies softened the proposal significantly. Among other things the new proposal was not retroactive, and incorporated important "use it or lose it" provisions for older recordings.

Something else has changed as well. Unlike the situation in the 1990s, studies now exist that document the negative effect that long terms and severe restrictions can have. Among them are the Library of Congress

“Survey of Reissues of U. S. Recordings” (2005), Britain’s “Gowers Review of Intellectual Property” (2006), the EU-commissioned “Recasting of Copyright and Related Rights for the Knowledge Economy” (University of Amsterdam, 2006), and the aforementioned studies of state-level recording copyright laws in the United States.<sup>16</sup> The Internet has spread this information around the world and provided ammunition to advocates of rational laws everywhere.

The louder the opposition to the further expansion of recording copyright, and the louder the demand for a rational balance between the legitimate needs of rights holders and the public good, the more likely laws will be passed that redress the current imbalance in the United States and prevent it from spreading to the rest of the world. If that happens, everyone will benefit, rights holders and scholars alike.

## NOTES

1. For detailed information on the copyright status of different types of works consult the excellent table compiled by Peter Hirtle at [www.copyright.cornell.edu](http://www.copyright.cornell.edu).

2. The provision was added to the bill at the last minute, almost unnoticed, in a House-Senate conference committee. The stated goal was to insure that pre-1972 recordings did not inadvertently fall into the public domain upon enactment of the new law.

3. *Capitol Records, Inc., v. Naxos of America, Inc.*, 830 N.E. 2d 250 (N.Y. App. 2005).

4. June Besek, *Copyright Issues Relevant to Digital Preservation and Dissemination of Pre-1972 Commercial Sound Recordings by Libraries and Archives* (Washington, D.C.: Council on Library and Information Resources and Library of Congress, 2005), available at [www.cilir.org](http://www.cilir.org) (publication no. 135); June Besek, *Copyright and Related Issues Relevant to Digital Preservation and Dissemination of Unpublished Pre-1972 Sound Recordings by Libraries and Archives* (Washington, D.C.: Council on Library and Information Resources and Library of Congress, March 2009), available at [www.cilir.org](http://www.cilir.org) (publication no. 144). Prof. Peter Jaszi, *Protection for Pre-1972 Sound Recordings under State Law and Its Impact on Use by Non-Profit Institutions: A Ten-State Analysis*, Program on Intellectual Property and the Public Interest, Washington College of Law, American University, in preparation.

5. The Library of Congress has a limited number of 1890s Berliner recordings on the American Memory Site (<http://memory.loc.gov/ammem/berlhtml/berlhome.html>), tied to its collection of the papers of inventor Emile Berliner, and the University of California-Santa Barbara has a site containing a large number of Edison cylinders ([www.cylinders.library.ucsb.edu](http://www.cylinders.library.ucsb.edu)), believed to be the property of the U.S. government. Other U.S. sites containing such recordings are of dubious legality. For more see Tim Brooks, “Current Bibliography,” *ARSC Journal* 38, no. 2 (Fall 2007): 307–8.

6. See [www.collectionscanada.gc.ca/gramophone/index-e.html](http://www.collectionscanada.gc.ca/gramophone/index-e.html) and [www.europarchive.org](http://www.europarchive.org). The latter restricts access from the United States.

7. *Gowers Review of Intellectual Property*, London: H.M. Treasury, 2006. 48–57. Available at [www.hm-treasury.gov.uk/gowers](http://www.hm-treasury.gov.uk/gowers).

8. Those with longer terms include India (sixty years), Australia, Singapore, Chile, Peru, Brazil, Ecuador and Turkey (seventy years), Mexico, Honduras and Guatemala (seventy-five years) and Columbia (eighty years). *Review of the Economic Evidence Relating to an Extension of the Term of Copyright in Sound Recordings* (Cambridge: Centre for Intellectual Property and Information Law, University of Cambridge, 2007), 37.

9. Tim Brooks, *Survey of Reissues of U.S. Recordings* (Washington, D.C.: Council on Library and Information Resources and Library of Congress, 2005). Available at [www.clir.org](http://www.clir.org) (publication no. 133).

10. Associated Press, "Settlement Reached Over 'Wind Done Gone,'" May 10, 2002 (accessed at [www.freedomforum.org](http://www.freedomforum.org)); "The Winds of Tara" at [www.fontainepress.com](http://www.fontainepress.com); "Amos 'n' Andy" in Tim Brooks and Earle Marsh, *The Complete Directory to Prime Time Network and Cable TV Shows, 1946–Present*, 9th ed. (New York: Ballantine Books, 2007), 60; "Song of the South," [www.wikipedia.org](http://www.wikipedia.org); Howard Pollack, *George Gershwin: His Life and Work* (Berkeley: University of California Press, 2006), 633.

11. Marybeth Peters, "The Importance of Orphan Works Legislation," Sept. 25, 2008, U.S. Copyright Office, [www.copyright.gov/orphan](http://www.copyright.gov/orphan).

12. The Section 108 Study Group, <http://www.section108.gov>.

13. The statement is viewable at the Association for Recorded Sound Collections Web site, [www.arsc-audio.org](http://www.arsc-audio.org).

14. From "Legal Impediments to Preservation of and Access to the Audio Heritage of the United States," at [www.arsc-audio.org/copyright-recommendations.html](http://www.arsc-audio.org/copyright-recommendations.html).

15. The interview was published in the *ARSC Newsletter*: Tim Brooks, "An Interview with Rep. Rick Boucher on Copyright," *ARSC Newsletter* 115 (Fall 2007): 4–5.

16. Brooks, *Survey of Reissues*; *Gowers Review of Intellectual Property*; Institute for Information Law, "The Recasting of Copyright and Related Rights for the Knowledge Economy, Final Report." The Netherlands: University of Amsterdam, November 2006 (available at [www.ivar.nl/publications/other/IViR\\_Recast\\_Final\\_Report\\_2006.pdf](http://www.ivar.nl/publications/other/IViR_Recast_Final_Report_2006.pdf)).