

Dear Mr. Gowers,  
I have appended below an American view on copyright law that seems highly pertinent to what is being proposed here.  
I hope you will find it of interest.  
Yours sincerely,  
Bill Dean-Myatt, MPhil.

Dear Sirs,

I think it is true that the European recording copyright extension matter will be decided on factual rather than anecdotal grounds. To that end I refer you to my statistical study, conducted recently for the U.S. Library of Congress and the National Recording Preservation Board, on the state of historic record reissues in the U.S. under the current U.S. copyright regime. It is available in paper copy or as a free download from the website of the Council on Library and Information Resources ([www.clir.org](http://www.clir.org)). A detailed article expanding on this study is "How Copyright Law Affects Reissues of Historic Recordings: A New Study," by Tim Brooks, in *ARSC Journal* Vol. 36 No. 2 (Fall 2005).

The bottom line is that only 14% of pre-1965 "historic" recordings are currently available from U.S. rights holders, most of them are from post-World War II periods. The figure drops to about 10% for the 1920s and 1930s, and approaches zero for periods prior to 1920. Ethnic recordings are particularly underserved.

It is also notable that there are many calls for the liberalization of the harsh regime in the U.S., which the European proposals, as I understand them, would replicate. See the more than 600 comments submitted to the Copyright Office in its investigation of the problem of "orphan works", at [www.copyright.gov/orphan](http://www.copyright.gov/orphan). Among others, two major artist organizations, the American Federation of Musicians (AFM) and the American Federation of Television and Radio Artists (AFTRA) called for a compulsory license that would allow non-rights holders to legally reissue recordings which the rights holders do not, on payment of a government-set fee. Under long copyright terms the problem of "suppressed recordings" is very real.

The net effect of a 95-year recording term in the U.S. has been:

1. Major independent labels and cultural organizations, which must abide by the law, avoid or reduce significantly their reissues of historic recordings because of the burden of licensing or the threat of lawsuits. Whatever rights holders may claim when seeking extended privileges, the reality is that important recordings are simply suppressed, with no benefit to them or to the public.
2. Demand for these recordings is so insistent that an extensive underground market has sprung up, which the rights-holders are well aware of. These CDs are available on the internet and elsewhere, effectively in defiance of the law. In the aforementioned study while only 14% of pre-1965 historic recordings are available from rights holders, another 22% are available from non-rights holders. Basically, laws widely perceived as unfair invite defiance, undermining the whole rule of law. Is this what the EU wishes? (This is not unlike the situation in England in the 17th century when public outrage at the use by the Crown of exclusive patents to constrain free speech led to the passage of the first copyright law, The Statute of Anne, in 1710. Have we forgotten our own history?)

Americans are finally waking up to the considerable problems created by the long copyright terms that were pushed through Congress in the 1970s (and extended in the 1990s). I would hope that the European Union would learn from these mistakes, rather than replicate them.

Tim Brooks

Greenwich, CT

Dear Mr. Gowers,

I want to register the strongest possible objection to the proposed extension of copyright protection to 95 years.

I am a researcher into the history and discography of recordings from the period 1890 - 1940, with particular reference to material of Scottish interest.

At the moment I am compiling a "Scottish Vernacular Discography, 1888-1960" for the National Library of Scotland, to whom you may refer for confirmation of my credentials.

In the first instance I believe that this proposed law will be virtually unenforceable for the following reasons. Very few people in Britain or Europe know what master records belong to what company. Perhaps less than a dozen people in Britain, including myself. Although EMI have extensive archives no one on their staff has any great knowledge of them. Decca have no archival material, they thought so little about the cultural value of their archives that they have physically destroyed them. Only through the researches of people such as myself has knowledge of what was recorded and by whom been preserved.

There have been hundreds of thousands of 78-rpm records in Britain between 1898 to ca 1960. Most of these had a short life and then went bankrupt or into liquidation. The master records and files were generally destroyed. Who will own the copyright of these records? Who own the rights to Guardsman, Sterno, Piccadilly, Kalliope; Simcha and all these other mysterious brands, some of which produced a few items of great musical and cultural value. However, if it was thought that some commercial value was to be gained I am sure that someone would appear out of the woodwork to claim their 'rights'.

Through my researches into Scottish music I have conducted detailed research into the Beltona record label which was the property of John G. Murdoch. Master records were produced for them by Vocalion Records, Edison Bell Winner, Crystalate Records and then Decca records. In 1940 the brand name passed to Decca but the right to earlier Beltonas remained with Murdochs who eventually became a part of the metals company, GKN. The company has been liquidated and the brand name, Beltona, now belongs to Ythan Music. Nearly all the artists were paid a flat fee with no royalties. How will the new copyright law apply here?

The main value of 99.9% of early records lies in their historical and cultural importance - there is no real commercial value in them. A CD of such material would be lucky to sell 250 - 500 copies worldwide and then it would probably take some years. How could a small specialist company be expected to track down people who may have a financial interest?

I have a large collection of early African 78-rpm records many of which are the only copies known - the master records have long since been destroyed. Potential sales of a CD of this material would be small, but the cultural value is immense. Again, how could I possibly track down the African artists who made these records in the 1920s and 1930s. The originating company can't really claim to have a great interest in this material when they don't even know it exists. In many cases I'm not sure that I would be able to track down the eventual history of many of the obscure and short lived companies that made them.

I would be more than happy to appear before any select committee or other body that is concerned, as would a number of other people who feel as I do.

Yours sincerely,

William Dean-Myatt, MPhil.

COMPILER OF THE SCOTTISH VERNACULAR DISCOGRAPHY