

COPYRIGHTING A BODY OF INFORMATION?

Can I copyright a body of information?

Can I copyright a body of facts I have uncovered through the efforts and knowledge of my researches?

I produce an occasional journal (1 or 2 issues a year) on Music Hall. Each issue contains an extended biography of a music hall artiste, complete with lists of all their recordings, a list of their songs, etc. These biographies are exhaustively researched and are the result of over 35 years researching music hall. My work is ground-breaking, and accepted as such by serious music hall historians and enthusiasts.

Unfortunately, as soon as my journals are published, the results of my researches, including many new facts I have uncovered /discovered, can be taken by other people and reproduced without fee or acknowledgement. It used to be common courtesy to acknowledge the work of others when borrowing from them. Some writers still do so, but a lot now don't. For example, information in my song listings is 'lifted' by others and published or circulated. This work (ie the collection of facts) is, I believe, my intellectual property, but I seem unable to copyright it as such. I am told that I cannot copyright (individual) facts, and I fully understand why and agree that that should be the case. I can only copyright my words and the order I write them in. That is not the important part of what I produce – the important part of my published biographies is the accumulation of freshly researched facts, which have taken me a lot of time and effort to research and compile. I have good cause to think my work, produced at considerable cost and effort to myself for little monetary return, has been used by others who have profited from it (through not having the cost of the original research) with no more effort or outlay than the purchase of a copy of my journal. This was particularly apparent when the Dictionary of National Biography was being compiled, although it took me a while to realise. I wasn't asked to contribute myself, but had rather more requests than usual for my biographies and other information at the time! I am close to a position of having to reluctantly abandon publication of my Music Hall journal. It is a minority interest journal, very detailed, and selling only around 100 copies to die-hard enthusiasts. Each issue loses me money, and the latest has only been produced with the aid of a grant from the Society for Theatre Research. As I am probably the world's leading expert on music hall, which has been my life's work, this would be a real loss to British theatre research. While profit has never been paramount in my decision to continue publishing my findings, what I consider 'piracy' of my efforts (although it seems that the 'pirates' are probably doing nothing LEGALLY wrong) is particularly galling, and a major deterrent to my continuing publishing the fruits of my researches. It is also possibly detrimental to sales of my journals. I consider my research work is my intellectual property and I should have a right to be associated with that work and be recognised as its author and compiler. Any extractions from it published elsewhere by others should at least have the courtesy of an acknowledgement! Indeed, there seems nothing in the current copyright laws to stop anyone taking all the facts I have researched, writing these up in their own words, and presenting them as a 'new work' with no credit to the real researcher.

It seems that publication in journal / monograph/ magazine form invites this practice more than publication in book form. This matter – copyrighting a compilation of newly researched and published facts - may be already covered by copyright, but I don't think it is. If not, are you covering it in your IP Review? If so, I would like to contribute my views (above) or in more detail if required.

Tony Barker

ACCESS TO HISTORICALLY IMPORTANT RECORDINGS HELD IN ARCHIVES

Some very old historically important recordings are held in various archives – EMI and the BBC, for example – with no chance of ever being reissued or rebroadcast by those companies, or of being leased to others. In the interests of historical research, academic interest, and public interest, might it be possible to review this situation? Currently requests for release or lease of such material are mostly met with refusal. Some old recordings and broadcasts, though of no great commercial value, would be of great academic interest to scholars, historians, researchers and specialist interest groups. If there is no chance of the owners making this material available themselves, might the Review look into the question of whether they should be, for a suitable fee, encouraged or made to make it available for others to reissue? The BBC are / were after all funded by the public, so should not the public have some access to their archive, particularly if it is old material never likely to be used by the BBC again? Are not their programmes in some part our property too? My own interest would be in the performances of, and interviews with, music hall performers. A BBC interview with Marie Kendall I have had the privilege of hearing was a wonderfully lively account of her life in music hall. I heard it after I had published my biography of her (Music Hall 14) - access to it would have definitely been of help in my researches for this biography, most importantly details of her early days before 1900. A similar interview I have heard with Hetty King covering her career, again most importantly her early days before 1900, includes facts I have never found anywhere else. I am certain the BBC will never broadcast them again. That interviews and performances such as these should be locked away potentially unheard in the BBC Archive for ever does seem a great big shame, when historians and researchers would benefit greatly from hearing them, or having copies of them, and indeed enthusiasts would love to hear them. Similarly, speeches by sportsmen, airmen, politicians et al would, in my opinion, be better served by reissue on CD, either by the BBC or interested parties and societies, than rotting in some archive.

EMI have some unique recordings from the early days of recording. As they have shown no interest in reissuing these it is to be hoped that they would at some point be made available for others to reissue. Perhaps they could be made to do so in the case of material over, say, 60 or 70 years old which would be of use to historians. At some point in their lifetime items in the BBC and EMI Archive (and similar companies) surely pass from merchandise to historical document. When these would benefit researchers, historians, scholars, etc, who are researching and writing the history of our country there must surely be a date at which they should no longer be locked away in a company archive. Maybe the owners should at some point (60 years? 70 years?) be obliged to make copies available for study.

I make the same case re films held by the British Film Institute, whose holdings are often gifts from the public. Should we historians not have more access to this material?

(Please excuse the rushed nature of the above, rushed in order to beat the submission deadline! I can expand this submission if required.)

Thank you.

Tony Barker

Music Hall Magazine

Cylidisc Music Hall CDs

<http://mysite.wanadoo-members.co.uk/musichall>

THE PROPOSED EXTENSION OF MECHANICAL COPYRIGHT TO 95 YEARS

I write as a music hall and historic recordings expert re the proposal to extend mechanical copyright to 95 years.

THE PROBLEM

If the proposed 95 years copyright extension becomes law, and is applied retrospectively, the only people allowed to reissue recordings made in the past 95 years, ie after 1910, will be the companies who recorded them, or who took over those companies. Due to takeovers these "parent companies" are now Polygram and EMI. What chance do we have that they will ever reissue music hall recordings?

WHAT CHANCE MUSIC HALL REISSUES BY THE MAJORS?

Polygram and EMI - Their collective track record of reissuing archive music hall recordings in the last 30 years is between nil and negligible. Reissue of these historical historically important recordings (and I believe of opera, jazz, blues etc) has not fared well in these hands. What are the chances of them doing better in the future?

POLYGRAM'S TRACK RECORD

No music hall reissues for over 30 years. Polygram (who took over Decca, who had taken over Edison Bell & Winner) in fact hold NONE of the masters, or indeed copies of any of their pre -1948 recordings AT ALL - NOT ONE. Of the nigh-on 4,000 Edison Bell Winners they technically control - You guessed it! They have NONE! This is a result of thinking so little of what they did have that they sold it off to private collectors years ago. This action alone shows their attitude to reissuing archive / vintage recordings - their recordings now only exist in the hands of private collectors! They DO NOT HAVE any of the music hall recordings THEY ALONE, under any new retrospective extension, would be able to reissue or suppress for 95 years from their recording date. Fortunately, most Winners and Deccas exist in various private collections - but these collectors are not young (I include myself!) and, without reissue, the future fate of these recordings is precarious.

EMI'S TRACK RECORD

Since they closed their World Records section over 30 years ago, there have been no music hall reissues from EMI. EMI do have an archive of many of their HMV 78 issues, but certainly not all of them. They have not kept any/ most of their own cheap label Zonophones, on which most of their music hall recordings were issued. Myself and others have tried for decades to encourage them to reissue what they have, or to make it available for reissue by others, all to no avail. And here's another thing! Their archive is even more remarkable in its incompleteness! When they merged with Columbia (&Regal) in 1931 they continued to consider them the enemy, & chose not to hold any archive of Columbia Records, even though they were now their property. Fred Gaisberg was amazed to find they didn't have the Columbia 78s of the great classical pianist Busoni in the EMI archive - and that was post-merger! Opera collectors in charge of the ongoing Historic Masters reissue project have found only one acoustic Columbia 78 in the EMI Archive so far. Pre -merger, Columbia had issued over 5,000 records, Regal had issued about 4,000. Through Lindstrom, they technically own 1,600 Jumbos and a few thousand more Bekas, Scalas and Coliseums, not one of which is held at EMI. These should all be in EMI's Archive, but they have NONE OF THEM! Again, THEY ALONE, under any new retrospective extension, would be able to reissue or suppress these for 95 years from their recording date.

INDEPENDENT REISSUERS

Most original music hall recordings only exist today due to the efforts of dedicated enthusiasts - enthusiasts not interested in financial considerations, but in the preservation of these artefacts of a valuable part of our cultural heritage. Myself & a number of other enthusiasts have spent the best part of our lives running to ground early recordings, in my case of music hall artistes, in others of opera, classical, jazz, blues, folk, country, speech, etc. The vast majority of these recordings (probably 75%) are not held in any company archive, existing only in private collections built up over forty-odd years devoted to saving them from the junk-heap. Some collectors choose to keep their finds to themselves. Others wish to spread knowledge and appreciation of this historical subject by reissuing them. If it were not for the activities of independent reissuers, whose CD reissues mostly sell in quantities less than 100, music hall reissues just would not exist.

WHY IS REISSUING ON CD IMPORTANT?

We are in an ongoing project to piece together what remains of this country's early recording history. Part of the process is to reissue these old recordings, thus making them accessible to more people, spreading interest in the project, and encouraging collectors to participate.

From 1898 to 1945 thousands of music hall recordings were issued on fragile 78s, & even more fragile cylinders. Many of these recordings now exist in small quantities, some in a sole copy, while some have not survived at all. There are huge gaps. The point of reissuing these 78s and cylinders on CD is to increase the recording's chance of future survival - and to enable current and future appreciation and study of these great music hall performers, and of their repertoire, much of which is of great social significance. Some recordings have been reissued from the sole copies remaining anywhere. The CD reissues bring together / focus the results of various private collectors' life-long efforts to save vintage recordings from the scrap-heap. Prompted by these CD reissues, other collectors are coming forward with records from their own collections, in many cases unique copies - these now exist in multiple copies on CD reissues, no longer at risk of being entirely lost to damage and decay. This means that music hall enthusiasts and students of this and future generations will, through these CD reissues, be able to hear extremely rare music hall recordings which will otherwise be lost. This is not a "stuff museum" project. Music hall recordings are great entertainment, a fact not generally appreciated due to a dearth of media coverage. The historical importance of early sound recordings has yet to be fully appreciated. The aim is to preserve these rare recordings in a more permanent format, the professional restoration and other costs being paid for by sales of the CDs.

WHO WILL REISSUE THIS MATERIAL?

We are not talking Elvis Presley and The Beatles here. These recordings have little or no monetary value as reissue projects. They have value as important artefacts to people who care about our cultural heritage. My reissue of six 1948 ITMA shows no longer held by the BBC sold 26 copies each and did not cover costs - that is not the point. They are now available to enthusiasts, and saved for future students, who might want to hear what made it such a landmark in entertainment history, and for historians seeking fascinating contemporary comment on life in post-war Britain.

LICENSING

Any additional cost of paying licence fees for these recordings would not be feasible. Most of the CD reissues have covered production costs at best. Some have not yet done so. Sales if anything are decreasing. The added burden of licensing would almost certainly end the project, depending on the fee. In the past we have asked EMI if we could licence some of the rarer masters they do have, of records that have never turned up in the collecting field, but the fee has been prohibitive. It also seems wrong to us that a licence fee could be demanded for an item - and there are thousands of them - that the company do not have copies of, through their conscious decision not to keep copies.

NON-SUFFERING ARTISTE'S RELATIVES

One of the arguments put forward in favour of the 95-year extension is that artistes and their families suffer from a shorter copyright period. This is quite the opposite with historic music hall recordings. Relatives of music hall artistes Dorothy Ward, Phil Ray, Will Johnson and Daisy Dormer have expressed their delight at hearing their forebear's recordings through my reissue of them on CD. The companies who recorded these Regals and Winners originally (ie now EMI and Polygram) have no archive copies of these recordings. The same relatives are eagerly awaiting my reissue of their later (1915) recordings planned for next year. A 95-year retrospective ruling would scupper that - who would be the loser? They would not have heard the voices of their forebears if it were not for the efforts of dedicated enthusiasts like myself.

My Western Brothers CD has (so far) delighted 5 of their relatives who have searched for their recordings in vain. Some of the Western Brothers' Columbia records may well exist in the EMI archive, but EMI have made no attempt to reissue them, and show no interest in ever doing so. Under the new retrospective 95-year extension, those relatives would have had to wait till 2029 to hear the first of the Western's Columbias, and till 2036 to hear the last, unless EMI or Decca had a change of heart in the meantime. Don't hold your breath for that!

CAN WE AFFORD TO WAIT?

This is work which must be done now - WHILE WE STILL CAN - for future generations as well as ourselves. Music hall, although currently rather unfashionable, is an important part of our culture - future students will hopefully have more consideration of its cultural worth. It is important to keep what interest there still is in the great music hall artistes of Britain's past alive for as long as possible. The collecting world is not made up of young people, and when we go our 78 collections may well disappear with us. There have been too many horror stories of lost collections. What would be the result of a 95-year effective freeze on reissues of music hall? It would mean, as an example, that 1935 recordings will not be reissuable until 2030 - I'm sure we all hope we'll still be around then, but we're not a young lot and if this extension is applied retrospectively, it will probably deal a killer blow to our life-long efforts to preserve what little is left of this country's early recording history. This is our country's collective heritage. This decision will determine whether future generations will thank us for our efforts to preserve a disappearing part of our country's culture, or curse a short-sighted decision which will deprive them of that valuable resource.

A RIGHT OR A RESPONSIBILITY

Let the majors have anything they will ACTUALLY reissue (and not just SAY they will reissue). If they do not actually reissue it, they should not have the right to repress or restrict our right to enjoy the music we love. They should not be able to effectively repress issue by demanding licence fees for records they do not even own. If they do have copies of historic recordings not otherwise in existence, maybe they could even be obliged to reissue them or let others do so in the interests of academic study. The only reason we enthusiasts have reissued these recordings is because the majors won't! It is not for any financial gain - that is why the majors will never reissue them.

While modern large interests will no doubt prevail in this matter, any retrospective ruling should be considered carefully. These reissues sell in tiny quantities. There are no artists deprived by their reissue - they have all been dead for many years. Their relatives, who are thrilled to hear the now extremely rare recordings their famous forebears made, are among those who would be deprived by a 95-year retrospective ruling. Ultimately, though, the major loser would be our nation's heritage. 78s are fragile things. All us collectors have broken some. It's inevitable. Some exist in single copies. Some don't exist at all anymore. With the best will in the world, it is inevitable that with deaths, damage, and the wear and tear of the years, more will inevitably disappear. The reissue programme must be done sooner than later if we want to preserve what we have left. Future historians and students of music hall and contemporary history, deprived of valuable source material, would surely not look favourably on any short-sighted decision taken now. Our right, maybe even our duty, to preserve the past for future generations is at stake here.

HISTORICAL DOCUMENTS

Max Beerbohm wrote, "Let me know a nation's songs, and I shall know its history." Old records are historical documents, no less so than early political and royal speeches (which could also be suppressed under a 95 year retrospective ruling). Aside from their wonderful entertainment value, music hall recordings are documentation of the star performers of the past, the Cliff Richards of their day if you want. They are also remarkably vivid and immediate social history records, and as near as we will get to contemporary comment. No, they ARE contemporary social comment, and as close as we will ever get to hearing the views of the "man in the street" on anything pre-1930. George D'Albert's recording re-riding early trams in the Elephant and Castle is brimming with contemporary social and sexual attitudes. This wonderful recording existed in just one original copy. We have reissued it, and it now exists on over 50 copies of the CD. Future students of the period will now be able to actually hear this incredible slice of contemporary social history, not look at a catalogue entry and wonder just what that recording might have told them.

The "dole" songs of the 1920s and 1930s are valuable social comment on the 1929 Depression, and will increasingly be seen as important documentation. Sold at a time of hardship for their potential working class audience, some are extremely rare. Will we be allowed to reissue them? We collectors - historical archaeologists - have worked hard to save what we can of such historical treasures. We would like the

opportunity to share and collate the fruits of all our efforts with fellow collectors, make them accessible in modern formats to anyone interested, and to thus do our best to preserve these documents for future generations.

HINDRANCE TO HISTORICAL RESEARCH

To leave responsibility for the reissue of historically important recordings in the hands of concerns with solely commercial interests will be fatal. Their track record speaks volumes. We have reissued well over 600 professionally restored recordings so far, the tip of the iceberg, but already far more recordings than the majors have between them reissued in the past 60 years. They have sold in tiny quantities of typically under 100, just about covering costs, but we will continue to reissue them if allowed to. My aim is to preserve every important surviving music hall recording on CD, no matter how small the demand. The current 50-year cut-off date is of no concern to us. But our efforts to ascertain just what does survive, professionally restore and preserve it will be severely compromised by a 95-year retrospective ruling. The last major event covered by music hall song is the Second World War. So any retrospective cut-off should consider the academic value of Second World War recordings, and how desirable it is to have them available for study. To lock them up behind a copyright wall until 2041 is surely an unthinkable act, reprehensible to the general public and academicians alike.

No-one questions the importance of archaeological work. Early record collectors have, possibly unwittingly, undertaken archaeological work in their pursuit of recordings often scarcer than findings at ancient sites. It would be easy to be fooled into thinking such relatively recent artefacts are not under threat. They are. This will become obvious with the passing of another century. It is obvious now to long-term early record collectors. It is also obvious that most of the many recordings not already found now never will be, and that those we have managed to rescue so far are themselves in danger.

WHO WOULD GAIN?

The only people to gain from a retrospective copyright extension are the major record companies and living high-profile artistes. The major record companies are only interested in preserving their copyright in a chosen few high-selling artistes. Their interest in "poor sellers" is nil. Some living artistes fear losing copyright in their 1950's recordings. Maybe a compromise would be to add "or artiste's lifetime plus 25 years (or more as is thought fit)" to the current 50-year copyright period. This would surely placate Charles Aznavour's and Cliff Richard's fears, although admittedly not satisfying EMI's concerns re their Elvis Presley back catalogue. But haven't they made enough profits from them over the past 50 years? To base any decision on a few exceptional high-profile recordings, at the expense of effectively denying public access to the vast majority of recordings, would be to give unfair precedence to commercial considerations over public interest. 95 years is a long time, and, if artistes think their 1950s recordings will be anything other than museum pieces by 2046 they should look to history. The stars are the exception, and may still be reissued to some degree, as are 1930's stars George Formby, Stanley Holloway and Gracie Fields now (but notably even reissues of these stellar artistes of yesteryear are not on their "parent labels," EMI and Decca). But other less famous artistes should take care - they, their followers, and their descendents, may well be left wishing that the recording company they recorded for would either reissue their recordings - or that, as they probably won't, an independent outfit could be allowed to do so - as did relatives of the Western Brothers, star performers of only 60 years ago.

No artiste who recorded before 1920 is still alive. The last one, Zona Vevey, died a few years ago aged over 100. If she were alive today, and the proposed copyright extension were in place, she would have no opportunity to hear the recordings she made 90 years ago and no longer possessed unless collectors like myself were allowed to reissue them. (I have them all, accumulated over 40 years of searching - EMI / HMV, who recorded them, almost certainly don't).

FIFTY YEARS IS FINE

The current 50 years retrospective copyright would seem to me to be quite long enough. I think that most complaints against a 95-year retrospective will revolve around the public's inability to access the music they love, which the majors no longer consider worthy of reissue. But if the majors want to hold on to their prize assets for longer, perhaps a "use it or lose it" clause would soon sort out just what they do want (eg Presley, Beatles, etc) - and what they don't care about. If there is any extension to the current 50 year term might I suggest that it should come hand in hand with a proviso that if any recording over 50 years old is not reissued by, or allowed to fall out of catalogue by the "copyright owner," it would seem safe to assume they have lost interest in it. It should then be available for reissue by others with no licence fee restriction. I think we would find, as Tim Brooks' American study has

shown, that they would be interested in less than 15% of all pre-1965 recordings (and even less from before 1945). I think the majors would admit they are not interested in reissuing minority interest material (something they have certainly said in private), and be happy to retain rights to their "best sellers" by keeping them in catalogue. The public, and avid collectors like myself, would be happy, as all we want is the right to access the music we love and care for.

TWO WORLD WARS!

The proposed 95 years is way too long. To show how ridiculously long this is, it would mean that we could not reissue any of the many World War One recordings until 2010-2014. Only EMI would be allowed to reissue World War One Regals, Jumbos, Scalas, Coliseums and Columbias - and they don't have any of them. Only Decca would be allowed to reissue World War One Winners - and they don't have any of them. We collectors do have them, but we would NOT be allowed to reissue them.

Historians have been eagerly interviewing the few surviving combatants. A mere handful of the young men who went to fight in World War One are still with us. That is how long 95 years is! It is a ludicrously long period to tie up our history for.

World War Two - Well, we'd only have to wait till 2035-2041 to start a reissue programme of our accumulated Second World War recordings. Oh, that's a shame - I probably won't be here then! And who knows where my records will be - many collections have wound up in skips, smashed to smithereens.

A RETROSPECTIVE 95 YEARS - NO!

This should not just be about the interests of a few big companies and a few big stars. They are business concerns, and have no interest in reissuing loss-making old recordings just because they are of historical and social significance. This should also be about our heritage and our ability to keep it alive and maintain access to it. It should also be about taking a responsible attitude to preserving important historical recordings. With that as a consideration, there can be no doubt at all that a retrospective 95 years (effectively 96 years, as recordings would not come out of copyright until the end of the 95th year, i.e. the start of the 96th year) is far, far too long.

95 years retrospectively take us perilously close to the start of commercial recording around 1898. As most pre-1904 recordings remain undiscovered, it effectively means that we will be able to reissue just what we have rescued from the 6 years of recordings issued between 1904-1910, and a smattering from the years before. The rest will disappear behind the copyright barrier. Records were expensive, often poorly distributed and were extremely fragile. They have been through two World Wars, home removals, one hundred years of turmoil. We have a precarious hold on what has survived. There must be a point where these recordings pass from merchandise to historical documents. Our work is akin to that of archaeologists, unearthing the world portrayed in these early recordings. Surely their finds would not be suppressed for decades, with further chance of damage and even loss. 95 years would severely shackle our efforts. It is far, far too long.

FOOTNOTE

I must also add that I only found out about this matter less than a week ago, and have since been emailing other people with an interest in the matter. Amazingly, nearly all had no knowledge of it. They are in the process of emailing others, but the deadline for contributions is drawing close. As whatever publicity the matter seems to have had does not seem to have reached very many of the interested parties, including similar historic reissue concerns to mine, might I suggest that late contributions also be considered.

While I have attempted - unsuccessfully! - to be brief above, I have omitted many specific details of old recordings which would further demonstrate their fascination and importance. I can supply more details of these or expand the points I have made if asked - either by mail or in person if it would help. While my comments refer to music hall recordings, they could equally be applied to rare and historic records in opera, speech, jazz, blues, country, ethnic and other fields.

Tony Barker

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