

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). 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. 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