

THE LIBRARY OF CONGRESS -- THE NATIONAL RECORDING PRESERVATION BOARD

NOTICE OF INQUIRY

Request for Information; Notice of Hearing; Study on the Current State of Recorded Sound Preservation

AGENCY: Library of Congress, The National Recording Preservation Board

ACTION: Notice of inquiry; Notice of hearing

SUMMARY: This Notice of Inquiry and Notice of Hearing advises the public that the Librarian of Congress, on behalf of, and in consultation with the National Recording Preservation Board (NRPB) of the Library of Congress, is conducting a study on the current state of recorded sound preservation and restoration in the United States. This study is being prepared pursuant to Public Law 106-474, The National Recording Preservation Act of 2000, 106 Stat. 264. Section 203 (2 USC 179a) of the legislation requires the Librarian to complete this study for submission to Congress. In support of the study, the Librarian will hold two public hearings on November 29, 2006, in Los Angeles, and December 19, 2006, in New York City. This Notice of Inquiry invites comments and information that will assist the Librarian in understanding the issues involved in recorded sound preservation nationwide. Groups or individuals interested in participating in these public hearings should contact the Library of Congress about submitting oral and written comments, per the guidelines appearing below. The hearings and public comments requested in this Notice are intended to assist the Librarian of Congress, in consultation with the NRPB, with completion of the study and the establishment of a comprehensive national recording preservation program. As also directed by P.L. 106-474, the program is to help coordinate the efforts of sound archivists, copyright owners, educators and historians, and others concerned with preserving America's recorded sound heritage.

The Library particularly invites comments from representatives of major and specialized sound archives, institutional collections holding commercial and unpublished sound recordings, major and independent record labels, audio engineers affiliated with corporations, institutions or self-employed, and scholarly and professional organizations involved with the production, study, use or preservation of recorded sound. The Library also invites comment from the considerable population of individuals with personal, often specialized collections of recorded sound, including published and unpublished materials. Commentary is also invited from the legal community and academic or other specialists in copyright, fair use and intellectual property law

as it pertains to preservation of, and access to protected sound recordings.

Though submissions are invited from several distinct communities, we note, and the law recognizes, that many of the broadest questions and issues in sound preservation are common to all. Preservation is not simply a matter of transferring endangered recordings to the digital domain. To achieve the objectives of preservation will require a commitment to a long-term process (possibly with no discernible end) to maintain the quality of preserved materials and the ability to access them. Are the efforts and resources being invested in rescuing recordings today diverting attention from the sort of programs and resources that will be needed to support preservation through the decades? What will be needed to sustain long-term preservation and what sort of collaborative effort might help to achieve this? These, and other larger questions are expanded upon later in this notice.

DATES FOR HEARINGS AND PUBLIC COMMENTS:

Two public hearings will be held:

November 29, 2006 (Los Angeles)

December 19, 2006 (New York City)

All requests to testify orally must be made no later than November 17, 2006 for the hearing in Los Angeles, and November 28, 2006 for the hearing to be held in New York. Requests should clearly identify the person and/or organization desiring to comment. Submission of testimony, or a preliminary summary of remarks, should be submitted with the request to testify. Camera-ready copy of your complete testimony must be submitted by November 22, 2006. (Los Angeles) and December 12, 2006 (New York).

The November 29 Los Angeles hearing will take place at the Renaissance Hollywood Hotel, 1755 North Highland Avenue, Hollywood, California 90028 from 9:30 a.m. to 5:00 p.m. The December 19 hearing in New York will take place at The Princeton Club of New York, 15 West 43rd Street, (between 5th and 6th Avenues), New York, NY 10036, from 9:30 a.m. to 5:00 p.m. For additional information on hearing locations and times, please refer to the website of the National Recording Preservation Board [<http://www.loc.gov/rr/record/nrpb/>].

Written submissions are also invited from persons or organizations unable to testify or attend the hearings. All written comments or supplementary information should be received, in camera-ready copy, by January 30, 2007.

ADDRESSES:

Testimony and Comments sent by electronic mail or delivered by hand are strongly encouraged. Submissions sent through the U.S. mail are strongly discouraged owing to delays in delivery of surface mail owing to security procedures.

Electronic submissions should be directed to rbamberger@crs.loc.gov with a cc to sleg@loc.gov. (see file formats and information requirements below). Submissions delivered by hand should be brought to the Library of Congress, M/B/RS Division, James Madison Memorial Building, Room LM-336, 101 Independence Avenue, SE., Washington, DC 20540. (Those sent by regular mail should be addressed to Steve Leggett, Program Coordinator, National Recording Preservation Board, Library of Congress, M/B/RS Division, 336 James Madison Memorial Building, First and Independence Avenue, SE., Washington, D.C. 20540.)

FILE FORMATS AND REQUIRED INFORMATION

(A) If by electronic mail: Send to rbamberger@crs.loc.gov (with cc to sleg@loc.gov) a message containing the name of the person making the submission, his or her title and organization (if the submitter is an organization), mailing address, telephone number, telefax number (if any) and e-mail address. The document itself must be sent as a MIME attachment, and must be in a single file and in recent, if not current versions of: (1) Adobe Portable Document File (PDF) format (preferred); (2) Microsoft Word; (3) WordPerfect; or in (4) Rich Text File (RTF) or (5) ASCII text file formats.

(B) If by regular mail or hand delivery: Send, to the appropriate address listed above, two copies of the comment, each on a 3.5-inch write-protected diskette, labeled with the name of the person making the submission and, if applicable, his or her title and organization. Either the document itself or a cover letter must also include the name of the person making the submission, his or her title and organization (if the submission is on behalf of an organization), mailing address, telephone number, telefax number (if any) and e-mail address (if any). The document itself must be in a single file in a single file and in recent, if not current versions of: (1) Adobe Portable Document File (PDF) format (preferred); (2) Microsoft Word; (3) WordPerfect; or in (4) Rich Text File (RTF) or (5) ASCII text file formats.

If by print only: Anyone who is unable to submit a comment in electronic form should submit an original and two paper copies by hand or by mail to the appropriate address listed above. It may not be feasible to place these submissions on the Board's website and, as noted earlier, use of surface mail is strongly discouraged owing to the uncertainty of timely delivery.

FOR FURTHER INFORMATION CONTACT:

Steve Leggett, Library of Congress, M/B/RS Division, Washington, D.C. 20540. Telephone: 202/707-5912; Facsimile: 202/707-2371; email: sleg@loc.gov or, Rob Bamberger, Consultant to the National Recording Preservation Board, Library of Congress, Washington, D.C. 20540. Telephone: (202) 707-1122; email: rbamberger@crs.loc.gov.

SUPPLEMENTARY INFORMATION:

The National Recording Preservation Act of 2000 (Public Law 106-474) was signed into law by President Clinton on November 9, 2000. The law established a National Recording Registry in the Library of Congress to maintain and preserve sound recordings and collections of sound recordings that are culturally, historically, or aesthetically significant. It additionally requires the Librarian of Congress to implement a comprehensive national recording preservation program after soliciting the participation of, and taking into consideration the counsel of other recording archivists, educators and historians, copyright owners, recording industry representatives, and others involved in activities related to recording preservation and with interests in make sound recordings more accessible for research and educational purposes. The law also established a National Recording Preservation Board that, among other activities, will study and report on the current state of sound recording preservation practices and activities in the United States. The authorities of the Act expire on September 30, 2008.

The legislation, in section 124(b) (2 USC 1724), charges the Librarian of Congress, in consultation with the National Recording Preservation Board, to conduct this study and after completion of the study, to develop a coordinated national sound recording preservation program. The objectives of this program are (1) to coordinate activities to ensure that efforts of archivists and copyright owners, and others in the public and private sector, are effective and complementary; (2) to generate public awareness and support for these activities; and (3) to increase accessibility of sound recordings for educational purposes; and (4) undertake studies and investigations of sound recording preservation activities as needed, including the efficacy of new technologies, and recommend solutions to improve these practices.

The undertaking of the study, and the conduct of these hearings coincides with the completion of the National Audiovisual Conservation Center (hereafter NAVCC) in Culpeper, Virginia where the Library's collection of sound recordings, film and video will be consolidated. One purpose of the NAVCC will be to conduct preservation of the ever-growing body of deteriorating published and unpublished sound recordings in the Library's collection that are, in effect, a history in sound of the nation's social, cultural and historical record. Through the development of a comprehensive national recording preservation program, the Library hopes to raise public and private recognition of the importance of recorded sound preservation and, in consultation with the National Recording Preservation Board, to identify initiatives to help solve the challenges faced by all stakeholders, recognizing the different environments in which universities and archives of all sizes, museums, libraries, record companies, E-commerce, and others operate.

These hearings are also intended to seek comment on potential public and private partnerships for significant accomplishment in furthering recorded sound preservation. The

Librarian is also interested in comment on how to raise public awareness of the importance of sound recording preservation and a recognition of needs that must be met to achieve it.

The National Recording Preservation Board, appointed by the Librarian, consists of twenty-one members, seventeen of whom are drawn from institutions and organizations specified in the Act, and an additional four at-large members. These institutions and organizations are: The National Academy of Recording Arts and Sciences (NARAS); The Recording Industry Association of America (RIAA); The Association for Recorded Sound Collections (ARSC); The American Society of Composers, Authors and Publishers (ASCAP); Broadcast Music, Inc. (BMI); The Society of European Stage Authors and Composers (SESAC); The American Federation of Musicians (AF of M); The Music Library Association; The American Musicological Society; The National Archives and Record Administration; The National Association of Recording Merchandisers (NARM); The Society for Ethnomusicology; The American Folklore Society; The Country Music Foundation; The Audio Engineering Society (AES); The National Academy of Popular Music; and The Digital Media Association (DiMA).

Topics and issues of interest, many of which we are directed to examine in P.L. 106-474, are noted below. They are loosely divided for archival, industry, and educational respondents, and are intended as suggestions to help frame specific comments about current preservation practices and problems. Noted first, however, are some of the broadest questions that all participants are invited to address.

Major Issues for Recorded Sound Preservation

Now that the history of recorded sound exceeds 125 years, the imperative for recorded sound preservation grows with every passing day. The introduction and widespread penetration of digital technology opens new possibilities but calls for entirely new perspectives on sound recording preservation. A quality transfer of a recording to a digital format is only the beginning of preservation, a first step in what has to be conceptualized from the start as the commitment to a long-term process. Testimony and comment is strongly invited that addresses: [1] what drives prioritization of your preservation efforts, e.g., is it driven by assessment of the most vulnerable elements in your collections, or largely determined by projects or evaluation of the cultural value of specific recordings or other factors; [2] whether your preservation program is designed to be sustained for the long-term; [3] if you see potential opportunities for partnerships and collaborations within the public or private sectors to support preservation, or between the public and private sectors; [4] the effects of U.S. law governing copyright and fair use on preservation and access and what amendments or additional provisions you would recommend the U.S. Congress should enact in this area; [5] creative solutions that would overcome obstacles to preservation; [6] preservation issues that may be receiving insufficient attention; and [7] how public consciousness can be raised about the importance of dedicating public and private resources to recorded sound preservation.

Archive and Library Community:

* **Collections.** We are interested in gathering some anecdotal reports about the size and nature of existing collections, including collections with a large proportion of unpublished

recordings. Are there collections in institutions that can be characterized as original, unique and with best surviving primary sources?

We are also interested in getting a sense of the range of formats of collections, and to get a sense of the extent to which archives and libraries with collections have attempted to confine acquisitions to specific subject areas and media. To what extent have institutions accepted collections that were not solicited, and how do institutions determine what merits accepting or acquiring. We would like to know if most collections are stored under conditions close to ideal to protect them. Lastly, we are interested in getting a sense of the sort of inventory or data bases used to catalog (to at least some degree) or as finding aids for individual items in institutional collections.

*** Preservation Efforts and Access.** We would like to learn about preservation resources and activities at archives, museums and library institutions. On the likely assumption that there is a far greater universe of sound recordings than there is resources to preserve them, we would like to know the criteria used in the identification of specific collections or items to receive priority for preservation. Testimony or comment would be valued about: [1] your equipment and personnel resources for preservation, and your source of funding for preservation activities; [2] your quality assurance standards; and [3] your practices in allowing access to recordings in your collection, particularly with respect to the protection of the rights of copyright owners. It would be particularly useful to have information on how your preservation efforts are funded. Are some of your efforts funded by grants, and is your preservation program driven primarily by grant money?

Industry:

*** Collection.** We are interested in learning about [1] the completeness of your holdings of your studio masters (tape, metals, safeties, etc.) and the masters of labels you may have acquired over time; [2] where these materials are housed; and [3] what sort of inventory management or data base you maintain to facilitate locating items. To what extent have you, as a matter of corporate policy, retained original studio disc or tape masters? Are there periods for which there are significant gaps or inconsistencies in your holdings of raw studio sessions, and disc or tape masters of issued recordings?

*** Preservation Efforts.** The study would benefit greatly from knowing [1] whether you have personnel whose function is to maintain your primary sound resources; [2] if preservation activities tend to be confined to back catalogue that is being prepared for reissue; [3] your quality assurance standards for your initial transfers of vault materials, especially with respect of transferring analog material to digital; and [4] whether the preparation of materials for reissue is subcontracted and the application of restoration technologies and techniques solely at the discretion of individual engineers; and [5] any system you may have for oversight and quality control of transferred material.

*** Copyright and Access.** The internet has strongly affected the traditional retail models for the distribution and marketing of recordings, new and old. While recognizing that you might not wish to share specific business or marketing plans under discussion internally, comment and

general impressions about your perceptions of opportunity or threat presented by the internet would be of interest to Congress. Testimony would be welcomed on [1] current programs to make back catalogue downloadable from websites you maintain or which with you partner; [2] your perceptions of the adequacy or inadequacy of current law governing copyright and protection of your catalog; and [3] the circumstances which could encourage you to make a larger universe of out-of-print recordings under your control distributable over the internet. With respect to this last issue, do you see any potential in a public and private partnership to achieve preservation of, and on-line access to your catalog.

Educational:

* **Use and Availability.** P.L. 106-474 directs the NRPB study to report on “current laws and restrictions regarding the use of archives of sound recordings” and to make recommendations to facilitate digital access to collections held by non-profits. We are interested in statements from universities, university libraries and teachers about the affect that laws and conventions shaping copyright, fair use and intellectual property. In particular, testimony might address how law is affecting the availability of sound recordings to students and researchers in libraries, and the use of sound recordings as teaching materials. Would you characterize your use of such materials, for educational or academic research, to be constrained by copyright and fair use, or your understanding of them? We would welcome comment from university counsel about any articulated policies the school may have governing the use by instructors of sound recordings in course curricula. Is copyright and fair use limiting the scope or subject of academic research and the publishing of that research?

* **Outreach.** We invite comment on how might the library, archival, educational and museum communities foster public awareness of preservation issues and needs.