

**THE LIBRARY OF CONGRESS -- THE NATIONAL RECORDING
PRESERVATION BOARD HEARING; STUDY ON THE CURRENT STATE OF
RECORDED SOUND PRESERVATION
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WRITTEN TESTIMONY SUBMITTED BY: Clifford R. Murphy

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WRITTEN TESTIMONY:

It seems a rather obvious point to make, but members of a Democratic society should be able to hear the recorded voices of their ancestors. Yet the voices of thousands of our American ancestors have been silenced for decades on account of copyright legislation. When copyright holders choose to mothball historic sound recordings indefinitely, they deny Americans access to tangible heritage, and effectively shape the present by silencing the past. It is wrong to deny the American working people access to the music that their cultures have produced. Our recording and broadcast industries were built on the backs of American vernacular musicians. America's vernacular musics – such as blues, country, jazz, conjunto, polka, and folk – are celebrated by people of all backgrounds and places of origin; in many ways these musics are our most effective diplomats in the world at large. Persons from all over the globe travel to now-famous centers of vernacular music making like Memphis, Chicago, Bristol, Los Angeles, San Antonio, Nashville, Kansas City, New York, and – until recently – New Orleans to glimpse the humble surroundings that produced such powerfully expressive musics. It seems our historic recordings have earned a pardon, but still they remain locked up.

When copyright holders mothball sound recordings indefinitely, a substantial impact can be heard in the way the American people express themselves through music. I have witnessed this first-hand as an ethnomusicologist working in the New England Country & Western music community. Could you hear the old recordings, you would note that,

historically, New England's Country & Western musicians sang in their native accents. Today, the younger generations of country musicians in New England often affect a Southern drawl. And while this changing accent can be attributed in part to mass-mediated radio and television broadcasts, New England country musicians are voracious buyers of old recordings not played on contemporary broadcasts. The reconfiguring of New England country music's past has not only caused changes in accent and repertoire, it has caused country music to appear to the casual observer to be freakishly out of place in New England and a sign of the bizarre effects of mass media and popular music. When copyright holders withhold sound recordings from the public, they silence the true diversity of our Nation's musical heritage.

This past summer, I assisted the National Council for the Traditional Arts and the Maine Folklife Center in developing a two-day presentation of Maine Country Music at the American Folk Festival in Bangor, Maine. What I witnessed there was a truly moving reminder of the importance this music has to the people of that region. The sons and daughters of Maine's "pioneer" generation of Country & Western musicians were drawn together on one stage to perform the music of their parents' (un-reissued) music; the outpouring of local support for this event overwhelmed the small staging area it had been allotted, and the festival organizers were surprised to find that Maine Country Music generated the same kind of attention and excitement as the far more exotic (and expensive to hire) musics "from away." In many ways this event resembled a large family reunion for both the performers and the audience: audience members shared their memories of the music and openly lamented the disappearance of historic recordings. As one of the organizers of this event, I was repeatedly given the complicated task of explaining to would-be buyers of historic recordings how to go about finding expensive German reissues of but some of the music performed that weekend.

This year marks the 81st anniversary of the first commercial recording of a New England country musician. When Mellie Dunham of Norway, Maine stepped into the Victor recording studio on January 19, 1926 and started into the "Chorus Jig," it could hardly have been predicted that Dunham's recording would not legally pass into the public

domain for another 141 years. To put that in perspective, the American Civil War ended 142 years ago. The recordings Mellie Dunham made for Victor have not been reissued. In fact, all of the commercial sound recordings of New England country musicians made for major labels prior to WWII are currently commercially unavailable in the United States.

New England country music recordings made by major labels since WWII have fared little better. For nearly two decades in the middle of the 20th Century, a Rhode Island country band called Eddie Zack and His Dude Ranchers were arguably central New England's most well known performers of working-class music. The group – who still perform every weekend in East Greenwich, Rhode Island – began its professional career in 1938 and recorded nearly 50 sides for Decca and Columbia in the 1940s and '50s. The group's efforts to get their music re-released have been rebuffed and they have suffered from corporate bullying and intimidation in the matter. Though the music of the Hayloft Jamboree might seem irrelevant to the history and culture of country music broadly defined on a national or international scale, the music of Zack's group was an important part of the fabric of New England working class history and culture. The sustainability of regional culture is jeopardized and our history edited for us when sound recordings like these are removed from the public ear. Music owned virtually in perpetuity by large corporations whose primary concern is selling to an international market creates a situation in which corporate-owned recordings of limited – i.e. regional – commercial appeal are allowed to lapse and languish permanently in cold storage.

A lack of reissues has also silenced much of the country music from other regions with which the New England country music community has had a longstanding dynamic relationship – particularly the regions of the Upper Midwest, Mid-Atlantic, the West Virginia-Ohio-Pennsylvania tri-state area, and the Canadian Maritimes. Though historically, the New England country music community never looked to Nashville's Grand Ol' Opry as the “mother church” of country music prior to the 1960s, country musicians who have come up since that time in New England now look to Nashville country music as its historic and traditional “roots.” It is not merely coincidental that the

same country music that has remained commercially available over the years is the same music that is closely identified with corporate headquarters located in Nashville.

What historic recordings of New England country music there are to buy on CD are produced on European specialty labels that market their expensive box sets to libraries and collectors. Some of this old corporate-owned archival material has also seeped out domestically through the selling of bootlegs and the sharing of files. While this serves to alleviate some of the problem, it is not a satisfactory long-term solution and it produces a situation that is not good for American music or American business.

Under current copyright laws, owners of master recordings maintain these rights until 2067 – a period of time provided under the 1998 Sonny Bono Copyright Term Extension Act. Can regional culture withstand the removal of these recordings for another six decades? Again, looking at New England country music can provide some bleak glimpses of what the future holds. Generations of country musicians who have come up since the 1950s are aware of some of the names that came before them, but are entirely unfamiliar with what those groups sounded like. Ferreting out old recordings is both expensive and time consuming. Traveling to country music archives in Washington, D.C., North Carolina, and Tennessee is prohibitively expensive for most of the working-class members of the New England country music community, meaning that preservation of older recordings in geographically remote archives is not a solution.

Anthony Seeger has speculated that major labels will eventually make their entire catalogs commercially available as digital downloads.¹ The Rounder Records and Smithsonian Folkways digital archives offer this kind of model of making old recordings available to the public. According to Rounder founder Bill Nowlin, Rounder generally digitizes any out of print album that gets requested by consumers. Rounder's overhead for getting an old record ready for digital download is fairly minimal by record company standards – about \$300 – including a full-color booklet if the person wants a one-off CD. The cost to the consumer is roughly the same as for a current release. Smithsonian Folkways operates on a similar system.

But what makes Rounder different from the large multinational corporations who own the bulk of pre-WWII sound recordings is that Rounder can afford, in Bill Nowlin's words, to be "self-indulgent."² A large multinational corporation on the other hand, is geared towards a massive national and international market and is beholden to anonymous stockholders who – within the logical framework of international business – cannot operate in a self-indulgent manner. An interest of one is indulged by the Rounders despite the fact that it will take another 59 buyers before the company breaks even on the digitization process. Sony simply cannot operate that way. The 1931 Brunswick single of Hank Keene and his Connecticut Hill Billies' "The Run-Away Boy" is not likely to generate the kind of revenue that matters at a multinational corporation, so it is hard to believe that company time will be allotted to piecemeal digitization of such recordings, let alone the undertaking of a catalog-wide digitization effort. Such passive suppression of historic sound recordings is counter to the spirit of copyright law – it is impossible to spur creativity via copyright when the copyrighted material cannot be accessed at all.

Many of these historic recordings are stored in state and federally funded archives. Still others are stored in archives privately owned by universities and commercial organizations. Access by the general public to these archives is made difficult by issues of cost, transportation, distance, or credentials not deemed satisfactory by private standards. This makes it extremely difficult, if not impossible, for the working public to access aural history. The cultures that produced American Vernacular musics do not generally have access to libraries at large academic institutions.

Mothballing old recordings benefits nobody – the corporations, the artists, the regional and national cultures – and denying everyday people the right to hear the voices of their ancestors is undemocratic. Sound recordings are a vital part of the lifeblood of both the traditional and popular music communities. The inability of music communities to access their own recorded past cuts them off from the wellsprings of music and poses a threat to the sustainability of our most valued cultural expressions. All other issues surrounding access to historic recordings – such as the very real professional inconveniences

copyright law presents to scholars and archivists – are peripheral to the real problem, which was one of Democracy and the cultural well-being of our Nation.

I believe the NRPB should call for a mandate for copyright holders of un-reissued historic recordings to enforce their copyright by making historic recordings commercially available; in the event copyright holders do not reissue historic recordings within three years of this mandate, the copyright should be forfeited and the recordings in question will enter the public domain. It is of utmost importance that historic recordings are made satisfactorily available to and affordably accessed by America's working people.

References

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