

**From:** [REDACTED]  
**To:** [FN-OMB-IntellectualProperty](#)  
**Subject:** Re: Comments on the Joint Strategic Plan  
**Date:** Wednesday, March 24, 2010 4:44:46 PM

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Victoria Espinel  
Intellectual Property Enforcement Coordinator  
Office of Management and Budget  
Executive Office of the President  
Filed via email

Dear Ms. Espinel:

I commend you highly for your willingness to hear opinions from the public at large on the subject of intellectual property infringement.

You've been quoted as saying that it's your intention as Intellectual Property Enforcement Coordinator to "help protect the ideas and creativity of the American public."

I realize that intellectual property infringement covers a vast area. But as a collector of old recordings, I have to ask the following:

Speaking in terms of recordings made prior to 1960...  
Just what are we protecting these "ideas and creativity" from? Potential overexposure? In case the government hasn't noticed, a 2006 study by the Library of Congress found that 70% of American music recorded before 1965 was (at that time) not available in the United States. These recordings simply fell out of print and remained there.

That sounds to me like they're already fairly well protected.

What's really at stake here is the potential loss of money to the owners of the copyrighted material – not necessarily the creators of those ideas – should that material again be made accessible to the public.

Much of the copyrighted audio pre-dating 1960 is in the hands of the large record labels. (We're currently down to four major players in this arena.) Seldom do they find it financially viable to release much of the material from so long ago. When they do, the term "restored" is rarely warranted.

Take this intellectual property off the market and it becomes a hoarded, illegal substance. The copyright holders will desperately try to control their property, virtually shut down the restoration and re-issue industry, sling heavy-handed lawsuits at "illegal sharers", and become the enemies of the public. Actually, this is already taking place.

Currently:

- Copyright laws in the United States treat most sound recordings differently from all other intellectual property
- There are currently no public domain sound recordings under U.S. law
- Recordings made between the 1890s and 1972 will not enter the public domain until 2067

- U.S. laws place considerable restrictions on preservation and fair use
- The United States is the only country in the world with such extensive restrictions on sound recordings

In essence, these recordings are not just protected, they're locked away.

I'd like to point out that the Constitution (Article 1, Section 8, Clause 8) reads Congress shall have the power to:

...promote the progress of science...by securing for limited times to authors...the exclusive right to their respective writings...

This passage pertains to art, music, and recordings as well. Isn't it time Congress re-emphasize "for limited times" and reduce some of the restrictions on our recorded heritage?

The copyright holders should be encouraged to concentrate on more current, commercially viable material, and allow smaller independent companies, who devote the time and energy to restore older audio recordings properly, access to their stock piles of historic recordings. The big companies could become heroes, the entrepreneurs of smaller audio companies will flourish, and most importantly, the public will be able to acquire clear, listenable copies of recordings which truly deserve to be heard by all.

Otherwise, if the reigns of copyright continue to be tightened, the next few generations will have little if any exposure to one of the 20<sup>th</sup> Century's greatest gifts to humanity – a first-hand soundtrack.

Sincerely,  
Andy Moyer