

From: [REDACTED]
To: [FN-OMB-IntellectualProperty](#)
Subject: Intellectual property enforcement comments
Date: Sunday, March 21, 2010 5:15:22 PM

Dear Dr. Espinel,

As a fellow scholar, I wish to present you with some hopes I have for new standards of intellectual property enforcement, particularly as pertains to recordings. As a musicologist who teaches and frequently writes on American popular music, I have witnessed first hand the difficulties associated with current American copyright law. I currently have an article on the blues that is being held from publication, as the publisher is worried that my quotations of blues couplets may somehow violate copyright law. In my opinion, it does not - this seems to fall clearly within fair use guidelines - but this publisher, along with many other actors, has become so spooked by the possibility that they might be in violation that they are requiring me to attempt to track down the current copyright holder of blues recorded as early as 1915. Were these couplets (most of which predate the recordings that contain these phrases) ordinary, written materials, they would be in the public domain. However, because of the wording of early copyright laws pertaining to recordings, they will be protected until 2067, even though I have been unable to identify any copyright holder for a large portion of these items.

In the classroom, I have trouble securing needed teaching materials, as early recordings exist in such a gray area that textbook companies will only use examples with a clear copyright lineage, thus limiting the number of voices that are available; as minorities were often exploited and their copyrights signed over to corporate interests (most of which have long gone out of business), these are disproportionately the voices that are excluded. One attempt to make a range of music more accessible to students is through licensed databases like Naxos, which offer tens of thousands of recordings on a streaming basis. Once accessed, though, one soon discovers that huge portions of the database that are available to subscribers in Canada and Europe are denied to American users, because of the disproportionately long copyrights offered to American interests. As a result, large portions of the American musical heritage are being released on anthologies in Germany and other European countries, and no one related to the creation of the original artifact receives any benefit.

I hope that new copyright standards can be created that offer sufficient protection to newly created works, with some reasonable period allowed for exclusive profits (I'm an author, too!). I further hope that historical recordings without a current copyright holder that has some relationship to the originating artist (i.e., not a record company that inappropriately created a copyright for their own benefit) can be released into the public domain, and that standards of all sorts relating to recordings can be clarified to eliminate the fear and speculation that I can say with absolute authority is having a chilling effect on education and publication.

Thank you for your time.

Sincerely,

Roberta Freund Schwartz
Associate professor of Historical Musicology
University of Kansas