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Associate Register for Policy & International Affairs

Date: 02/28/2005

From: J. E. Schmidt

Comment:

I have what is probably one of the largest collections of theatre pipe organ LP (long-playing) recordings in existence. If ever there was a collection of "orphan works," this is it! This collection is particularly unique in that 98% of these records are in mint condition, having been played only a few times over the years on studio equipment.

Most of these albums were "private issues" and produced in small quantities. In many cases it is likely that only 500 to 1000 copies were originally pressed, and not a large number survive today.

For example, there is the 1958 stereo LP of the Wurlitzer pipe organ in the Old Minnesota Theatre which was located in the Twin Cities. It was demolished about a year after this recording was made and converted into a parking lot. The artist passed away many years ago, and if the master tape even still exists, where might it be and who holds ownership of the copyright today?

Another example are the "Cook Laboratories" stereo theatre organ recordings made in the early fifties, approx. 1954. Originally these were issued as "binaural" LPs, requiring a special pickup arm with two cartridges, as the left and right channels were in separate bands on each LP record. These were collectively reissued in 1973 as a box set of 6 LP records, Cook #105, which I have in pristine mint condition. But 1973 was 32 years ago... where are the master tapes today, and who holds the rights?

Then, there is Lani Records, album LS-1000, of John Demello at the organ of the Waikiki Theatre in Honolulu, circa 1965 or so. Few copies were sold, and I have one of only three copies known to still exist world-wide. This may be the rarest of them all. Going back earlier, I have a number of 16" transcriptions of organist Edwin Sawtelle at the instrument during the wartime 1940's period.

For purposes of preservation, I am in the process of converting these albums to digital; at the same time doing audio restoration, enhancement and clean-up where needed, since small ticks and pops occur even with pristine LPs carefully preserved and seldom played.

Fortunately I have very good equipment and the expertise with which to perform this work, although, alas, a Cedar Noise Reduction system, while desirable, is unaffordable. Still, people have told me they can hardly believe they're listening to what was vinyl originally.

Usually two albums fit easily on one CD, and I wish there was some way I could release them, but the danger of lawsuits makes it impossible to do so, and as a result it all has to remain locked up, the way things are today, and many of the younger theatre organ enthusiasts of today will never be able to hear these recordings.

A smaller number of albums were issued by major labels, but corporate executives being what they are, there is no interest in reissuing anything unless at least 50,000 copies can be sold. So, although these master tapes exist, all are locked up.

If a master tape is lost, whereabouts unknown or otherwise unavailable, the next best thing is to work with a mint condition LP, such as I have; and while I can produce a very good CD working from such a source; if, for example, I were to release for sale CD's of Gus Farney at the Organ Loft in Salt Lake City; I would be immediately sued by the legal department of Warner Bros. Records; even though the executives of same had no interest nor intention of reissuing these recordings themselves. And Gus Farney himself passed away decades ago.

But wait: it gets worse. The practical reality is this is NOT something out of which huge sums of dollars can be made. The demand is so limited that it is not feasible to order even a small CD pressing of only 500 copies per title because for all we know only 50 copies might be sold. As I see it, the only feasible way to distribute reissue CDs of most of these albums is on the Internet, and, perhaps in conjunction with the Organ Historical Society (OHS), if they were willing, and each CD would have to be "burned to order," or perhaps just five at a time to have a little limited stock on hand. It does happen that equipment for short-run custom burned CDs exists here, as well as the necessary infrastructure for order-processing, credit card payments and shipping.

Royalties are definitely possible, but there has to be a shield in place with revised copyright law, to prevent lawsuits in situations such as I have described with all the out-of-print theatre organ recordings. Without such protection in place: neither OHS, nor any other entity, nor I personally, could risk becoming involved. Just one lawsuit would instantly bankrupt and scuttle the whole project. Typically, an audio CD sells in the range of \$15-18. Since the actual cost of the "burn to order" CD will be about \$1.50, I suggest that \$5 could easily be set aside in an escrow fund of some kind, to be available if and when a rights-holder surfaces and demands compensation. \$5 is actually much higher than is normally paid as a royalty on a CD, even \$2.50 each if two albums are on the CD is higher. Remaining funds would constitute a small profit which would go towards offsetting equipment costs and [wishful thinking] perhaps a Cedar Noise Reduction system some day.

There need to be some requirements a purported rights holder coming forward has to meet -- such as, at minimum and most importantly, be able to supply the original master tape so that the best possible reissue CD may be produced, helping to preserve the work and making it available for present and future generations.

Lastly, here's another example of a [lost?] "orphan work" that might be of greater interest than theatre pipe organ records. While in high school, Senator John Kerry played bass guitar in a band, and they released an LP album. I believe that only 500 copies were pressed, not unusual in such cases, and I heard that one surviving copy sold on ebay for \$2000. Perhaps we could bring this "orphan work" project of the Copyright Office to the attention of Senator Kerry and I think that he might be supportive. I may contact him personally to discuss a CD reissue of the high-school rock band album. If the master tape is long lost, as it might be, then the best surviving LP would need to be used, as I have described earlier. At minimum, this would be of historical interest.

I would be happy to participate in a committee to help along the orphan work project, but if meetings have to be held in Washington I would need travel and per diem expenses in order to make the trip. Other than that, I'm a "dollar-a-year man." No charge!

To sum up, we have today marvelous computer-based resources with which to clean up and preserve digitally all of the recorded material of the past, and reissue these works on CD, but due to legal knots and the constant danger of lawsuits, there are massive quantities of recordings doomed to be forever locked up until they rot away. I am sure a 95% estimated majority of the artists in question, now long deceased, if they could speak would want their works to again become available for future generations. As has been said, it is financially impossible to locate the present holder of the rights for many works, and in the case of recordings to find the original master tapes. I have suggested that an escrow process to hold royalties

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against the possibility of a rights-holder surfacing and demanding payments, is the best way to deal with the problem so that "orphan works" may continue to be available.

Thank you for your time.

Sincerely yours,

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