I want to throw out a few names for you: Homer, Plato, Virgil, William Shakespeare, Ludwig van Beethoven, Emily Brontë, and as was mentioned yesterday, Samuel Clemens/Mark Twain. Name one thing they all have in common. They're all long dead great creators, whose work now belongs to the public. Now I want to throw out a few more names. John Philip Sousa, King Oliver, Bix Beiderbecke, Edvard Grieg, Charley Patton. These are all long dead great recording artists whose creations belongs to record companies who rarely, if ever release their recordings to the public, and whose recordings will remain in copyright for at least the next fifty-three years. In Grieg's case, all of his recordings will be in copyright in this country for a total of 164 years, even though they were made in France and are out of copyright there. Just as a basis for comparison, in the EU, they've been out of copyright since 1953, **1953**, over **sixty** years ago, longer than many of us here have been alive.

I've sat in the audience here for two days, and I've really been quite impressed. You clearly all represent your constituents very ably. I doubt I can match your facility with language or your command of the facts. But I did notice that there has been one viewpoint that has been sorely lacking from this discussion. Nobody has been representing the **public**. Congressman Nadler's a man I've long admired, and as a matter-of-fact, at one time used to be my representative. Yet, truthfully, I was disappointed by his speech yesterday. He talked about the **RESPECT** Act, in my view a shoddy piece of legislation that deals with only one small area of pre-1972 recordings, and that really only protects the rights holders, and not the necessarily the creators. He never mentioned the public domain. He should have. There's a reason it's called that.

Article I, Section 8, Clause 8 of the United States Constitution, empowers the United States Congress:

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

The earliest recordings currently in copyright date from 1890, and, assuming there are no further extensions, go out of copyright in 2067. That's some limited time.

Did you know that almost everything written before 1923 is now out of copyright, and in the public domain? Conversely, did you know that virtually everything recorded before 1923 is now still **in** copyright, and **not** in the public domain? A number of you have mentioned fairness and doing what's right. I fail to see what's fair and right about that discrepancy; that recordings made more than fifty years before most of us were born will go out of copyright after almost all of us here will be dead and gone. I mentioned Edvard Grieg before. He was born back in 1843. Assuming his descendants are still alive, the oldest surviving would be his great-great-great grandchildren.

Yesterday, Mr. Kohn made mention of the fact that you are representatives of your organizations and are being well paid for participating on this roundtable. For the record, I am being paid for being here today by no one. I've come here to speak for the public; the scholars, discographers, students, consumers, listeners and collectors who desire, but often cannot get access to these recordings. I speak for the archivists who cannot disseminate them, and technically can't even copy them to save their contents from permanent disintegration. And finally, I speak for the deceased artists themselves, whose voices are ironically being stifled by copyright laws that have the perverse effect of keeping their recordings from being rereleased or in some cases, even accessed.

Record companies are the gatekeepers of our cultural sonic heritage. They're in business to make money, as they should be, and they have concluded that recordings made before, say 1955, are for the most part not financially worth reissuing. From their perspective, given their potentially limited sales figures, they're right. That does not mean, however, that there is no audience for them.

Some of these historic recordings are available in Canada and in Europe, significantly more than are available here. Ironically, some are also available in the U. S., issued illegally by pirates. Let me tell you a story. A decade ago, a small record company in New York wanted to license some 1930s Philadelphia Orchestra recordings from BMG, now part of Sony. They tried to contact BMG's in-house attorneys, requesting a license that they wanted to pay for. BMG never responded. I asked one of the attorneys, why not. He explained to me that researching BMG's ownership would take some time, and that the amount of money that they would get from such a license wouldn't cover the cost of the person hours it would take to determine ownership, so it made more financial sense to simply ignore the request. So the small record label, receiving no response, issued the recordings anyway. When somebody does the right thing by breaking the law, that's a broken system.

I should point out that in many cases of early recordings, the record companies no longer even own copies of these important historical performances. In the ironies of ironies, when they **do** want to reissue an older recording, they often have had to turn to collectors to provide them with a recording that they still own in terms of copyright, but that they didn't see fit to preserve.

I'd like to cite some statistics. According to a definitive 2005 study conducted by Tim Brooks (who is here today, by the way) at the behest of the Library of Congress, only fourteen percent of recordings made in this country between 1890 and 1964 have been made available in terms of reissues by the copyright holders. Concerning those made before 1920, availability ranges between zero and six percent. Even though the record companies and even many individuals might disagree, the world did not begin with rock and roll. In these cases, the state of copyright law is benefiting no one: not the creators, the copyright holders nor the public. This is not in anyone's best interest.

Section 301(c) of the 1976 copyright act needs to be repealed in **full**, and not piecemeal simply to benefit organizations such as the RIAA. Recordings made before February 1, 1972 should be brought under Federal Copyright laws and protections. Ideally, in my view, the length of copyright terms for all recordings should match the EU's seventy years, and record companies should be required to "use it or lose it" for recordings over fifty years old. At the very least, pre-1972 copyright terms shouldn't be more than the ninety-five years that exist for recordings made after that date.

--Jon M. Samuels