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Copyright Law  
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Assignment #3

As I mentioned in class, copyright law is in need of what I will call a fragility clause. Music that was recorded one hundred years ago is still under copyright. Due to this copyright that will not expire until sometime in 2067, music that was recorded in the form of Edison's early cylinders is in danger of being lost forever because copyright law forbids it from being copied. Not to mention the machines that can play those cylinders will not be around forever and I'm sure that even today the machines are scarce and parts of them may be impossible to find. This problem exists today, let alone in another fifty-two years.

A study is being done by the Copyright Office so a plan can be created to cover the above mentioned sound recordings by copyright law but also preserve them for the long term while keeping the rights holders at peace.<sup>1</sup> In a report surrounding pre-1972 sound recordings, a chart is laid out to show what every existing audio format is made out of, when it was used, the content it holds, and most importantly, the risks and challenges that archives, museums and libraries face when it comes to digitizing said materials.<sup>2</sup> This report also notes that cylinders were the first form of commercial recordings and spoken word; even more a reason to preserve them. Cylinders were made out of "nitrocellulose celluloid with plaster, cardboard and other cores." It goes on to state that the "plaster core can expand through hydrolysis, making it difficult

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<sup>1</sup> <http://www.copyright.gov/docs/priorities.pdf>

<sup>2</sup> U.S. COPYRIGHT OFFICE, FEDERAL COPYRIGHT PROTECTION FOR PRE-1972 SOUND RECORDINGS (2011), *available at* <http://www.copyright.gov/docs/sound/pre-72-report.pdf>.

to mount the cylinder on the playback mandrel and can, in severe cases, cause the celluloid to break or split. The celluloid becomes more brittle with age.”<sup>3</sup>

The report also mentions that many record companies no longer have these old recordings such as cylinders. I think the law should be altered in a way that if the record company no longer has a physical copy of the original recording in safe keeping then they should have to release that said recording into the public domain. This way if an archive or other institution actually has taken the steps to acquire and take care of said recording then they should now have the right to preserve it, digitize it and make it accessible to the masses via online access.

The specific part of the copyright law that should be amended is Section 114.<sup>4</sup> The exclusive rights of the owner of the copyright<sup>5</sup> should be amended to include the specification I mentioned above; the rights holder, whether it is the individual who recorded the performance or even the heirs of that performer or the record company the performer recorded for must give up the recording into the public domain if they do not have physical possession of the original recording. That being said, if an archive or other institution does a diligent search and cannot find the people I just mentioned then they have the right to digitize it as well as streaming it any way possible in order to preserve said recording.

The problems caused by this particular area of the copyright law is that the law doesn't allow the people who care about pre-1972 sound recordings to take care of them in the appropriate time so they aren't lost forever.<sup>6</sup> The global culture is harmed under the current law because from now until 2067 when these recordings go into the public domain, the recordings and the playback

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<sup>3</sup> U.S. COPYRIGHT OFFICE, FEDERAL COPYRIGHT PROTECTION FOR PRE-1972 SOUND RECORDINGS (2011), available at <http://www.copyright.gov/docs/sound/pre-72-report.pdf>, pp. 57.

<sup>4</sup> <http://www.bitlaw.com/source/17usc/114.html>

<sup>5</sup> <https://www.law.cornell.edu/uscode/text/17/114>

<sup>6</sup> [http://www.copyright.gov/docs/next\\_great\\_copyright\\_act.pdf](http://www.copyright.gov/docs/next_great_copyright_act.pdf) pp. 18

devices that would have been used to digitize them could fade away with time. Generations of people will not be able to listen to and experience a significant portion of recorded aural history because of the lack of concern by the government and the rights holders that are being protected. The current copyright law does more harm than good. The reform I mentioned would solve this problem because it would throw many recordings into the public domain so the proper institutions can preserve them while there is still time left. Every archive and human being who is concerned about our culture would ally with me on this issue because of the reasons I just mentioned. The foes to my reform would be the government and the rights holders of these sound recordings because they want to squeeze every single cent out of the music they hold the rights too. The arguments that would support my foes' position is that they would be completely concerned with the "now" and not tomorrow. They only care about money. Most everyone these days is concerned with the "now."