

Iasa

International Association of Sound Archives
Association Internationale d'Archives Sonores
Internationale Vereinigung der Schallarchive

phonographic bulletin

secretarial: david g. lance c/o imperial war museum, london

no. 17/ april 1977

PHONOGRAPHIC BULLETIN

Journal of the International Association of Sound Archives IASA

Organe de l'Association Internationale des Archives sonores IASA

Beitsschrift der Internationalen Vereinigung der Schallarchive IASA

Editor: Dr. Rolf Schurmann, Foundation for Film and Science STM, Utrecht

Technical Editor: Dr. Dietrich Schuller, Phonogrammarchiv der Österreichischen Akademie der Wissenschaften, Wien

The PHONOGRAPHIC BULLETIN is published three times a year and is sent to all members of IASA. Applications for membership of IASA should be sent to the Secretary (see list of officers below). The annual dues are at the moment \$ 10.00 Canadian for individual members and \$ 25.00 Canadian for institutional members. Back copies of the PHONOGRAPHIC BULLETIN from 1971 are available at \$ 5.00 Canadian for each year's issue, including postage. Subscriptions to the current year's issues of the PHONOGRAPHIC BULLETIN are also available to non-members at a cost of \$ 10.00 Canadian.

Le journal de l'Association internationale d'archives sonores, le PHONOGRAPHIC BULLETIN, est publié trois fois l'an et distribué à tous les membres. Veuillez envoyer vos demandes d'adhésion au secrétaire dont vous trouverez, ci-dessous, les adresses. Les cotisations annuelles sont en ce moment de 10 dollars canadiens pour les membres individuels et de 25 dollars canadiens pour les membres institutionnels. Les numéros précédents (à partir de 1971) du PHONOGRAPHIC BULLETIN sont disponibles au coût de 5 dollars canadiens par année (frais de port inclus). Ceux qui ne sont pas membres de l'Association peuvent obtenir un abonnement au PHONOGRAPHIC BULLETIN pour l'année courante au coût de 10 dollars canadiens.

Das PHONOGRAPHIC BULLETIN erscheint dreimal pro Jahr und geht allen Mitgliedern der IASA zu. Aufnahmeanträge für die Mitgliedschaft in der IASA sollten an den Sekretär (Anschrift siehe unten) gerichtet werden. Der Jahresbeitrag beläuft sich z. Zt. auf 10 kanadische Dollar für Einzelmitglieder; korporative Mitglieder zahlen 25 kanadische Dollar pro Jahr. Ältere Hefte des Bulletins von 1971 an sind zum Preis von 5 kanadischen Dollar pro Jahrgang erhältlich, einschließlich Porto. Abonnement für Nicht-Mitglieder der IASA sind erhältlich zum Preis von 10 kanadischen Dollar pro Jahrgang.

THE EXECUTIVE BOARD OF THE INTERNATIONAL ASSOCIATION OF SOUND ARCHIVES IASA

President: Dr. Dietrich Schuller, Leiter des Phonogrammarchivs der Österreichischen Akademie der Wissenschaften, Liebiggasse 1, A-1010 Wien, Austria

Vice-Presidents: Ann Briegleb, Head of the Ethnomusicology Archives, Music Dept., UCLA, Los Angeles, California 90024, USA

Timothy Eckersley, 72 Westbourne Park Road, London W2, Great Britain

Prof. Dr. Claude Marcel-Dubois, chef de la Phonothèque et du Département d'Ethnomusicologie, AIFP, Musée National des Arts et Traditions populaires, 6 Route de Sabatini Gaudin, 75210 Paris, France

Secretary: David C. Lance, Reader in the Department of Sound Recording, Imperial War Museum, Lambeth Road, London SE1 0EW, Great Britain

Treasurer: Doug de Plater, Chef du Service des Archives Sonores, Archives publiques du Canada, 395 Wellington Street, K1A 0J3, Ottawa, Canada

Editor: Dr. Rolf Schurmann, Foundation for Film and Science STM, P.O. Box 1000, 3500 Utrecht, The Netherlands

© The International Association of Sound Archives IASA

No part of this issue may be reproduced in whole or in part by microfilm, microfiche or any other means without permission from the publisher.

EDITORIAL

1977, the Year of the Phonograph, has already given the occasion for many contributions in periodicals throughout the world about the role of sound recording in technical and cultural respects. IASA does not lag behind. One of the sessions programmed for the Annual Meeting in Mainz, 11 - 17 September 1977, will be dedicated to Edison's invention and the Phonographic Bulletin will be true to its name by the publication of several articles in relation to the significance and development of the "talking machine" during the first period of its existence. Dr. Peter-Hans Kylstra of Utrecht State University has written an article about the use of the Phonograph for scientific purposes which appears in this issue of the Bulletin as our first contribution in commemoration of Edison's machine, otherwise and more prosaically known as US Patent Office number 200, 521.

During the Bergen Annual Meeting 1976 "The Practice and Problems of Access to Sound Archives" was theme of one of the sessions. Discussion during that session led to the establishment of a Copyright Committee under the chairmanship of Robert Ternisien, which will give its first report during the forthcoming meeting in Mainz. The Executive Board of IASA has decided to publish the contributions to the Bergen session in the present issue of the Phonographic Bulletin because of the many interesting facts given in the papers and the valuable openings for further research and debate brought forward in some of them.

Although our Association has not established an official language (the English text of the Constitution is authoritative, but further arrangements have not been made) English is the language most frequently used during the Annual Meetings and in the Phonographic Bulletin. Our French and German colleagues will therefore be pleased that two articles in this issue appear in different versions. I would like to thank especially Frau Viktoria Ernst of the Phonogrammarchiv in Vienna for her German translation of the contribution by Prof. Dr. Claudie Marcel-Dubois.

Dr. Rolf Schuursma
Editor

PRELIMINARY PROGRAMME OF THE ANNUAL MEETING OF IASA

TOGETHER WITH THE INTERNATIONAL ASSOCIATION OF MUSIC LIBRARIES (IAML)

MAINZ, 11-17 September 1977

Sunday 11 September

11 - 13 IASA: Executive Board (members only).
afternoon IAML and IASA: Opening Session.

Monday 12 September

9 - 11 IASA: General Assembly Part I.
11 - 13 IASA: Technical Committee (members only).
IASA: Copyright Committee (members only).
12 - 12.30 Record Libraries Commission of IAML: Recorded music presentation to mark the Edison Centenary.
18 Reception in the Townhall of Mainz.

Tuesday 13 September

9 - 11 Record Libraries Commission of IAML: The literature on recordings (papers).
11 - 13 IASA: Sound Archives in the Federal Republic of Germany.
16 - 18 IASA: Ethnomusicological sound archives.
20 IASA: Social evening.

Wednesday 14 September

9 - 11 IASA: Edison Centenary celebration.
11 - 13 Record Libraries Commission/ IASA/Public Libraries Commission: joint session on preservation and storage of modern recordings.
afternoon Excursion.

Thursday 15 September

9 - 11 Radio Sound Archives Commission of IAML: Hundred years of recording.
11 - 13 Record Libraries Commission/IASA: joint session on preservation and storage of old recordings.
14 - 16 IASA: Open session with papers on various topics.
16 - 18 IASA: Executive Board (members only).
20 Concert in the Townhall of Mainz.

Friday 16 September

9 - 11 Record Libraries Commission of IAML: the literature on recordings (cont. from Tuesday).
11 - 12 Representatives of IAML Commissions and IASA: planning and coordinating activities for 1978.
13 - 15 IASA: General Assembly Part II.
15 - 17 IAML and IASA: Closing Session.
19 IAML and IASA: Farewell Dinner.

Saturday 17 September

IASA: Executive Board (members only).

7.30 - 22 Excursion to Heidelberg

1877-1977 the centenary of the phonograph

THE USE OF THE EARLY PHONOGRAPH IN PHONETIC RESEARCH

Dr. Peter H. Kylstra, Head of the University Museum of the State University in Utrecht

Jules Verne and the Phonograph.

In his novel of 1879, "Tribulations d'un Chinois en Chine" Jules Verne wrote: "Afterwards he opened the small box, took the strip of paper with the impressed dots and dashes, which just had reproduced the sound of the absent voice, from it and replaced it by a new piece of prepared paper".

Jules Verne's Dutch biographer, E. Franquinet, comments in 1964: "Another invention (of Jules Verne) was the perfected phonograph. One year before Jules Verne wrote this novel, Edison had invented a talking machine which was in an extremely primitive state. The sound was recorded on a wax cylinder and reproduced by a gigantic horn in a shrill and metallic way".

History shows that Jules Verne was far more right than his biographer some 85 years later. He described almost exactly the state of the art of the phonograph as it was known when he was writing his novel. The wax cylinder had to wait about nine years to come into use.

The invention

The invention of the phonograph was certainly not the result of the desire to make better musical boxes, as often is thought nowadays. The phonograph springs from telecommunication problems. The telegraph lines became overloaded in the sixties and seventies of the last century. Copper to make the wires was, as it is in our day, very expensive and many technicians and inventors were looking, as they do now, for cheaper solutions. These were found in the so-called multiplex telegraph, which made it possible to transmit several messages together along a single wire.

Apart from other solutions, Alexander Graham Bell and Elisha Gray tried to realize this by constructing multiple harmonic telegraph instruments. They sent the telegrams in Morse code as alternating currents of different frequencies. Each telegram had its own frequency. The several alternating currents were generated by a tuned iron reed which was kept in oscillation by an electromagnet switched by selfinterruption by the vibrating reed. At the receiving end of the line the different frequencies were selected by another set of electromagnetically driven receiving reeds which vibrated in synchronization with the transmitted frequencies. The harmonic telegraph together with his attempts to record the sounds of speech lead Alexander Graham Bell to the construction of the telephone. The harmonic telegraph was a forerunner of modern carrier telegraphy and telephony.

Whilst Bell and Gray sent several messages over the line at the same time Edison wanted to send them at an increased speed after each other. Therefore he constructed an instrument, which resembled an ordinary telegraph recorder. Instead of using the technique of his day by writing the Morse code in ink he impressed the dots and dashes with a steel point in paper tape as was done in the earlier recorders. By running the tape along a contact the impressions caused electrical signals which could be transmitted. This transmission, however, could be performed at a much higher speed than a telegraphist was able to handle with his key.

The Morse impressions in the tape running at high speed through the instrument caused a sound much like that of vowels. If fast running impressions in a paper tape could make sound, so might Edison have thought, it must be possible to let sound make impressions on paper. To achieve this, Edison already possessed a useful instrument. Being slightly deaf he had found a way to let his tactile sense take over the function of his ears to judge the amplitude of the telephone signal. He attached a needle to the centre of the diaphragm.

of his telephone so that he could feel the force of the vibrations. By replacing his sensitive skin with a fast moving strip of paper he preserved the sound vibrations of the telephone membrane as impressions in the paper.

Thus Jules Verne was well informed when writing his novel. He well may have read the note in Nature of November 29th, 1877: "The New York Times states that Mr. Edison, the inventor of many improvements in telegraphy, is hard at work in the endeavour to make the telephone record the sounds it transmits. His apparatus at present consists chiefly of a steel point attached to the disk of a telephone and pressing lightly on a strip of paper passed beneath the point at a uniform rate. The vibrations of the disk are thus recorded and can be translated. Mr. Edison has already achieved some success in this attempt but as yet finds difficulty with the more delicate vibrations. The intention suggests an ultimate possibility of recording a speech at a distance, verbatim, without the need of shorthand." Soon afterwards Edison changed the design of his sound-recorder. The telephone was replaced by a small horn covered on one side by a diaphragm carrying at its centre the usual steel pin. So it became possible to pick up the sound oscillations directly from the air. A sheet of tin foil wrapped round a cylinder took the place of the paper tape. This cylinder could be turned by rotating its spindle in which a screwthread was cut. This screwthread made the cylinder move from one end to the other during the rotation. So the point of the diaphragm dug a helical groove in the tin foil. The sound vibrations caused depth variations in this groove which in their turn, made the diaphragm of a second horn mounted opposite to the first one to vibrate correspondingly.

Earlier Sound Recorders

Edison was not the first to record sound. The famous Thomas Young amongst others published in 1809 his 'timekeeper', the first kymograph which opened the way to the recording of sound vibrations. Duhamel constructed in 1846 his 'vibroscope'. This was a small cylinder covered with smoked paper. The spindle of the cylinder, in which a screw-thread was also cut, was turned by a crank. In this way Duhamel recorded directly the vibrations of tuning forks and other oscillating bodies. Great fame was earned by the 'phonautograph', invented by the French typographer Leon Scott. In contrast to Duhamel, Scott was able to record sounds from the air. His phonautograph, which he constructed in 1854 looks much like an enlarged phonograph. A big horn

was closed with a membrane at the narrow end. A straw mounted on the membrane rested lightly on a drum covered with smoked paper. This drum was carried by a spindle in which a screwthread was cut and could be turned by a crank. Scientists of great fame used Scott's phonautograph for their acoustical studies. Franciscus Cornelis Donders was one of the first. He used the instrument for his phonetic experiments and was the first to attach the phonautograph to a tuning-fork in order to have a reference frequency. From the early sixties of the last century Donders made many recordings of speech sounds in the physiological laboratory of the University of Utrecht. Scientists of several countries came to him to see his experiments. One of these was Henry Sweet a famous English phoneticist who was the model for Henry Higgins in Shaw's famous play "Pygmalion". In the Utrecht University Museum a recording made by Donders in 1874 of Sweet's voice is preserved. At the same time as Donders recorded Sweet's voice Alexander Graham Bell made recordings of speech sounds with the phonautograph of Scott in Boston. He did so in the hope of obtaining tracings which he could use as examples of good pronunciation for his deaf pupils. He thought that if his pupils were able to make the same recording on the phonautograph as the example showed, they would have learned the correct pronunciation. He hoped in vain, however. It turned out to be impossible to obtain good recordings. The fidelity of the recordings was bad as the higher components of the speech sounds were missing. Alexander Graham Bell wondered why the ear could perceive frequencies which the phonautograph was unable to write down. Whatever the answer might be he thought he would find the best phonautograph receiver in the human ear. So he went to his friend Dr. Clarence Blake, a well known ear-specialist and asked his advice.

Blake offered Bell a complete auditory organ from a dead body to use for his experiments. Carefully Alexander Graham Bell glued a straw to one of the auricular ossicles, which turned out to give perfect recordings of the sounds received by the dead man's ear-drum. This result and his experience with the multiple harmonic telegraph led him finally to the construction of the telephone. So the world received the most used communication system from a man who tried every possibility to teach the deaf to speak.

Finally in Paris there was in 1877 an artist, well known in the circle of the Impressionists, who designed an instrument to record and reproduce sounds. Being without funds to make a working model of his idea or to have it

patented, he deposited his invention at the Académie des Sciences to keep it secret. This artist whose name was Charles Cros, and Leon Scott, the inventor of the phon-autograph, were two of those who opposed Edison's right to call himself the inventor of the phonograph. Even the name of the instrument was in dispute, for Abbé Lenoir baptized Cros' invention with the name "phonograph". He did so in an article on the subject, which he wrote for *La Semaine du Clergé* of October 10th 1877.

Disbelief

Though the recording of sound was practised long before Edison invented his phonograph, he was certainly the first who was able to reproduce it. The French physiologist, M. Bouillaud, however, did not want to believe in Edison's talking machine. He was sure that it all was the work of ventriloquists as he stated on September 30th during a session of the Académie des Sciences. His words caused much indignation and a number of scientific magazines informed their readers about Bouillaud's disbelief. Nature reports in its issue of October 10th 1878: "M. Bouillaud, the once celebrated medical practitioner, who is a member of the Paris Academy of Sciences, assailed M. du Moncel in the sitting of September 30, and asserted that the phonograph and microphone experiments must be the work of ventriloquists".

The Dutch magazine *Het Album der Natuur* quotes some of the crucial words spoken by Bouillaud: "When he was contradicted from all sides, he declared that he would... never accept that a horrible piece of metal could take the place of the noble sound organ which is present in our body"".

The suggestion that members of the Académie like Bouillaud should be dismissed can be read in the French magazine "*L'Electricité*".

The possibilities

The disbelief of Bouillaud was not shared by many people. There were some sceptics but certainly Edison wasn't amongst them. He had a strong faith in his invention, which can be learned from his article in the North American Review. Nature of May 30th 1878 quotes parts of it and begins with apparent astonishment as follows: "What a surprise is in store for the children next Christmas if Mr. Edison's expectations are realised. Dolls that can say "papa" and "mama", will be quite at discount and will bear much the same relation to the doll of the future that the anthro-

poid ape does to the man of to day, and the time will probably have come for some Darwinian toy-maker to write the history of Doll development, if, indeed, he does not extend his researches to the whole world of toys. We are promised dolls that can speak, sing, cry, laugh; musical-boxes that will grind out the voice and words of the human singer; locomotives and every other species of "animal and mechanical toy", that will give out their natural and characteristic sounds".

Somewhat further, however, the enthusiastic tale turns into a slightly gloomy one:

".....; that (the phonograph) may be the means of actually realising some of the wildest dreams and speculations of the "frenzied" poet and preacher, and creating a revolution in human intercourse only to be paralleled by the invention of printing, or even of speech itself. Indeed, at first sight it may seem a step backwards, as it is likely to lead to the abolition, to some extent, of writing and printing, and the substitution of the human voice as the main means of intercourse at a distance".

Edison saw a great future for the phonograph, as he foretells in this article.

Edison saw the most important use of his invention as a dictating machine: "The main utility of the phonograph, however, being for the purpose of letter-writing and other forms of dictation, the design is made with a view to its utility for that purpose". He illustrates this as follows: "The phonograph letters may be dictated at home or in the office of a friend, the presence of a stenographer not being required. The dictation may be as rapid as the thoughts can be formed, or the lips utter them. The recipient may listen to his letters being read at a rate of from 150 to 200 words per minute, and at the same time busy himself about other matters. Interjections, explanations, emphasis, exclamations, etc, may be thrown into such letters, ad libitum".

The reviewer of Edison's article says: "Then as to books there seems some chance that ere long the printer's, if not the publisher's occupation will be to a great extent gone and the present unwieldy form of communication between an author and his readers be abolished. What would one give to have the "Christmas Carol" bottled up for ever in Dickens's own voice to be turned out at pleasure? Books, as Mr. Edison truly says, would often be listened to where none are read and the possibilities of the instrument in this direction may be learned from the fact that a book of 40.000 words might be recorded on

a single metal plate ten inches square. We need not point out the uses to which the invention might be put for the preservation of the greatest efforts of our greatest orators, but when Mr. Edison speaks out of our thus collecting and preserving "the last words of the dying member of the family" and of great men, we feel as if he were approaching both the ludicrous and the shocking".

From his article in the North American Review it is known that Edison foretold the use of the phonograph for the teaching of elocution, the reproduction of music, clocks that announce the time in articulate speech, the preservation of languages, educational purposes and finally as a perfection of the telephone.

Edison realised one thing that we in our day tend to forget. That is the fact that no legal record lasts after making agreements by telephone. Edison hoped to overcome this problem by the use of his phonograph: "Lastly, and in quite another direction, the phonograph will perfect the telephone, and revolutionise present systems of telegraphy. That useful invention is now restricted in its field of operation by reason of the fact that it is a means of communication which leaves no record of its transactions, thus restricting its use to simple conversational chit-chat, and such unimportant details of business as are not considered of sufficient importance to record. Were this different, and our telephone conversation automatically recorded, we should find the reverse of the present status of the telephone. It would be expressly resorted to as a means of perfect record".

Edison's forecasts didn't give us any help. Even today we continue to make our most important decisions and promises by telephone, without keeping them on record to provide legal proof if such is needed later.

Reality

Edison's enthusiasm wasn't generally shared. His publication on the future of his invention, wasn't the first on the subject to be reviewed by 'Nature'. On January 3rd 1878, this well known magazine reviewed an article about the phonograph, which had appeared in the Scientific American of December 22nd 1877. Sir William Thomson, later Lord Kelvin, explained the phonograph to the Royal Society of Edinburgh, which was reported in Nature of February 7th 1878

"It was the most interesting mechanical and scientific invention they had heard of in this century. There could be no limit to its application. A man could speak a letter through the phonograph - it would be recorded on tinfoil, sent in an envelope through the post, and his friend, by applying the point of the phonograph to the tinfoil, could reproduce the words and tones uttered. In fact they could take down the singing of a Titians (had we one), which might be reproduced to a tone two hundred years hence".

On March 7th, the famous William H. Preece of the GPO^{*} reported on the phonograph to the Royal Society in London. He described two phonographs exhibited on the occasion made in accordance with "the published accounts of the apparatus and details received from the inventor, Mr. T.A. Edison" by Mr. Pidgeon and Mr. Strow. "Nature" of March 21st, reports Preece's Lecture: "If now this plate (the receiving diaphragm) be sung or spoken to the tinfoil will be intended in accordance with the vibrations communicated to the plate. The emitting plate having been provided with a resonator its point is now brought into the position initially occupied by the point of the receiving plate, and rotating the drum with the same velocity, fairly identical sounds are given out".

During this session of the Royal Society, where Mr. Spagnoletti with Mr. Sedley Taylor sang "God save the Queen" into the phonograph, Preece reported: "Prof. Graham Bell pointed out that the articulation of the instruments was very similar to what he had observed in the earlier forms of telephone, and he had no doubt, judging from his own experience of that instrument, that the phonograph will ere long be so adjusted as to articulate much more perfectly. He anticipated that the quality of the sound would be found to vary as the rate of rotation was altered, as well as the pitch, and this proved on experiment to be the case".

From this report it may be concluded that the phonograph at that moment was far behind the two-year-old telephone. The remark about the rate of rotation would very soon turn out to be of great importance for the theory of the speech sounds.

One week after Prof. Alfred M. Mayer had given a detailed report on the state of the art of the phonograph in Nature of April 11th, 1878, the famous phonetist Alexander John Ellis expressed his ideas about the fabulous instrument in the same magazine. Ellis, friend of Melville Bell and Henry Sweet, was far less

* General Post Office

enthusiastic about Edison's invention than many others: "The difference between the words produced from the phonograph and those spoken into it gave me the same feeling as the difference between a worn print and an early proof of an engraving. When the words were uttered loudly and slowly and repeated rather faster, it was easy to catch the sense and meaning, but I doubt whether unknown English words would be recognised and certainly unknown foreign words would present insuperable difficulties".

He ends his comment with the following words: "The invention is highly interesting, the effects at present produced are sometimes startling (as in cries, coughs, laughter, music), the philosophy of the process (taking a permanent impression of a very complex compound vibration, and using it as a mould to reproduce that vibration) is exceedingly attractive, but at present the instrument - at least that one which I saw, differing in many respects from the one described by Prof. Mayer - has not risen beyond a lecture illustration or a philosophical toy".

Science and the Phonograph

It could hardly be otherwise, or the scientists would have been attracted by the invention of the phonograph. Hadn't Ellis commented already, be it in a pessimistic way, on the talking machine? In his first comment he had written: "Hence I feel totally unable to speak positively as to the change of vowel quality by altering the rapidity of rotation and therefore pitch". But only three weeks later, on May 9th, he had to change his mind: "Since writing my former letter on the phonograph (Nature, vol. XVII. p. 485) I have had the advantage of seeing some of the work that Prof. Fleeming Jenkin is doing with his own instrument, which must, I think, be more sensitive than the one I examined. This work convinces me that the phonograph has already risen beyond the rank of lecture illustrations and philosophical toys, to which I assigned it in my last, and that it promises to lay some permanent foundations for the more accurate investigation of the nature of speech sounds".

What was the problem. Nothing less than the vowel theory of the well known Professor Hermann von Helmholtz and its validity. The new inventions of the telephone and the phonograph gave some scientists the tools with which to attack Von Helmholtz, while others used these instruments to prove the validity of his theory.

History of the Vowel Theory

Von Helmholtz was not the first to try to explain the acoustic base of speech sounds and vowels in particular. As long as it was attempted to teach the deaf and dumb to speak, there was a need to understand the acoustical basis of speech. Mostly the early elocutionists confined themselves to the description of the articulation. One of the most beautiful anatomical drawings and descriptions of the oral cavity in connection with speech and the pronunciation of the vowels are left to us by Leonardo da Vinci. Franciscus Mercurius van Helmont compared the opening of the mouth during the utterance of the different vowels with the notes on the scale, as he describes in his book: "Ware Natuurlike Hebreuse A.B.C." (The True and Natural Hebrew ABC). In this book he explains how to teach the deaf to speak. It is not clear whether his comparison with the notes on the tone scale was meant as an acoustical one. In this work, which was published in 1647, Van Helmont tried to prove that the tongue takes the form of the Hebrew characters during the articulation and pronunciation of the different speech sounds. Therefore he states that Hebrew is the divine language, which has been spoken since the Babylonian confusion of tongues.

Johan Conrad Amman, a physician in Amsterdam who taught deaf children published his experiences in 1692 when he was only 23 years old. In his book "Surdus Loquens" ("The Speaking Deaf") he proves that he is aware of the resemblance between the throat with the oral cavity and reed pipe.

In 1780, the Imperial Academy of Sciences in St. Petersburg offered a prize for the best essay on the subject of speech production

1. "Qualis sit natura et character sonorum litterarum vocalium a, e, i, o, u tam insigner inter se diversorum".
2. "Annon construi queant instrumenta ordini tuborum organicorum, sub termino vocis humanae noto, similia, queae litterarum vocalium a, e, i, o, u sonos exprimant".

The future winner of the prize had in other words not only determine the origins of the different timbres of the five vowels, but he had also to construct a machine which must be able to produce those vowels. There were, however, in fact two contests so that a prize could be won by the solution of either of the two problems.

On the 19th September 1780 C.G. Kratzenstein was honoured with a prize for his essay:

"Tentamen Coronatum de Voce" (Price-Essay on the Voice")

In this publication he described a talking machine, which turned out later to give poor results. Eleven years later Wolfgang von Kempelen constructed a much better talking machine. Both machines consisted of a vibrating reed blown by a current of air simulating the vocal cords and an adjustable resonating extension to perform the function of the throat and oral cavity.

One year after the contest of the Imperial Scientific Society of St. Petersburg Christophorus Fridericus Hellwag, a physician, wrote a thesis: "Dissertatio Inauguralis Physiologico Medica de Formatione Loquela" ("Inaugural Thesis on Medical Physiology of the formation of speech")

In this thesis he described his famous triangle of the vowels, which is still in use for the instruction of elocutionists. But (which is far less known) he gave an acoustical description of the vowels. By listening carefully to the whispered vowels he heard noises of a certain pitch which differed from one vowel to the other. He concluded that if the vowels are whispered in a certain sequence "then, in a marvellous way, the sequence of the whispered sounds will also agree with the sequence of the notes on the gamut..... If we make use of the whispered vowels in this way then we can even perform in a certain way the melody of a song , which is impossible to do with one single vowel". Hellwag means to say that it is possible to whisper a song by just changing our oral cavity as we do by pronouncing the different vowels. Here in the year 1781 we certainly stand at the cradle of modern vowel theory, which will be formulated some 80 years later.

By placing pipes above a vibrating reed R. Willis heard sounds which were remarkably like the vowel sounds. He heard the same phenomenon if he vibrated reeds tuned to certain pitches with the help of a spinning toothed wheel. He came to the conclusion that the vowels by comparison are characterised by a certain tone, which has a different pitch for each vowel. We could call this the single tone vowel theory as Fleeming Jenkin and Ewing actually did in 1878. Willis published his results in 1829.

Sir Charles Wheatstone explored the laws of the already long known principle of acoustical resonance with which he explained the talking machines of Kratzenstein and Von Kempelen as well as the phenomena heard by Willis. He made it clear that the sounds, which were so much like vowels,

were caused by an overtone of the vibrating reed which resonated in the pipe which was placed above it. To explain these facts Sir Charles himself constructed a talking machine. He demonstrated this artificial voice for the British Association in 1835. His comments on the work of Kratzenstein, Von Kempelen and Willis were published in 1837. Von Helmholz called Wheatstone the founder of the vowel theory.

Donders and Von Helmholtz

Without knowing about the experiments of Hellwag in 1781 Donders also listened to the whispered vowels. He too heard a characteristic pitch in them. He wrote down the pitches heard in the different vowels in their musical notation and sent them to the Viennese physiologist and phonetist Ernest Wilhelm Brücke. His letter was written on April 2nd 1857 and published a year later.

Von Helmholtz studied the acoustical properties of the vowels at the same period as Donders. He stated in his famous book "Die Lehre von den Tonempfindungen" (By A.J. Ellis translated as "On the Sensations of Tone"):

that Donders was the first to explain the specific notes which can be heard in the whispered vowels by the resonating properties of the throat- and oral cavities: "Die That-sache, dass die Mündhöhle bei verschiedenen Vocalen auf verschiedene Tonhöhen abgestimmt sei, ist zuerst von Donders aufgefunden worden, und zwar nicht mit Hülfe von Stimmgabeln, sondern mittels des Geräusches, welches beim Flüstern der Luftstrom im Munde hervorbringt".

("The fact that the cavity of the mouth for different vowels is tuned to different pitches was first discovered by Donders, not with the help of tuning forks, but by the whistling noise produced in the mouth by whispering" (translation by A.J. Ellis).)

Von Helmholtz determined the pitches on which the throat- and oral cavities resonate with the help of tuning forks which he placed in front of the mouth. These pitches were more or less the same as those which Donders found by listening to the whispered vowels. He even went so far as to make artificial vowels by combining the sounds of a number of tuning forks. So he came to the conclusion that the vowels are determined by one or two characteristic tones, the pitch of which depends on the tuning of the throat- and oral cavities. These tones are partials of the vocal sound. Only the pitch of these characteristic tones is of importance not their frequency relation to the fundamental of the

vocal sound nor their mutual phase relation. So the pitches of the characteristic tones in the vowels of men and women are about the same, though their voices may differ more than one octave.

This theory went into history as Von Helmholtz's theory of the vowel sounds. It is, with minor alterations still generally accepted in our day. In 1894, Ludimar Hermann gave the name "Formants" to the characteristic tones of the vowels.

The Phonograph and the theory of Helmholtz
The arrival of the telephone and the phonograph offered instruments to the scientists either to prove or to reject Von Helmholtz's theory of the vowel sounds. Emile Du Bois Reymond attempted to prove that Von Helmholtz was right by stating that the timbre of the vowel sounds, and with that their identity, is independent of the phase relations of the characteristic tones and other components of these sounds. Assuming that the phases of all components of a sound are shifted 90° by induction he thought that the telephone must change the phase relations of the vowel sounds as well. As the vowels are unchanged by the telephone, Du Bois Reymond found that this instrument proved the correctness of the great master's theory. Shortly after Du Bois Reymond's lecture on this subject for the Physiological Society in Berlin on November 30th 1877 and its publication on December 8th, his disciple Ludimar Hermann, attacked his teacher. Hermann showed that if the phase of an electrical oscillation is shifted by the differentiating action of the induction, the amplitudes of the components of the sound have to change as well. So if the phases are shifted by the telephone the amplitudes of the characteristic tones of the vowel sounds have to change also. If such is the case, the identity of the vowels is lost. That is, however, certainly not true; the vowels are not changed by the telephone. This brought Hermann to the conclusion that either there is no phase shift, which meant that Du Bois Reymond was wrong, or the phase is shifted indeed by the telephone, and with it the amplitudes of the characteristic tones and other components, which meant that Von Helmholtz's theory was wrong.

In a series of experiments Hermann showed that in experimental conditions there is no 90° phase shift and the diaphragm's of the transmitting as well as the receiving telephone vibrate in the same way, the amplitude of the latter being, however, smaller than that of the former. This meant

that Du Bois Reymond didn't prove anything about the vowel theory of Von Helmholtz.

Some months later Von Helmholtz as well as H. Fr. Weber showed that Du Bois Reymond and Hermann also, went astray by omitting the effects of the telephone coil's self-induction.

Only three months after the attacks on the telephone the phonograph was placed in position to assail the vowel theory. The first attack came from Fleeming Jenkin and J.A. Ewing in Edinburgh. They published their experimental results in Nature, March 14th 1878, under the title: "Helmholtz's vowel theory and the phonograph" and wrote: "The following experiments with the phonograph are of interest as throwing light on the nature of vowel sounds:- Let a set of vowel sounds, as A, E, I, O, U (pronounced in Italian fashion) be spoken to the phonograph in any pitch, and with the barrel of the instrument turned at a definite rate. Then let the phonograph be made to speak them, first at the same rate, and then at a much higher or lower speed. The pitch is, of course, altered, but the vowel sounds retain their quality when the barrel of the phonograph is turned at very different rates. We have made this experiment at speeds varying from about three to one, and we can detect no alteration in the quality of the sounds. According to Helmholtz the characteristic quality of each vowel is given by the prominence of a constituent note or notes of definite or approximately definite absolute pitch in the sounds uttered. Now obviously the absolute pitches of the vowel-sounds in the above experiment were all altered in the same proportion so that the absolute pitch of the prominent notes varied greatly; but yet the vowel quality was unchanged. This experiment, therefore, appears to give results in contradiction of Helmholtz's theory as we understand it".

This indeed was a severe blow to Von Helmholtz's theory. If indeed the vowels can be recognised when the phonograph is turned at very different speeds there must be something wrong with the theory of the vowel sounds. All pitches change and if a vowel keeps its quality it can't be determined by certain characteristic tones with a rather fixed pitch. But were the vowels really unchanged, as the authors thought they heard? It is very difficult to judge this, with the primitive instrument they worked with.

If Fleeming Jenkin and Ewing listened to texts they probably had seen before and if they did so repeatedly in order to get a better judg-

ment, they indeed might very well have imagined that they heard certain vowels.

After a fortnight, Fleeming Jenkin and Ewing published their discovery that as they reversed the direction of the recording drum's rotation the vowels as well as the consonants were unchanged.

Not every one believed in the results of the experiments of Fleeming Jenkin and Ewing. In Nature, May 23, 1878, other sounds were reported from Boston. These came from Chas R. Cross, who worked with the ear-specialist Clarence Blake, the man who gave the ear of a dead body to Alexander Graham Bell. A man of great authority in this field. He performed the same experiments and was well aware that he would hear the vowels change if he changed the phonograph's speed of rotation: "Several other experiments were tried in the short time during which the instrument was at our service, all of which were strikingly confirmatory of Helmholtz's theory".

On June 13th 1878, Fleeming Jenkin and Ewing reacted to the article by Cross. They didn't believe much in the results of Clarence Blake: "That no marked change is produced in the relative values of the vowels is confirmed by the fact that neither in public nor private exhibitions do the hearers of sentences alternately run slow and fast suggest that the vowels have changed with a change of speed. This alone would be a sufficient proof that 'oh' does not change into 'ee', as we understand Mr. Cross to say,...."

Yet this disbelief seems not to have been too strong, for Fleeming Jenkin and Ewing can be shown to have started a profound study of the vowel theory. They studied not only the work of Von Helmholtz from his book but also read the publications of Donders. This must have been rather difficult for they had to study these in Dutch. It seems, however, that they encountered more difficulties with the ideas of Von Helmholtz and the texts in which these are expressed even though they could relish Von Helmholtz's thoughts in their own language: "...., but it is not a little difficult to ascertain what Prof. Helmholtz's latest theory is. This difficulty is indeed admitted by his translator, Mr. A.J. Ellis". Today, what these authors wrote 99 years ago, can only be confirmed. One has to read the chapter about the vowels in "Die Lehre von den Tonempfindungen" very carefully indeed to get some idea of Von

Helmholtz's theory of the vowel sounds. This theory is buried under a great many words. The expression of the "characteristic tone" is overshadowed by his description of how he listened to this tone through his different resonators during the utterance of the vowels. It takes 22 pages to read before Von Helmholtz states that he coined a theory.

Again Donders and Von Helmholtz

Perhaps Fleeming Jenkin and Ewing thought along the same lines: "Indeed we fail to find in the "Tonempfindungen" any very complete vowel theory, but we think that the following passage, taken from Donders' pamphlet "De Physiologie der Spraakklanken, 1870" expresses very clearly a doctrine which is very generally looked upon as that of Helmholtz. Donders says (if our translation from the Dutch be correct):-"Vowels spoken loudly are sounds of a determinate timbre maintained unaltered, depending on the form of the mouth cavity and of the mouth aperture even without the accompanying 'whish' characterised by strong, comparatively low, upper tones not occurring in a definite order relatively to the prime tone, but for each vowel of an approximately constant pitch""." "We understand Donders to believe that on whatever part of the scale a vowel be spoken the pitch or pitches of maximum resonance of the cavity are constant for a given vowel, and that indeed the form itself is constant. This may be called the constant cavity theory, and is taught by Mr. Ellis as the doctrine of Helmholtz".

Fleeming Jenkin and Ewing gave indeed a correct translation of the Dutch in quoting section 17 in their own language. In Dutch Donders wrote: "Zeventien klinkers, luid gesproken, zijn klanken van een bepaald, onveranderd aangehouden timbre, afhankelijk van den vorm van het mondkaanaal en van de mondopening, en, ook zonder bijkomend geruisch, gekarakteriseerd door krachtige, betrekkelijk lage boventonen, niet van een bepaalde orde in betrekking tot den grondtoon, maar voor iederen klinker van eene nagenoeg absolute toonsoogte".)

So the authors came to conclude that: "We fail to find that Helmholtz himself has stated this doctrine definitely in all rigidity, although he accepts the results of Donders' experiments, and has himself confirmed and amplified...., but when we examine the one or two more general statements made by Helmholtz we find room for doubt, both as to his meaning and as to the truth or completeness of the conclusion". To find the truth for themselves, Fleeming Jenkin and Ewing performed a beautiful series of experiments with the phonograph. With a delicate system of levers connected to the reproducing diaphragm of the phonograph they were able to enlarge the movements of the stylus 400 times. The amplified vibrations were recorded in ink on a sheet of paper laid around a rotating drum with a frictionless recording pen much like the siphon recorder which Sir William Thomson developed for telegraphic use. This siphonrecorder was especially designed to record telegraph signals transmitted via submarine cables.

Recordings of numerous vowels were analysed by the authors with the method of Fourier. They published their results in Nature of July 25th, August 8th and 22nd, 1878. Their Fourier analysis brought them to the final conclusion: "It is evident that Willis and Wheatstone were right in considering that the vowel quality was given by a particular resonator, and that the pitch of maximum resonance of the resonator was an important element in determining the vowel character of the sounds produced. Willis vowels were not thoroughly recognisable because the form and material of his resonator were not adapted to include the second element of reinforcement. Further, our experiments agree with the observation of Donders that there is a pitch of maximum resonance in human mouth cavities for the vowel o, although, as we have said above, we are disposed to consider the o cavity as not quite constant. We fail to distinguish any such characteristic tone in the case of u, and we observe that it is fixed by Helmholtz only with considerable difficulty. Our experiments entirely confirm Helmholtz's statement that vowel sounds are made up of harmonic partial tones, and the groups of partials, so far as he gives them, for the vowels we have investigated agree fairly well with our results. Since these experiments were brought to a close our attention has been directed to a paper by Felix Auerbach (Pogg. Ann. Ergänzung, VIII.2), containing an account of experiments on vowel sounds made by him in Prof.

Triangle of

Helmholtz's laboratory. By the aid of resonators applied to the ear he made numerical estimates of the strength of the several partial tones when vowels were sung on various notes. He was led, as we have been, to the conclusion that the relative partials were an important factor in the results as well as the absolute pitch, but we cannot say that our numbers agree with his estimates or support the deductions which he has drawn from them".

Fleeming Jenkin and Ewing were the first to use the phonograph as a scientific tool. They worked on the theory of the vowel sounds. But whose is the theory? It grew out of the experiments of a long line of scientists. To whom is to be given the honour of having his name attached to it?

From Holland, Fleeming Jenkin and Ewing might have been asked who it could have been. Perhaps they would have answered "Donders"; he placed the characteristic tones of the vowel sounds in their proper place on the gamut; he coined the theory in eight lines.

Silence and after

After this, a deep silence fell over the phonograph. It wasn't developed into a telephone repeater, as Edison foretold, nor did it replace musical boxes or books. Too many shortcomings of the beautiful invention as it was at that time made all these castles in the air fall apart on earth. Edison had no time to remove these shortcomings. He wanted to bring light to the night. Therefore he was too busy with the invention of the electric light bulb. The phonograph had to wait for about ten years. But when it made its come back with its wax cylinder instead of tin foil and powered by a spring or electricity to replace the musical box in drawingrooms and restaurants and started to take the place of stenographers, it again came to the assistance of the scientists. In 1889, unaware of each other, Ludimar Hermann and Jan Daniël Boeke, the former in Königsberg and the latter in Utrecht, used the phonograph for their phonetic experiments. It didn't take long before they met each other to exchange their experiences. Hermann recorded the vibrations photographically after optical enlargement with a mirror attached to the diaphragm. Boeke measured the groove with the aid of an especially designed microscope and draw it by hand on paper. Both determined the pitch of the characteristic tone, which Hermann called the "formants" with the Fourier analysis. The phonograph and the microscope designed by Boeke the wax cylinders which preserve the vowels he analysed and all his calcu-

lations are kept in the Utrecht University Museum where everyone who is interested will be warmly welcomed.

UNESCO RESOLUTION ABOUT
ACCESS TO THE ARCHIVES OF PHONOGrams
11 November 1976

By courtesy of Mr. Pekka Gronow of the Finnish Institute of Recorded Sound the Editor received the text of a draft resolution submitted to the Nineteenth Session of the General Conference of UNESCO by Denmark, Finland, Norway and Sweden. The text was as follows.

"In international co-operation in the sphere of cultural development increased attention has been paid lately to the question of massproduced culture as well as to the mechanisms and effects of the so-called cultural industry on national cultures. This question is also connected with Unesco's activities in respect of the impact of transnational corporations in the Organization's fields of activity. These problems are particularly relevant for the culture of smaller countries in an era when an ever increasing part of the supply of cultural materials is being taken over by international cultural industries.

One aspect of the questions related to cultural industries are the problems in the field of recorded music. The main part of the production of recorded music has since the early days of phonographic recording been dominated by a limited number of big transnational corporations. These corporations made already at the beginning of this century recordings of performances in many countries, which are of great national and also international cultural value and which constitute an important part of the history of music of this century particularly in smaller countries. However, some of these recordings are not available anymore and the matrices which still exist are in the archives of the recording companies and have not been properly registered or identified. They have

neither, in most cases, been put at the disposal of researchers. In order to rectify this situation Unesco should study the possibilities of making available both for national cultural and for research purposes the valuable historical sound recordings, which are in the possession of the record companies. In this connexion it would be particularly important to gain access to the recordings made before the Second World War. At a long range, efforts should be made to make the historical archives of the record companies as a whole available to musicians and researchers in the same way as literary material is already available. The same situation exists also in respect of cinema classics.

In view of the above it is proposed that:

- a) The Director-General is invited to make preparations to include in the programme for 1979-1980 a project related to the problems of the interaction of national cultures and industrially produced international culture.
- b) As a part and as one of the first steps of the above-mentioned project the Director-General is also invited to initiate a study on "Access to the Archives of Phonograms"".

The General Conference passed the following resolution:

"The General Conference invites the Director-General to make preparations to include in the programme for 1979-1980 a project related to the problems of the interaction of national cultures and industrially produced international culture, including a study on "access to the archives of phonograms"".

the practice and problems of access to sound archives

papers read during the annual meeting of iasa in bergen, august 1977

HISTORY OF COPYRIGHT

Robèrt Ternisien, Radio Canada, Montreal

To talk about copyright to the members of the International Association of Sound Archives, I thought it would be interesting to step back in time and make a rapid survey of the evolution and development of copyright throughout the ages and see the broad outline which leads us to the concept of copyright as it is known today. I referred to a study written by Marie-Claude Dock, Chief of the International Copyright Information Center of UNESCO, entitled: "The Origin and Development of the Literary Property Concept", to quote a few parts connected with this evolution. Thus, it would seem that since antiquity this idea of literary property was established and that even the primitive peoples had some notion of literary property, as an application of the principle: property is work. Among an Asiatic tribe, driven back into the Philippine hinterland mountains, (the Negritos), only the author of a song is entitled to sing it, and the author of a poem to recite it. Among Bushmen of South Africa, nobody may handle a lithic painting as long as its author or his family are known and, as early as Greek antiquity, we find certain facts which do seem to prove that Attic laws were not entirely powerless in repressing literary piracy

Copyright in antiquity

Aristophanes the grammarian, sitting one day on the jury of the literary contest instituted in Alexandria to honor Apollo and the muses, cast his vote in favour of the competitor that all the other judges were agreed to take as the weakest. Asked to explain the reasons for his judgment, Aristophanes demonstrated that the other contributions were but slavish copies of existing works. The makers were convicted of stealing by the Areopagus and expelled from the city.

During Roman times, many writings of Latin authors enable us to propound with sufficient

certainty not only that authors derived a financial benefit from their works, but also that the latter were respected as such.

Cicero lets us presume that agreements on publication of his works were concluded between himself and his publisher. Evidence from Seneca who writes: "We say that the books belong to Cicero; Dorus, the bookseller claims to own the same books, and truth is on both sides. The one claims them as their author, the other as the buyer, and it is but fair to say that they belong to both. Indeed they belong to both but not in the same way".

After a study of the author's legal situation in Roman antiquity, Mr. Pouillet's notion of intellectual property is the following: "Copyright has always existed, but it did not enter from the very start into positive legislation". This right existed in abstracto manifesting itself, assuming so to speak tangible form, in the relationship between authors and bibliopolies and games organizers; social needs, however, had not yet imperative introduced it in the realm of law. This situation remained unchanged during the Middle Ages in Europe, for Barbarian invasions drove the lay world away from intellectual speculation. Men of letters sought refuge in the meditative silence of monasteries until the XIIth century, when began an intellectual renaissance among laymen.

Between that period and the XVIIIth century, authors were protected according to the principle of privileges granted to publishers booksellers, printers, and afterwards by the system of dedications which often brought back to the authors important sums of money. Ideas changed radically in the XVIIIth century. For a long time absorbed in the principle of privileges, copyright was at last separated from them, so that, by the end of that period and during the first decade of the following century, in many countries, legal principles recognize it and general laws on intellectual property sanction it.

The first copyright laws

The first law on copyright and literary property goes back to April 10, 1710, to England. It is known as Queen Ann's law.

In France, we have to wait till the revolution of 1789 is over to find a first text adopted by the Assembly of January 1791 and modified in 1792 and 1793. The authors of this law do not hesitate to use the term "property" in order to define an author's right in his work. Meanwhile, not only does the text recognize the author's right, which alone was a notable progress, but it takes a stand on the nature of that right and sanctions it by several measures (financial compensation, deposit formalities, etc.). Whatever their brevity and deficiencies, these two laws remained until 1957 the charter of performance and publication right. Their interpretation was a reply to problems raised by inventions which introduced new ways for disseminating intellectual works. In Germany, it is only as late as November 9, 1837, that the first Federal law was enacted, although a certain protection was introduced in the Prussian Civil Code of 1794, quoting "A Saxon ordinance of February 27, 1686, which would have explicitly recognized the author's right while protecting the books against piracy, the publisher of which had acquired the property from the writer".

In Spain, under Charles the Third, in 1762, a law was legalizing the right of the author while stipulating that the latter's heirs will inherit it.

In the United States, the Constitution of 1787 empowers Congress "to promote the Progress of Science and useful Arts, by securing for limited times to Authors and Inventors the exclusive right of their respective Writings and Discoveries". The first Federal law to protect books, maps and plans during a period of fourteen years, renewable if the author is still alive, was promulgated in 1779 and we read in a preamble to the law that "there being no property more peculiarly a man's own than that which is produced by the labour of his mind".

In Russia the first law on copyright dates from January 1830, and it concerned only literary works; musical compositions were protected later by a law of January 1845.

The natural origin of copyright was so

obvious that, when the political, social, economic and cultural context enabled it to pass from the virtual to the real state, nobody was surprised nor thought of discussing its legitimate and well founded character. A protection was granted by most of these legislations to the author in his lifetime and a period extending to 12, 14 or 25 years after his death. It is the French law of July 18, 1886, which, by extending the protection to fifty years after the death of the author, constituted a considerable step forward in the evolution of copyright, a precedent which in time was followed by many other countries.

The Berne Convention, 1886

Before the existence of the Berne Convention of September 9, 1886, the protection of foreign works was ensured by bilateral treaties existing between the concerned states. The idea of an international convention was launched after a Congress of the International Literary Association held in Rome in 1882. This association itself was founded on the initiative of the Société des Gens de Lettres de France, under the chairmanship of Victor Hugo. A diplomatic conference convened by the Swiss Federal Council was held in Berne in September 1884 to be continued in September 1885 and 1886. This diplomatic conference completed its work by adopting an "International Convention for the protection of literary and artistic works" consisting of twenty-one articles, completed by an additional article and a final protocol. The Convention came into force on December 7, 1887, after the exchange of ratification among all the states signatories. The German, Italian, Swiss and Belgian laws drafted and published before the Berne Union considerably influenced the structure itself of the Berne Convention.

This Berne International Convention had to evolve during the years and the first partial revision, that of Paris, 1896, brought no change to its basic structure but set out the condition for protection in the sense that the work had to be published for the first time in a country of the Union, and another modification dealing with the right translation (a protection similar to the general term of protection of the work, on condition, however, that the translation would be done during a term of ten years from the first original publication).

The Berlin Diplomatic Conference of November 1908 brought a second modification which deeply altered and remodelled the original

Berne Act modified in Paris. Two important changes: 1) suppression of all registration procedures; 2) rights are independent of the country of origin of the work.

The categories of protected works were extended and defined and finally the fifty-years term of protection post mortem auctoris was confirmed. Thus, at the end of the First World War, three great countries were not party to the convention of the Union of Berne: the United States of America, Russia and the Austro-Hungarian Empire, soon falling apart. In the United States, the law of March 4, 1909, confirmed its fundamental divergences with the system of the Union but nevertheless constituted a remarkable step towards broader protection of works. In Russia, the new Communist regime did not admit any right of intellectual property.

The additional Protocol of 1914 allowed the possibility of adopting restrictive measures with regard to a country outside the Union. This was claimed among others by Great Britain to protect Canada and Australia having difficulties to cope with the United States.

The fourth revision held in Rome in 1928 gives a final recognition of the moral right and the exclusive right of the author to authorize the public performance of his work by radiocommunication and the institution of compulsory licences leaving to each country member of the Union the responsibility for the regulation of this right.

After the Second World War

The following revision which should have been convened at Brussels in 1935 was postponed first until 1936, then sine die at a later date and finally it took place after the Second World War in June 1948. The numerous modifications and precisions added to the Act revised in Rome in 1928 drove the original Berne Convention and all its previous revisions to a ceiling erected on solid foundation where we can consider future needs while remaining faithful to tradition. This revision and the wishes expressed opened the doors to the realization of two new international conventions:

- 1) The Universal Copyright Convention of Geneva in 1952.
- 2) The Convention for the protection of the artist performers and producers of phonograms and broadcasting organizations.

The last revision of the Berne Convention goes back to a conference held in 1967 in Stockholm during which particular measures were included in a Protocol forming an integral part of the Act in favour of developing countries which allowed them to depart during a certain time from the conventional common law. But once the developed countries had appended their signature, they refused to ratify it for they considered that the sacrifices demanded of them went beyond the means, which led under the United States influence to a last revision in Paris in 1971 held simultaneously with the revision of the Universal Convention signed in Geneva in 1952 and which had for goal the protection of the labours of the mind under an aspect more liberal than in the Berne Union. Here, the protection is given to the citizens of a state, provided certain formalities are carried out, during a period of 25 years starting either from the date of first publication or from the author's death, and paragraph 4-A states that: "No Contracting State shall be obliged to grant protection to a work for a period longer than that fixed for the class of works to which the work in question belongs, in the case of unpublished works by the law of the Contracting State of which the author is a citizen, and in the case of published works by the law of the Contracting State in which the work has been first published".

In general, the Universal Convention is less compulsory than that of the Berne Union even with all its restrictive possibilities, which allows the emerging countries an easier adhesion while giving to the latter great facilities for translations, reproductions as well as the possibility to obtain compulsory licences, these compulsory licences applying only to literary works. Phonographic recordings, cinematographic works and television programs seem to be excluded from it, not being mentioned in article 4. However, the following article was given a certain flexibility under certain particular conditions. In short, in both conventions, the fundamental rights of the authors have been taken care of and recognized while allowing the user the possibility to make the best use of them and to give the labours of the mind the greatest possible transmission in view of a better international understanding. Actually, 63 countries have ratified the Universal Convention while 63 have ratified the Berne Union.

The Rome Convention, 1961

The objective of the Rome Convention of 1961 was the protection of the performers, produ-

cers of phonograms and broadcasting organizations. Since 1928, during the revision of the Berne Union, wishes were expressed to obtain this type of protection. A new attempt was tried in 1948 and, following this conference, a committee of experts was formed at the suggestion of the Berne Bureau with the participation of the International Labour Office and UNESCO and it is only in 1956, after the rejection of many projects, that begins the last phase which results in the final draft of the Rome Convention of 1961 for the protection of neighbouring rights. The amplitude of this convention which tries to protect different interests did not create the expected enthusiasm and only 15 countries have ratified this Convention.

Because of the countries which were not particularly interested in giving protection to the three groups which the Rome Convention tried to protect the interests and facing the lack of enthusiasm created by this Rome Convention, a new convention was written to ensure protection to the producers of phonograms before the existing international piracy which brought considerable damage to producers of phonograms as well as to the performers and authors who could not collect, no need to say, their royalties from the piracy records produced illegally. This Convention for the protection of producers of phonograms was enacted in October 1971 at Geneva and came into effect in April 1973.

Another convention for the protection of broadcasting organizations assuring the protection of transmissions by satellites, written after four years of intensive study by experts, came into being in May 1974.

Even if all these International Conventions tried to give a uniform protection on an identical basis to authors of all the countries which adhered to them, we have to remember that, according to the articles included in these conventions, it is the national law of the country where the protection is requested which insures this protection.

Before I end this short exposé and general outline of the History of Copyright, I want to express the wish, in order to allow a greater circulation of sound recordings which are preciously stored in your respective archives and to permit the authors to get a fair reward for their work, that our Association may institute a committee to study the possibility of intensive ex-

change of these sound documents to the benefit of everyone while retaining the interests of the authors according to the different international conventions.

Note of the Editor: during the Annual Meeting of IASA in Bergen a Copyright Committee has been established. Chairman: Robert Ternisien.

HISTORIQUE DU DROIT D'AUTEUR

Robert Ternisien, Radio Canada, Montreal

Pour parler de droit d'auteur aux membres de l'Association Internationale d'Archives Sonores, j'ai pensé qu'il serait intéressant de remonter dans le temps et de faire un rapide tour d'horizon sur l'évolution du droit d'auteur à travers les âges et de voir les grandes lignes qui ont conduit au concept que nous connaissons aujourd'hui. Je me suis référé à une étude de Marie-Claude Dock, Chef du Centre International d'Information sur le Droit d'Auteur de l'UNESCO, et qui s'intitule "Genèse et Evolution de la Notion de Propriété Littéraire", pour citer quelques faits relatifs à cette évolution. Ainsi, il semblerait que dès l'antiquité cette notion de propriété littéraire était acquise et que même les peuples primitifs auraient connu une certaine forme de propriété littéraire par application du principe que la propriété, c'est le travail. Chez une peuplade asiatique refoulée dans les montagnes de l'intérieur des îles Philippines (les Négritos), l'auteur d'une chanson a seul le droit de la chanter et l'auteur d'un poème seul le droit de le réciter. Chez les hommes de la brousse de l'Afrique australe (les Boschimans), personne ne peut toucher à une peinture rupestre tant que l'auteur ou sa famille sont connus et, dès l'antiquité grecque, on retrouve certains faits qui sembleraient prouver que les lois attiques n'étaient pas complètement impuissantes à réprimer la piraterie littéraire. Le droit d'auteur dans l'antiquité Aristophane, le grammairien, qui siégeait un jour parmi les juges du concours littéraire institué à Alexandrie en l'honneur des Muses et d'Apollon, se prononça en faveur de celui des concurrents que tout le monde s'accordait à regarder comme le plus faible. Interrogé sur les motifs de sa décision, il prouva que les

ouvrages de tous les autres étaient des copies serviles de textes préexistants. Ces derniers furent condamnés devant l'Aréopage pour fait de vol et chassés hors de la ville.

Dans l'antiquité Romaine, plusieurs écrits d'auteur latins permettent d'avancer avec suffisamment de certitude que l'écrivain, en plus de tirer un profit pécuniaire de ses œuvres, voyait ses œuvres respectées. Cicéron nous laisse présumer que des conventions relatives à l'édition de ses œuvres étaient conclues entre lui et son éditeur. Un témoignage de Sénèque qui écrit: "Nous disons que les livres appartiennent à Cicéron; le libraire Dorus appelle les mêmes livres siens et la vérité est des deux côtés. L'un les revendique comme auteur, l'autre comme acheteur; et c'est à bon droit que l'on dit qu'ils appartiennent à l'un et à l'autre; en effet, ils leur appartiennent à tous les deux mais non de la même manière". Après une étude sur la situation juridique des auteurs de l'antiquité Romaine, la conception de M. Pouillet est la suivante: "Le droit des auteurs a existé de tout temps mais n'est pas rentré dès l'origine dans la législation positive". Ce droit existait in abstracto, se manifestait, se concrétisait en quelque sorte dans les rapports des auteurs avec les bibliophiles et les donneurs de jeux mais les nécessités sociales n'avaient pas imposé son entrée dans la sphère du droit. Cette situation restera la même pendant le Moyen-Age européen, les invasions barbares entraînant le monde laïque loin des spéculations de l'esprit. Les lettrés se réfugient jusqu'au 12ème siècle, èpoque qui marque le début d'une révolution intellectuelle chez les laïques, exclusivement dans le silence et le recueillement des monastères. Entre cette période et le 18ème siècle, on a vu à la protection des auteurs grâce au principe des priviléges accordés aux éditeurs, libraires, imprimeurs, puis au système des dédicaces qui rapporte souvent des sommes importantes aux auteurs. Avec le 18ème siècle, les idées se modifient profondément. Le droit d'auteur, longtemps absorbé par le principe des priviléges, en est enfin nettement séparé, si bien qu'à la fin de cette période et pendant les premières décennies du siècle suivant, sa reconnaissance par des principes juridiques et sa consécration dans des lois générales sur la propriété intellectuelle se produisent dans un très grand nombre de pays.

Les premiers lois sur le droit de l'auteur
La première loi sur le droit des auteurs et la propriété littéraire remonte au 10 avril 1710 pour l'Angleterre. Cette loi est connue sous le nom de Loi de la Reine Anne.

En France, il faut attendre après la Révolution de 1789 pour trouver un premier texte qui fut adopté par l'Assemblée en janvier 1791 et modifié en 1792 et 1793. Les rédacteurs de cette loi n'hésitent pas à employer le terme de propriété pour caractériser les droits de l'auteur sur son œuvre. Ce faisant, la loi ne se contente pas de reconnaître le droit de l'auteur, ce qui en soi est un progrès considérable, elle prend partie sur la nature de ce droit et le sanctionne par différentes mesures (réparations pécuniaires, formalités de dépôt, etc.). Ces deux lois, quels que soient leurs laconismes et leurs imperfections, on constitué jusqu'en 1957 la charte du droit d'édition. Leur interprétation devait fournir la réponse aux problèmes qu'allait poser toutes les inventions qui ont introduit de nouveaux modes de diffusion des œuvres de l'esprit. En Allemagne, il faut attendre jusqu'au 9 novembre 1837 pour voir la première loi fédérale intervenir, bien qu'une certaine protection ait été introduite dans le Code civil prussien en 1794, et l'on cite même: "Une ordonnance saxonne du 27 février 1686, qui aurait reconnu de manière explicite le droit des auteurs contre la contrefaçon, en protégeant les livres dont les éditeurs ont acquis la propriété des écrivains".

En Espagne, c'est une loi de Charles III de 1762 qui consacrait en des principes juridiques le droit des auteurs, en stipulant que ce droit se transmettra à ses héritiers.

Aux Etats-Unis, la Constitution de 1787 donne au Congrès le pouvoir de promouvoir le progrès de la science et des arts utiles, en assurant pour un temps limité aux auteurs et aux inventeurs un droit exclusif sur leurs écrits et leurs découvertes respectifs. La première loi fédérale, qui protège pendant une durée de quatorze ans, renouvelable si l'auteur est encore en vie à l'expiration de cette période, les livres, cartes et autres, date de 1790 et le préambule de la loi dit qu'il n'y a pas de propriété plus particulière, plus légitime à l'homme que celle qui est le produit du travail de son cerveau.

En Russie la première loi sur le droit d'auteur, qui ne concernait que les œuvres

littéraires, date de janvier 1830; les œuvres musicales furent protégées par une loi de janvier 1845.

L'origine naturelle du droit d'auteur était si évidente que, lorsque le contexte politique, social, économique et culturel leur permit de passer dans la législation de l'état virtuel à l'état réel, personne ne s'en surprit, ni n'envisagea d'en discuter la légitimité et le bien-fondé. La plupart de ces lois accordait une protection à l'auteur durant sa vie et douze, quatorze ou vingt-cinq ans après sa mort. C'est la loi française du 18 juillet 1886 qui, en portant à cinquante ans après la mort de l'auteur la protection, a constitué une étape importante dans l'évolution du droit d'auteur. Exemple qui fut suivi par les autres pays au cours du temps.

La convention de Berne, 1886

Avant la conclusion de la Convention de Berne, le 9 septembre 1886, les œuvres étrangères étaient protégées par des traités bilatéraux entre les états concernés. L'idée d'une convention internationale a pris naissance après un congrès de l'Association Littéraire Internationale, tenu à Rome en 1882. Cette Association a elle-même vu le jour grâce à l'initiative de la Société des Gens de Lettres de France, sous la présidence de Victor Hugo. Une conférence diplomatique convoquée par le conseil fédéral suisse s'est tenue à Berne en septembre 1884, et était continuée en septembre 1885 et 1886. Cette conférence diplomatique clôtura ses travaux par l'adoption d'une "Convention internationale pour la protection des œuvres littéraires et artistiques" qui est composée de vingt-et-un articles, un article additionnel et protocole de clôture. Elle entra en vigueur le 7 décembre 1887, après les échanges de ratification entre tous les pays signataires. La structure même de la Convention de Berne a été considérablement influencée par les lois allemande, italienne, suisse et belge, qui avaient été rédigées et publiées avant la création de l'Union de Berne.

Cette Convention Internationale de Berne a dû évoluer au cours des années et la première révision partielle, faite à Paris, date de 1896 et n'a rien changé à sa structure de base mais a précisé les conditions de protection, à savoir que l'œuvre devait être publiée pour la première fois dans un pays membre de l'Union, et une autre modification regardant le droit de traduction (même protection de l'œuvre

à condition que la traduction soit faite dans un délai de 10 ans après la première publication originale).

La deuxième modification fut apportée lors de la Conférence diplomatique de Berlin en novembre 1908 qui a profondément remanié et refondu l'Acte original de Berne modifié à Paris. Deux modifications importantes:

- 1) Suppression de toutes les formalités d'enregistrement;
- 2) Indépendance des droits par rapport au pays d'origine de l'œuvre.

Les catégories d'œuvres protégées furent précisées et enfin la durée de protection étendu au principe de 50 ans post-mortem auctoris. Nous constatons qu'à la fin de la première guerre mondiale trois grands pays n'adhéraient pas à la Convention: les USA, la Russie et l'empire Austro-Hongrois démantelé par la suite. Aux USA, la loi du 4 mars 1909 a fait ressortir les divergences avec les pays membres de l'Union de Berne mais a toutefois représenté un progrès en ce qui concerne une plus grande protection des œuvres. En Russie, le nouveau régime communiste ne reconnaissait aucun droit de propriété intellectuelle.

Le protocole additionnel de 1914 permet d'adopter des mesures de restriction à l'égard des pays non membres de l'Union. Ceci a été entre autre réclamé par la Grande-Bretagne pour protéger le Canada et l'Australie face aux difficultés qu'il éprouvait avec les Etats-Unis. La quatrième révision a lieu à Rome en 1928 et apporte la reconnaissance du droit moral et du droit de l'auteur d'autoriser l'exécution publique de son œuvre par la radiodiffusion, ainsi que l'institution de licences obligatoires payantes laissant à chaque pays membre le soin de réglementer ce droit.

Après la deuxième guerre mondiale

La révision suivante qui devait avoir lieu en 1935 à Bruxelles a été reportée en 1936 puis renvoyée sine die à une date ultérieure qui fut fixée après la deuxième guerre mondiale au mois de juin 1948. Les nombreuses modifications et précisions de l'Acte révisé à Rome en 1928 conduisirent la Convention originale de Berne et toutes ses révisions à un plafond érigé sur des fondements solides où l'on peut tenir compte des besoins futures tout en demeurant fidèle à la tradition. Cette révision et les voeux émis ont ouvert les portes pour l'établissement de deux nouvelles conventions internationales:

- 1) La Convention Universelle des Droits d'Auteurs de Genève en 1952;
- 2) La Convention pour la protection des artistes interprètes ou exécutants et producteurs de phonogrammes et des organismes de radiodiffusion que nous verrons un peu plus tard.

La dernière révision de l'Union de Berne date d'une conférence de 1967 à Stockholm au cours de laquelle des mesures particulières pour les pays en voie de développement ont été incluses dans un protocole qui fait partie intégrante de l'Acte et permet à ces pays de s'écartier pendant un certain temps du droit commun conventionnel. Mais après avoir signé l'Acte, les pays développés ne l'ont pas ratifié, trouvant que les sacrifices demandés dépassaient la juste mesure, ce qui conduisit sous l'influence des Etats-Unis à une dernière révision à Paris en 1971 parallèlement avec la révision de la Convention Universelle signée à Genève en 1952 et qui a pour objet la protection des œuvres de l'esprit sous un aspect beaucoup plus libéral que dans l'Union de Berne. Ici, la protection est accordée aux ressortissants d'un état, sous réserve de formalités à accomplir, pendant une durée de 25 ans soit à compter de la date de publication, soit à compter de la mort de l'auteur, et l'alinéa 4-A prévoit: "qu'aucun état contractant ne sera tenu d'assurer la protection d'une œuvre pendant une durée plus longue que celle fixée, pour la catégorie dont elle relève, s'il s'agit d'une œuvre non publiée, par la loi de l'état contractant dont l'auteur est ressortissant et s'il s'agit d'une œuvre publiée par la loi de l'état contractant où cette œuvre a été publiée pour la première fois".

En général, la Convention Universelle est moins contraignante que l'Union de Berne même avec ses possibilités de restriction, ce qui permet plus facilement aux pays en voie de développement d'y adhérer en donnant à ces derniers de grandes facilités pour les traductions, les reproductions ainsi que pour l'obtention de licences obligatoires, ces licences obligatoires n'étant applicables qu'aux œuvres littéraires. Les enregistrements phonographiques, les œuvres cinématographiques et les programmes de télévision n'ayant pas été inclus dans la formulation de l'article 4 semblent en être exclus. Toutefois, des assouplissements ont été apportés dans l'article suivant sous réserve de certaines conditions particulières. En résumé, dans l'une et l'autre des conventions, les droits

fondamentaux des auteurs ont été ménagés et reconnus tout en permettant à l'usager la possibilité d'en tirer le meilleur parti et de donner aux œuvres de l'esprit la plus grande diffusion possible en vue d'une meilleure compréhension internationale. Actuellement, 63 pays ont ratifié la Convention Universelle et 63 pays ont ratifié l'Union de Berne.

La Convention de Rome, 1961

La Convention de Rome de 1961 a pour but la protection des artistes interprètes ou exécutants, producteurs de phonogrammes et des organismes de radiodiffusion. Dès 1928, lors de la révision de l'Union de Berne, des voeux avaient été émis pour obtenir ce genre de protection. Une nouvelle tentative eut lieu en 1948 et, à la suite de cette conférence, un comité d'experts a été formé sous l'influence du Bureau de Berne avec la participation du Bureau international du Travail et de l'UNESCO et ce n'est qu'en 1956, après le refus de plusieurs projets, que débuta la dernière phase qui aboutit à la rédaction de la Convention de Rome de 1961 pour la protection des droits voisins ou connexes. L'ampleur de cette convention qui tend à protéger des intérêts différents n'a pas suscité l'intérêt envisagé et seulement 15 pays ont ratifié cette Convention.

A cause des pays qui ne désiraient pas nécessairement accorder la protection aux trois groupes dont la Convention de Rome tend à protéger les intérêts et devant le peu d'enthousiasme suscité par cette Convention de Rome, une nouvelle convention a été rédigée pour assurer la protection des producteurs de phonogrammes devant la piraterie internationale qui existait et qui portait un tort considérable tant aux producteurs de phonogrammes qu'aux auteurs et interprètes qui ne pouvaient percevoir, il va sans dire, leurs redevances sur les disques pirates ainsi illégalement produits. Cette Convention pour la protection des producteurs de phonogrammes a été signée en octobre 1971 à Genève et est entrée en vigueur dès avril 1973.

Une autre convention pour la protection des organismes de radiodiffusion assurant de protéger les transmissions par satellites spatiaux a été rédigée après quatre années d'étude par les experts et a vu le jour en mai 1974.

Bien que toutes ces conventions internationales tentent d'apporter une protection aussi uniforme que possible aux auteurs sur une base semblable dans tous les pays du monde qui y ont adhéré, il faut se rappeler que,

conformément aux dispositions incluses dans ces mêmes conventions, c'est la loi nationale du pays où la protection est demandée qui régit cette protection.

Avant de terminer cet exposé et ce survol de l'histoire du droit d'auteur, je voudrais formuler un voeu afin de permettre une plus grande circulation de tous les documents sonores qui sont précieusement gardés dans vos archives respectives et, pour assurer aux auteurs la juste rétribution qu'ils méritent, que notre Association puisse peut-être former une commission pour étudier les possibilités d'échanges intensifs de ces documents sonores pour le bénéfice des populations tout en sauvegardant les intérêts des auteurs en conformité avec les différentes conventions internationales.

Note du rédacteur: pendant la réunion annuelle de l'IASA à Bergen une commission était instituée pour le droit de l'auteur.

President: M. Robert Ternisien.

UN ESSAI DE VALORISATION D'ARCHIVES SONORES

Prof.Dr. Claudie Marcel-Dubois, Musée des Arts et Traditions Populaires, Paris

La consultation et la communication des archives sonores dans un organisme à mission de service public pose des problèmes de différents ordres où l'on distingue des aspects pratiques ou techniques et des aspects théoriques.

Il convient de préciser que nous envisageons ici les archives dont les collections sont composées de phonogrammes originaux inédits (non publiés) possédant un caractère ethnologique ou ethnomusicologique, c'est-à-dire qui représentent des traditions orales et de la musique non-écrite dont le compositeur est inconnu, fondu qu'il est dans une collectivité.

Les aspects pratiques et théoriques

Dans ce cas, un premier aspect pratiques surgit. En effet les phonogrammes ou vidéos-grammes ont été collectés et enregistrés sur le terrain, soit par des chercheurs privés ou non-membres des archives qui reçoivent les enregistrements, soit par des chercheurs, membres des dites archives et qui rapportent leurs phonogrammes d'une mission supportée (financée) par leur organisme. Quels seront alors, dans l'un ou l'autre de ces cas, les droits du chercheur ou du collecteur, de l'interprète (exécutant) ou de l'informateur, du ou des organismes dont dépendent les archives?

A cet aspect pratique s'ajoute le côté technique: quelles seront les précautions prises pour assurer une bonne conservation, malgré les écoutes répétées, les duplications? Jusqu'à quel point le personnel et les crédits alloués à des archives sonores suffiront-ils à ces manipulations?

L'aspect théorique, d'autre part, n'est pas le moindre problème. Cet aspect est celui de la recherche fondamentale qui a présidé à la constitution de collections phonographiques du type de celles que nous envisageons ici. La motivation de cette recherche n'est pas automatiquement la même que celle du consultant. L'érudition n'est pas toujours le seul but de la consultation ou de la communication. Or lorsqu'il s'agit de phonogrammes ethnomusicologiques notamment, les pièces enregistrées peuvent être traitées, aménagées, reprises et aboutir à des arrangements, à des productions commerciales,

à des changements divers qui peuvent modifier totalement la finalité de la constitution de la collection.

De ce fait, il semble impossible, pour un service public, de ne pas conclure, au moment de l'entrée des phonogrammes dans les archives, un accord avec les chercheurs scientifiques sur les conditions d'accès à leurs collections inédites. Toute communication ou consultation paraît devoir être assortie de règles qui peuvent varier d'une collection à l'autre mais qui doivent être établies soigneusement en envisageant les problèmes juridiques, méthodologiques et scientifiques. Comment alors communiquer ces archives, qui en est propriétaire et quels sont les droits que cette propriété confère? Quelles sont les règles à appliquer pour respecter ces droits?

Vers un modèle de contrat

Chez nous, le besoin d'une réglementation à ces égards s'est fait sentir. Au début de 1976, à l'initiative du Musée national des arts et traditions populaires, un groupe de travail a été formé sous la responsabilité de l'auteur de ces lignes. Il est apparu que l'établissement d'un modèle de contrat entre le cédant de phonogrammes inédits et l'organisme réceptionnaire devait être l'objectif le plus urgent à atteindre.

Notre groupe a tenu ces séances de travail entre mars et juin 1976, au Musée des arts et traditions populaires. Le groupe réunit des représentants de la Direction des musées de France, du Centre national de la recherche scientifique, du Comité national de la musique, de l'Office de recherche scientifique des territoires d'Outre-Mer, de la Bibliothèque nationale et de sa Phonothèque nationale, de la Société des auteurs et compositeurs de musique et de la Société des droits de reproduction mécanique, du Syndicat national de l'édition phonographique et audiovisuelle, du Musée de l'homme (Département d'ethnomusicologie) et du Musée national des arts et traditions populaires (Département d'ethnomusicologie et Phonothèque).

Le groupe a étudié dans un premier temps certains documents existants (ceux de la Phonothèque nationale par exemple) puis a décidé de prendre comme point de départ à ses travaux un projet établi, il y a environ cinq années par le Département d'ethnomusicologie du Musée de l'homme.

La notion de propriété est vite apparue

comme ressortissant à plusieurs niveaux: interprète-informateur, chercheur-collecteur, organisme; de plus la distinction à respecter entre propriété scientifique, propriété artistique, propriété matérielle a été soigneusement relevée. A ce sujet, notre modèle de contrat, devant s'appuyer sur le droit français, se réfère aux articles 21 à 33 du titre II "De l'exploitation des droits patrimoniaux" de l'article 543 du Code Civil (loi du 11 mars 1957).

Les débats ont ensuite porté longuement sur la notion d'auteur particulièrement difficile à cerner dans le cas d'oeuvres de tradition orale fixées par l'enregistrement sonore. Sans qu'une définition satisfaisante soit arrêtée, il a été proposé, concernant le droit moral, que le chercheur-collecteur découvrant l'œuvre et effectuant l'enregistrement sonore soit considéré comme "inventeur", que le chanteur-locuteur-instrumentiste appelé informateur soit considéré comme "auteur", celui-ci délégant son droit de divulgation au chercheur quand il est dans l'impossibilité matérielle de l'exercer; enfin il a été proposé que l'organisme dont dépend le chercheur ne jouisse daucun droit de propriété incorporelle sur les œuvres collectées.

Quand aux droits matériels, il a été suggéré qu'ils soient répartis, selon une participation à définir, entre l'informateur, le chercheur et l'organisme. Il est précisé que dans le cas d'une édition, le chercheur pourrait être considéré comme auteur d'anthologie sonore et l'informateur-interprète pourrait obtenir des droits voisins de ceux d'auteur.

Un texte préliminaire de projet de contrat

Un texte préliminaire de projet de contrat a été rédigé par notre groupe de travail. Ce contrat prévoit la cession de phonogrammes originaux par un chercheur à un organisme. Cette cession est assortie des obligations respectives des deux parties et des réserves émises par l'une ou l'autre de ces parties. Précisons qu'il peut s'agir non seulement de phonogrammes mais aussi de vidéogrammes ou d'enregistrements sur tout autre support.

Le texte débute par un ensemble de renseignements sur l'identité et le statut du chercheur-collecteur et sur sa mission, sur la provenance et les caractéristiques techniques et statistiques des enregistrements; les conditions et réserves du droit d'exploitation et de divulgation sont également demandés dès l'abord. Suivent des clauses

autorisant, sous conditions soigneusement stipulées, l'incorporation des enregistrements dans l'un ou l'autre des fonds de l'organisme auquel ils sont confiés: réserve, archives, public. Il est prévu, d'autre part, l'engagement par l'organisme de fournir au cédant des copies de ses enregistrements, de conserver et d'inventorier les originaux selon des normes techniques appropriées. Enfin des articles stipulent les autorisations ou réserves relatives aux droits de propriété incorporelle, aux droits d'exploitation et de reproduction (copie) ainsi que les conditions d'écoute et d'échange de collections entre institutions régionales, nationales et étrangères. Des conventions spécialés sont, de surcroît, requises pour la diffusion par radio ou télévision ainsi que pour les éditions, commerciales ou non, touchant les enregistrements qui font l'objet du contrat.

L'accès aux différentes collections d'archives sonores semblerait ainsi plus normalisé si chaque pays envisageait de promulguer une réglementation répondant aux lois et aux coutumes nationales. La protection des œuvres de tradition orale comme celle des chercheurs-collecteurs et des informateurs-interprètes ou encore celle des archives elles-mêmes pourrait sans doute être mieux assurée; enfin les fonds originaux de nos archives sonores pourraient être ouverts à bon escient à la consultation, à la communication, aux échanges mêmes.

La continuation de l'essai parisien

Il va sans dire que l'expérience que nous venons de conduire à Paris n'est pas complète; ainsi, dès octobre 1976 notre projet de contrat sera soumis au Syndicat de la propriété intellectuelle; ainsi encore des modèles de fiches d'admission et de consultation en phonothèque sont à l'étude.

L'engouement pour les traditions orales, notamment des traditions orales de la musique et de la parole, qui peut se remarquer actuellement dans différents milieux (milieu scientifique, milieu du spectacle et de l'animation culturelle, milieu artistique et littéraire) d'une part, d'autre part la mission de nos institutions de conserver et, tout à la fois, de communiquer un patrimoine culturel fixé uniquement par l'enregistrement sonore et/ou visuel rendaient urgent l'examen des habitudes régissant l'accès aux archives sonores, et partant la valorisation de celles-ci, la question étant plus importante encore pour une phonothèque, du type de celle du Musée national des arts et traditions populaires, qui contient des phonogrammes originaux de caractère ethno-

logique et ethnomusicologique. Notre cas n'étant pas isolé, nous avons pensé que notre tentative pourrait être matière à discussion de la part de nos collègues, ne serait-ce que sur le plan du principe en général si les dispositions de détail sont, par la force des choses, conditionnées pas des coutumes nationales. C'est pourquoi, malgré mon absence (l'essai était lu pas M. Léo LaClare), j'ai tenu à faire part de l'essai parisien et je remercie d'avance ceux qui auront bien voulu communiquer et écouter ce texte, fruit de la réflexion commune du groupe de travail sus-mentionné.

EIN VERSUCH ZUR AUFWERTUNG DER SCHALLARCHIVE

Prof. Dr. Claudio Marcel-Dubois, Musée National des Arts et Traditions Populaires, Paris (übersetzt von Frau Viktoria Ernst, Phonogrammarchiv der Österreichischen Akademie der Wissenschaften, Wien)

Die Inanspruchnahme und Nutzbarmachung eines Schallarchivs einer im Dienste der Öffentlichkeit stehenden Organisation bringt Probleme verschiedener Art mit sich, wobei man praktische oder technische sowie theoretische Aspekte unterscheidet.

Es muss festgehalten werden, dass es hier um jene Archive geht, deren Sammlung aus unveröffentlichten Originalphonogrammen ethnologischer oder musikethnologischer Art bestehen, das heißt, die mündliche oder nicht notierte musikalische Überlieferungen repräsentieren, deren unbekannter Verfasser mit der Gemeinschaft verschmolzen ist.

Praktische und theoretische Aspekte

In diesem Fall ergibt sich ein erster praktischer Aspekt. Tatsächlich wurden die Phonogramme, bzw. Videogramme im Feld gesammelt und aufgezeichnet, sei es nun durch private Forscher, die den Archiven, welche die Aufnahmen erhalten, nicht angehören, sei es durch Wissenschaftler, die Angestellte dieser Archive sind und ihre Aufnahmen von Feldforschungen zurückbringen, die von ihrer Organisation unterstützt bzw. finanziert wurden.

Welche sind nun im einen wie im anderen Fall die Rechte des Forschers oder Sammlers, des Ausführenden oder Gewährsmannes, der Gemeinschaft(en), von welcher(-en) die Archive abhängig sind?

Diesem praktischen Aspekt gesellt sich ein technischer hinzu: welche Vorsichtsmassnahmen müssen getroffen werden, um trotz wiederholten Abhörens und Duplizierens eine gute Konservierung zu gewährleisten? Bis zu welchem Grad reichen Personal und Finanzen, die den Archiven zur Verfügung stehen, für diese Massnahmen aus?

Ein nicht geringeres Problem ergibt sich in theoretischer Hinsicht. Es ist dies der Gesichtspunkt der Grundlagenforschung, die zur Grundung der phonographischen Sammlungen vom hier angeführten Typus führte. Die Motivation dieser Forschung deckt sich nicht zwangsläufig mit derjenigen des Benutzers. Wissensvermehrung ist nicht immer das alleinige Ziel der Inanspruchnahme.

Hingegen können die Aufnahmen, insbesondere sofern es sich um ethnologische Phonogramme handelt, bearbeitet, zusammengezogen, für Arrangements und kommerzielle Produktion benutzt sowie verschiedenen Veränderungen unterzogen werden, die den ursprünglichen Sinn einer Sammlung völlig verändern können.

Sobald die Aufnahmen in die Archive gelangen ist es daher im Dienste der Öffentlichkeit unerlässlich, mit den Forschern Vereinbarungen zu treffen, die die Bedingungen, unter welchen ihre unveröffentlichten Sammlungen zugänglich sind, festlegen. Jede Weitergabe oder Benützung muss notwendigerweise Regeln unterliegen, die von Sammlung zu Sammlung variieren können, in Hinblick auf juridische, methodologische und wissenschaftliche Probleme jedoch sorgfältig festgesetzt sein müssen.

Wie also können diese Archive nutzbar gemacht werden, wer ist der Eigentümer und welche Rechte sind mit diesem Besitz verbunden? Welche Vorschriften müssen beachtet werden, um diese Rechte zu wahren?

Auf dem Weg nach einem Vertragsmodell

Bei uns erwies sich eine gesetzliche Regelung in diesen Belangen als notwendig. Zu Beginn 1976 bildet sich auf Initiative des Musée des arts et traditions populaires eine Arbeitsgruppe unter dem Vorsitz der Verfasserin dieser Zeilen. Als dringlichstes Anliegen erwies sich die Schaffung eines Vertragsmodells zwischen demjenigen, der unveröffentlichte Phonogramme abtritt und der begünstigten Organisation.

Unsere Arbeitsgruppe hielt ihre Sitzungen zwischen März und Juni 1976 im Musée des arts et traditions populaires ab. In ihr sind die Leitungen des Musées de France, des Centre national de la recherche scientifique des territoires d'Outre-Mer, der Bibliothèque nationale und ihrer Phonothèque nationale, der Société des auteurs et compositeur de musique, sowie der Société des droits de reproduction mécanique, des Syndicat national de l'édition phonographique et audiovisuelle, de Musée de l'homme (Musikethnologische Abteilung) sowie des Musée national des arts et traditions populaires (Musikethnologische Abteilung und Phonotheke) vertreten.

Die Gruppe studierte zunächst gewisse bereits vorliegende Dokumente (jene der Phonothèque nationale z.B.) und wählte in der Folge als Ausgangspunkt für ihre Arbeiten ein Projekt, das vor etwa fünf Jahren von der Musikethnologischen Abteilung des Musée des arts et traditions populaires begonnen worden war.

Es zeigte sich bald, dass der Begriff der Eigentümerschaft mehrere Bereiche anspricht: den Interpreten/Gewährsmann, den Forscher/Sammler, die Organisation; darüber hinaus wurde die einzuhaltende Unterscheidung zwischen wissenschaftlichem, künstlerischem und materiellem Eigentum sorgfältig aufgezeigt. In dieser Hinsicht verweist unser Vertragsmodell, dass sich auf das französische Recht stützen muss, auf die Artikel 21 bis 33 von Stück II "De l'exploitation des droits patrimoniaux" des Artikels 543 des Code Civil (Gesetz vom 11. März 1957). In der Folge wurde lange über den Begriff des Urhebers debattiert, der - sofern es Werke mündlicher, mit Hilfe von Tonaufnahmen festgehaltener Überlieferung betrifft - besonders schwierig abzugrenzen ist. Es wurde keine zufriedenstellende Definition beschlossen, jedoch vorgeschlagen, dass - was das moralische Recht betrifft - der Forscher/Sammler, der das Werk entdeckt und die Tonaufnahme herstellt, als "Entdecker" anzusehen sei, und der Sänger/Erzähler/Instrumentalist, der Gewährsmann also, als "Urheber" gelten soll, der sein Recht der Vergabe an den Forscher delegiert, soferne ihm persönlich die Wahrung desselben unmöglich ist.

Schliesslich wurde vorgeschlagen, dass der Organisation, welcher der Forscher angehört, keinerlei geistiges Eigentumsrecht an den gesammelten Werken zukommen soll.

Bezüglich der materiellen Rechte wurde vorgeschlagen, dass sie nach einem noch festzusetzenden Schlüssel zwischen Gewährsmann, Forscher und Organisation aufgeteilt werden sollen. Es wird betont, dass im Falle einer Veröffentlichung der Forscher als Urheber der Tonsammlung gelten könne, und der Gewährsmann ihm rechtlich anzugelichen sei.

Ein vorläufiger Textentwurf des Vertrages
Unsere Arbeitsgruppe erstellte einen vorläufigen Textentwurf dieses Vertrages. Der Vertrag setzt voraus, dass die Originalaufnahmen vom Forscher einer Organisation übergeben werden. Diese Übergabe ist für beide Parteien mit Verpflichtungen verbunden, sowie mit Einschränkungen, die dem einen oder anderen Partner auferlegt werden. Es sei hier betont, dass es sich nicht allein um Phonogramme, sondern auch um Videogramme oder um Aufzeichnungen auf jedem beliebigen Träger handeln kann.

Der Vertragstext gibt zunächst eine Reihe von Auskünften über Identität und Rechts-

stand des Forscher/Sammlers, über sein Forschungsziel, über die Herkunft der Aufnahmen sowie über sie betreffende technische und statistische Daten. Gleichfalls zu Beginn wird festgehalten, welchen Bedingungen bzw. Einschränkungen Nutzung und Vergabe unterliegen. Es folgen die sorgfältig erwogenen Bedingungen, welche die Eingliederung der Aufnahmen in den einen oder anderen Sammlungsteil (mit unterschiedlichem Zugänglichkeitsgrad) der Organisation, welcher sie anvertraut wurden, gestatten. Andererseits soll es ein Anliegen der betreffenden Organisation sein, den Deponenten mit Kopien seiner Aufnahmen auszustatten und weiters die Originale entsprechenden technischen Normen gemäss zu konservieren und zu inventarisieren. Eigene Punkte befassen sich schliesslich mit den Ermächtigungen bzw. Einschränkungen in Bezug auf die Rechte des geistigen Eigentums, der Nutzung und der Reproduktion, sowie mit den Bedingungen, die das Abhören sowie den Austausch von Sammlungen zwischen regionalen, nationalen und internationalen Institutionen gestatten. Darüber hinaus werden für den Fall der Wiedergabe durch Radio oder Fernsehen, sowie der Veröffentlichung (kommerziell oder nicht) von Aufnahmen, die Gegenstand des Vertrages sind, spezielle Vereinbarungen verlangt.

Eine gesetzliche Regelung, die von jedem Land unter Heranziehung seiner jeweiligen Gesetze und nationalen Geprägtheiten zu treffen wäre, würde den Zugang zu den verschiedenen Sammlungen der Schallarchive wesentlich vereinfachen. Für die Werke der mündlichen Traditionen, für die Forscher/Sammler und Gewährsleute/Interpreten, und darüber hinaus für die Archive selbst wäre ein effektiverer Schutz gewährleistet. Und schliesslich könnten die Bestände an Originale, die sich im Besitz unserer Schallarchive befinden, mit gutem Gewissen für Benutzung und Information, sowie für den Austausch herangezogen werden.

Die fortsetzung des Pariser Versuches
Es versteht sich von selbst, dass die Versuche, die wir in Paris unternommen haben, noch nicht abgeschlossen sind; so wird unser Vertragsentwurf Oktober 1976 dem Syndicat de la propriété intellectuelle vorgelegt werden; weiters beschäftigen wir uns mit der Entwicklung von Formularen für die Benutzung von Phonotheken.

Die Vorliebe für mündliche Überlieferung, insbesondere der Musik und des Wortes, die sich gegenwärtig in verschiedenen Bereichen abzeichnet (etwa dem wissenschaftlichen, dem des Schauspiels und der kulturellen Er-

neuerung, dem künstlerischen und literarischen) einerseits, andererseits das Anliegen unserer Institutionen zu bewahren und gleichzeitig ein kulturelles Erbe, das einzig und allein durch akustische bzw. visuelle Aufzeichnung festgehalten ist, weiterzugeben, lässt es dringlich erscheinen, die Usancen, die den Zugang zu den Schallarchiven regeln, einer näheren Be trachtung zu unterziehen. Und in Hinblick auf ihre Nutzbarmachung ist diese Frage für eine Phonotheek von der Art des Musée des arts et traditions populaires, das Originalaufnahmen aus dem ethnologischen und musikethnologischen Bereich besitzt, umso wichtiger.

Da unser Fall nicht isoliert steht, dachten wir, dass unser Versuch unseren Kollegen zur Diskussion vorgelegt werden könnte, sei es auch nur auf genereller, prinzipieller Ebene, da ja die Details zwangsläufig von den nationalen Gegebenheiten abhängig sind. Deshalb wollte ich mich trotz meiner Abwesenheit (das Referat wurde von Mr. Léo LaClare gelesen) mit diesem Aufsatz beteiligen und danke im voraus all jenen, die diesem Text ihre freundliche Aufmerksamkeit schenken und seinen Inhalt, die Frucht der gemeinsamen Bemühungen der oben genannten Arbeitsgruppe, weitergeben.

BBC ARCHIVE MATERIAL FOR OTHER THAN BROADCASTING PURPOSES

Laurence Stapley, Head of Recording Services, Radio, BBC

All of us who are in charge of broadcasting sound archives face an increasing dilemma. Our collections have been built up entirely for broadcasting purposes. Selectors and others decide to keep those things which they feel will be used in the future for programmes. That is what the money is allocated for. We have no budget for any other purposes whatsoever.

Our philosophy then is a broadcasting one, and our staff is trained to service the programme makers. But increasingly people from outside the BBC are looking at our catalogues and saying: "Wait a minute, we want to use the things you have collected too. We believe it's wrong for you to keep these things entirely to yourselves. They should be made available to many organisations in the national interest".

We, in the BBC, believe there is some substance in these arguments. But it's not always so easy to see how they can be carried out in practice. Recently the BBC's Board of Governors agreed it was time to take a hard and detailed look at the BBC Archives with a view to making recommendations on this and other matters.

They set up a committee under the chairmanship of Lord Asa Briggs, the distinguished historian, who has written extensively on the history of broadcasting.

The terms of reference of this committee are to advise the BBC on the policies to be followed for the preservation or disposal of its visual, audio and written material, on the most suitable method of storing and retrieving its archive holdings, and on the ways in which its archives might be best exploited in the BBC's and the national interest. The committee's terms of reference recognise that, in view of the purposes for which the BBC derives its income from licence revenue, its archival policy should have, as its main object, the preservation of material needed for the BBC's own use.

The Committee consists of:

Lord Asa Briggs, Vice-Chancellor of Sussex University, Chairman.

Professor Kenneth Charlton, Professor of History of Education, University of London.

Mr. R.E. Coward, Director-General, Bibliographic Services Division, British Library.

Professor Margaret Gowing, Professor of the History of Science, University of Oxford.

Mr. Benny Green, Writer and Broadcaster.

Mr. A.R.A. Hobson, Associate, Sotheby, Parke-Bernet & Co.

Mr. Michael Holroyd, Biographer, literary critic and novelist.

Mr. David Jenkins, Librarian, National Library of Wales.

Professor Randolph Quirk, C.B.E., Professor of English Language and Literature, University College, London.

Mr. Donald Sinden, Chairman, British Theatre Museum Association.

Professor Michael Tilmouth, Professor of Music, University of Edinburgh.

To my mind there is no question that the most important and most effective way of getting our material heard by the public is through the broadcasting medium. In Britain it can be used for programmes for the general public on the four major networks, the regions and twenty local radio stations. There are also programmes for schools, for the Open University and other education. Any other distribution must be subsidiary, but at the same time many of the schemes operating outside the media of broadcasting are important and relevant, and I would not wish to denigrate them.

The BBC and the British Institute of Recorded Sound

Already we supply some of our programmes to the British Institute of Recorded Sound. This institution, situated in central London, has built up a large collection of BBC material. They have permission from us and the unions to record a selection of our programmes. This they do 'off-the-air'. They have FM receivers, time switches, several recorders, and other gadgetry. The real snag is that the unions, understandably, will only give the Institute rights for the material to be heard on the Institute's premises. Unless costly rights are taken out and agreements with artists obtained, recordings cannot be sent outside.

The contracts we negotiate are for broadcasting purposes only. Any extension of these rights means a great deal of work by our contracts and copyright departments. In terms of man hours alone clearances can, and often are, a costly business.

So I know you will appreciate, that getting recordings to the people who want them is

not as easy as it might first appear. It may well be that a research worker only wishes to hear a recording lasting two minutes or so. If he has to come a considerable distance, he may think twice about it. Therefore auditioning on the premises only can restrict the effective use of the library.

Just supposing for a moment that there are no copyright difficulties, and that the library can be made available on a national scale by sending tapes to bona fide researchers who require them. The amount of work involved would be very considerable and the cost high. Dubbing would become a major factor as well, of course, as the retrieval of the tapes once they had been sent out. Such a library could only operate on a very heavy subsidy. It might, of course, be possible to operate a central oral history library through the existing local library services, and putting the onus on the local librarian to ensure that tapes were returned and, as far as possible, to find out whether they were being properly used.

Distribution of cassette kits

An interesting way of dealing with the problem from an educational point of view is by making up special recorded kits. These kits can be used in conjunction with text books and become an integral part of teaching various subjects. The advent of cassette tapes helps enormously. Cassettes can be made up of speech extracts on various subjects illustrating, in a graphic way, the points the lecturer wishes to make.

Work in this area has of course already begun, and a number of publishers and others are showing a growing interest.

But cassette kits, valuable as they could be for educational purposes, do not solve the problems of the historian or researcher wishing to hear specific recordings.

We do allow a number of such people into the Archive Library in London on the payment of a small fee. They can also, as I have mentioned, go to the British Institute of Recorded Sound. But the question of travelling remains a problem.

I don't believe, as with so much in life, that we will ever find a completely satisfactory answer to some of the problems which I have outlined, but I don't want to give you the impression that nothing is happening in Britain at the moment, or that all is gloom. Various schemes are progressing, and much thought is being given to the problems.

The very fact that the Archive Committee, which I have already mentioned, has been set up by the BBC's Board of Governors, demonstrates the seriousness with which these problems are being taken, and how important we feel it is to reach a solution.

The BBC and the Imperial War Museum
Recently we have let David Lance, the Keeper of the Department of Sound Records at the Imperial War Museum in London, have many of our Second World War recordings including the complete recordings of the Nuremberg Trial. All this material has, I am glad to say, no copyright restrictions on it. So I have been able to allow Mr. Lance to send these recordings to universities and other institutions which may require them for valid educational or research purposes.

From our point of view this is an interesting experiment with wide implications. I will certainly watch the results with keen interest. I believe in time other museums and universities will set up their own oral history section - some in specialised areas. Certainly, as the economists would say, "we are in a growth industry". These collections, as is the case with the Imperial War Museum, will also provide a source of recordings for broadcasting purposes. Already we have used Mr. Lance's material for a programme on World War I flying which he wrote and narrated.

Another institution which takes our material is the Theatre for Shakespearian Studies in London. Like the British Institute of Recorded Sound, they have permission to record various programmes 'off-the-air' which they then can use in conjunction with their courses and general studies.

Distribution of gramophone records
BBC programme material is used from time to time by commercial gramophone record companies. We have sold them tapes of such outstanding artists as Kathleen Ferrier, perhaps our most famous contralto, Jacqueline du Pré, the cellist who tragically has contracted arterial sclerosis, and Dennis Brain, the famous horn player who was killed in a car crash some years ago while still a young man, but whose name lives on through his brilliant playing on recordings.

A number of BBC produced plays and readings have appeared on Decca's Argo label. Occasionally, the record companies may

want other kinds of material. For example, E.M.I., who are producing shortly a box set of recordings of Sir Thomas Beecham conducting Delius, have asked that they might include some of our archive recordings of Sir Thomas giving his views on Delius and his music.

As some of you may know already, the BBC has its own record label - BBC Enterprises. This label draws on archives quite extensively. A good example is the double album called "50 years of Royal Broadcasts". This has sold very widely throughout the world and has been particularly successful in North America.

We are planning to work in close conjunction with the new London Museum which will be opened shortly. Our recordings will play an essential part in their audio visual displays.

At Sir Winston Churchill's home, "Chartwell" in Kent, we have supplied recordings for a new Son et Lumière production. This also applied to the various similar productions at St. Paul's Cathedral.

Our very extensive collection of wildlife sounds is used extensively. We have something like 6,000 animal sounds, many of them now in stereo. Recently we collaborated with the Royal Society for the Protection of Birds in making an LP composed of bird songs and music.

Before I came to Recording Services in the BBC my predecessor, Timothy Eckersley, allowed the French recording company, Société d'études et des relations publiques in Paris, to have a selection of our recordings of General de Gaulle. These were made up into 12 LPs and distributed widely throughout France. The same company also used our recordings for their compilation on the Second World War.

Our Sound Effects Library is in demand by theatres, schools, amateur dramatic societies and film companies. A number of these effects have also been put on disc by BBC Enterprises for sale to the public.

I think you will gather from all this activity that the question of distributing archive material for other than broadcasting purposes is thriving. But it is not easy, particularly in view of the fact that we have no staff whose special job it is to cope with the various projects and problems which I have touched on. Our staff is recruited for broadcasting purposes only.

They cope valiantly, but there is a limit to what they can do.

Perhaps at a future conference I will be able to report on the findings of the Asa Briggs Committee and the way they feel the problems I have outlined should be tackled.

STUDIES IN SCANDINAVIAN-AMERICAN DISCOGRAPHY I

by Pekka Gronow
Suomen Äänitearkisto r.y. (Finnish Institute of Recorded Sound)
Helsinki, 1977
ISBN 951-9222-07-3
112 pages.

The aim of Mr. Gronow's publication is "to list all Finnish records issued by the Victor and Edison companies in the U.S.A., as well as the total known Scandinavian output of Odeon/OKeh, Brunswick, Vocalion and some minor labels. Together with the author's previous "American Columbia Scandinavian "E" and "F" Series", it lists all known Finnish-American records up to the 1940's as well as a considerable share of all Scandinavian-American recordings of the same period" (quotation from the Introduction).

Mr. Gronow starts with a detailed explanation of the historical background of the labels mentioned above including a statement about his sources of information and a bibliography. The listings of gramophone records of the various labels take up the greater part of the book, which is illustrated with pictures of labels and excerpts from record catalogues.

The address of the Finnish Institute of Recorded Sound:
Pietarinskatu 12 A 12
00140 Helsinki 14/08.

PRACTICE AND PROBLEMS OF ACCESS TO SOUND ARCHIVES IN NORTH AMERICA

Don L. Roberts, Head Music Librarian, Northwestern University, Evanston, Illinois, USA

This paper will discuss the current policies ~~the~~ of North American sound archives which govern accessibility of recorded materials. As stated at the Bergen conference, the author does not consider himself an expert in this field and the following comments are partially based on the observations of several North American sound archivists including Ann Briegleb (UCLA), Gerald Gibson (Library of Congress Recorded Sound Section), Frank Gillis (Indiana University Archives of Traditional Music), David Hall (New York Public Library Rogers and Hammerstein Archive), Joseph Hickerson (Library of Congress Archive of Folk Song), Léo LaClair (Public Archives of Canada Sound Archives Section), and Les Waffen (United States National Archives). The assistance of these colleagues is gratefully acknowledged.

From the standpoint of access and restrictions, published recordings present different problems and this paper is divided accordingly. Access to broadcast archives falls outside the scope of this discussion since there are relatively few important collections in North America.

and unpublished

Access to published sound archival materials
Most North American sound archives have public auditioning facilities. Due to heavy use and staff restrictions, some archives require that a listening appointment be scheduled in advance; for example, the Library of Congress Archive of Folk Song and Recorded Sound Section prefer to have the necessary retrieval information one week before listening appointment. Although many other collections can often handle on-the-spot requests, the wise listener will always make advance arrangements. As a general rule, North American sound archives will not make copies of in-print recordings except for "in-house" use. Copying is, to say the least, a confusing "grey area" in the United States where recordings were not covered by specific copyright laws until February 15, 1972. Recordings published before this date were only vaguely protected under the "fair use" concept. It is likely that the United States will soon have a new copyright law which includes sound recordings.

(Shortly after the Bergen conference, a new U.S. copyright law containing provisions for

recordings was passed and will go into effect on January 1, 1978).

Most North American sound archives will make copies of out-of-print recordings providing the requester secures all necessary clearances. The following examples will illustrate that obtaining these clearances can sometimes be quite difficult. The Library of Congress states "No commercially issued recordings will be duplicated. Exceptions can be made only upon receipt of written permission of the companies and persons involved". The Indiana University Archives of Traditional Music explicitly defines the problems and policies.

"Any unauthorized duplication of phonorecordings is an infringement of the owner's right to make copies for public distribution and sale. It is understandable that a commercial firm should have the right to attempt to recoup, or gain a profit from, funds expended for investment purposes. When, however, a phonorecording is no longer available for sale, the owner should not have the right to withhold permission for duplication of a single copy when the material is to be used for serious research. The Archives of Traditional Music feels obligated, legally and ethically, to all individuals - collectors, performers, producers, composers, editors - who have an interest in the materials held by the Archives. At the same time we attempt, within the limitations imposed upon us, to provide material to the public to be used for serious research for other educational purposes. Each request for duplication of materials is evaluated and judged on its own merits, taking into consideration the owner's rights and the user's intent and purposes. An individual requesting a taped copy of a commercial recording is thus asked to determine first if the recording is out of print. If it is not, the individual is informed that we cannot make a duplicate copy of the recording and that it must be purchased. If the recording is out of print, we ask the individual to write the record company or to the current owner of the master copy and request permission for us to make a duplicate copy of the recording in our possession. If permission is not received within a period of three months, we determine what action we will take toward providing a duplicate copy using the following set of criteria: 1) the nature or character of the contents of the phonorecording; 2) the purpose for which the duplicate copy will be used; 3) the specific amount of the total recording to be

duplicated; and 4) the potential market value of the portion to be duplicated. All individuals or institutions for whom we make duplicate copies must sign our Form ATM-3 before materials are shipped. In signing this Form, the recipient of the duplicate copy agrees that the copy will be used only for non-profit, educational purposes; that it will not be duplicated; that verbatim transcriptions of either text or music will not be published without the consent of the owner; and that proper credit will be given in all references to the material involved. Requests for duplicate copies of broadcast materials are handled in the same way as those requests received for commercial recordings".

According to David Hall, the Rogers and Hammerstein Archive will not issue a printed formal document on sound recording duplication until a copyright law has been passed which more clearly defines ground rules. Hall further states: "suffice it to say that we go by pretty much the same ground rules that are followed at the Library of Congress and Indiana. Put succinctly, we require written clearance directed to us by the parties controlling the rights (proprietary, for the most part) to any sound recordings sought by a user in tape-duplicate format. This holds not only for individuals, but for organizations - commercial and non-commercial as well. One of the major reasons why R. and H. has not gotten to the point of publishing its ground-rules and/or setting up contracts and/or release forms à la Indiana or LC is because we have neither the staff nor the available equipment to carry on a regular audio duplication service comparable to our photo services here at the New York Public Library".

It is readily clear that the above policy statements often make it quite difficult for a person to obtain a copy of a commercial recording. In an attempt to simplify matters, several libraries and archives have requested, and received permission to make single copies of commercial items for in-house use. However, there have been instances where similar petitions have been denied. One important United States archive is currently attempting to secure blanket permission from major record companies to copy any or all of their out-of-print recorded products for non-commercial use providing the recipient of the copies clears performance and other necessary rights. There are further encouraging signs of cooperation from the record industry. Two projects issuing anthologies of American music culled, in part, from various out-of-print commercial recordings have successfully obtained reissue permissions from several

record companies. These projects are a fifteen disc set of American ethnic music being compiled by the Library of Congress and a 100 disc set of all types of American music being issued on the New World Records label under the auspices of the Rockefeller Foundation.

There is a strong reason to think that the matter of copying published recordings will be more clearly defined, and hopefully made easier, in the near future. This belief is based on an impending new copyright law, an increase in communications between archives, record companies, and publishers over the last few years, and a better understanding of the factors involved by all interested parties.

Access to unpublished sound archival materials

Access to unpublished recordings is even more complicated due to the greater diversity of the materials recorded and the conditions under which they were recorded and/or obtained. The following examples will illustrate the wide range of restrictions placed on the access and copying of unpublished items. The Public Archives of Canada Sound Archives Section, which primarily houses spoken word recordings, places the following restrictions on access to unpublished materials.

'As to restrictions governing the use of our holdings the Sound Archives attempts to keep in mind and be fair to the interests of the originator, the donor, as well as the researcher. The necessity of complete scrupulosity is heightened by the relatively recent development of sound recording technology and the consequent lack of legal precedent to guide us. Archives and libraries have not yet resolved the question of copyright which modern processes of photocopying pose. And a tape-recorder is yet many more times accessible, both economically and technically. Furthermore, sound recordings can be made without the knowledge of those being recorded, as the events of 'Watergate' testify so dramatically.'

Thus the Sound Archives attempts to clarify the precise conditions and restrictions which apply to sound recordings at the point of acquisition. We recommend the transfer of all copyright to the Public Archives and when the donor has clear legal title to do so, that can clarify the matter.

In these cases, if the donor wishes to impose any restrictions they will usually

be worded: 'Permission of ----- required to consult'. 'Permission of ----- required to diffuse' (broadcast documentaries, etc.). 'Permission of ----- required to consult before ----- (date)".

The Library of Congress Archive of Folk Song which houses the largest collection of American folk/ethnic music materials including many original field recordings, has the following use restrictions.

'Copying records for private research use: While certain collections are restricted by collectors, performers, or record companies, most are available for single copy duplication. Applicants will be advised when special letters of permission are required.'

Copying non-commercial field recordings for broadcast or museum exhibits: Restrictions are the same as for private research use (above). However, we do request that the resultant broadcast or exhibit give credit to "The Archive of Folk Song in the Music Division of the Library of Congress" and to the particular performers, collectors, and institution of origin (if other than the Library).

Copying non-commercial field recordings for publication: Tape duplications from the Library of Congress may not themselves be further duplicated, either for commercial or non-profit purposes without the written permission of the performers or their heirs, and other interested parties, if any (see below concerning permissions). Whenever possible, applicants should specify their specific intent toward publication at the time of their initial request. Potential publishers should note that the Library's Recording Laboratory is fully equipped to produce master quality duplications.

Obtaining letters of permissions: To the best of its ability, the Archive of Folk Song will supply the names and addresses of performers, heirs of deceased performers, collectors, record publishers, or other interested parties whose permissions are necessary before duplication. When we know, through prior experience, that a party cannot be traced, we will so inform the applicant. We suggest that letters requesting permission be sent via registered, return-receipt-requested mail. A returned envelope will then serve as proof the performer cannot be traced. The Library requires the original letters for its files in all transactions".

Frank Gillis describes the policy for field-

collected recordings at the Indiana University Archives of Traditional Music:

"As regards field collections, we sign contracts with collectors which give them, as a maximum, lifetime rights to materials they have collected plus an extension to heirs and/or executors for a period of twenty-five years. We sign separate contracts with institutions that have deposited phonorecordings with us. We also have a contract for the deposit of confidential materials; this contract is used sparingly and only for what we consider to be valid reasons, such as for the purpose of withholding materials which, in the context of a particular time, place, and social situation would be potentially dangerous to the informant or collector. Collections thus classified are not available for listening to anyone except the director of the Archives, or his delegate, or anyone who has the permission of the depositor(s).

As I mentioned previously, the greatest majority of our collections are available for listening within the Archives. Thus, the question of rights is raised primarily when we have requests for dubs to be used outside the Archives. We have little difficulty as regards rights and dubbing for outside use when such requests concern field recordings. For collections in this category we sign contracts with collectors whereby they select one of three options outlined in our standard contract, stipulating what use we can make of their collections. If collectors select Option 1, they give us the right to use their material at our discretion; Option 2 gives us the same right when dubs are to be used for educational purposes, but makes the permission of the collector necessary if the material is to be used for commercial purposes; Option 3 is selected when the collector wishes to restrict materials so that permission is needed for educational or commercial use. Collectors must also specify in the contract the names of others--individuals or institutions--who have an interest in the collection. The rights of other individuals or institutions who have an interest in the collection are the responsibility of the collector signing the contract. Requests for dubs of collections which have come as gifts are of course handled at the Archives' discretion".

Ann Briegleb, Archivist of the University of California at Los Angeles Ethnomusicology Archives, outlines the situation on rights and special problems at her insti-

tion.

"**Rights of informants:** Broadly speaking, informant's rights must be mutually agreed upon (preferably in writing) before the moment of recording with the collector/depositor. Multi-duplicated release forms are a good thing to take into the field, and also prove helpful for in-house recording sessions. I have been told that release forms would not hold up in a court of law, but I do not know of the situation ever being tested. Dealing with a group of performers rather than one or two individuals is also more complicated. For in-house recording sessions, I refer to Archive-arranged sessions of visiting artists or ensembles. It is just as important to remember release forms in these instances as in field situations.

Rights of collectors/depositors: The research collector often has to protect his rights to the commercial or even educational use of his own material (usually for a limited amount of time), and therefore will request that the Archive in which he deposits, sign an agreement (we call it a contract at UCLA although it is not legally binding) as to the uses to which the recorded material may be put. At UCLA we do not have a rigid 3 option plan such as Indiana has, but allow for much flexibility in our "contracts" (short of "no one can listen to this material until after I die"). Generally a depositor asks that his permission be given for any request requiring tape duplication for another individual or archive, publication of written transcriptions, etc., of any part of his collection. Special problems may include: 1. How does an Archive treat "restricted" material (assuming that they accept it into their collection in the first place) that a collector perhaps should not have recorded, e.g., permission was not granted to record so the collector had to surreptitiously record? At UCLA we once had a restricted religious recording which we had to control in its usage, until finally the collector informed us that he had received word from his informant that the person in question had died and that it was allright to play the recording now. I have also been told in no uncertain terms by a Native American musician that if my archive contains recordings of Native American secret ceremonies, we will receive "bad medicine". Supposedly archives that did contain this material had the most difficult time getting their tape recorders to work, etc.. 2. Should an archive accept a collection

with too many "strings"?

3. Is an archive responsible for commercial use of material deposited in other archives as well as in it, and with restrictions placed upon its use by the collector/depositor?"

Libraries and archives have not reached a consensus of opinion on whether or not listeners should be allowed to duplicate materials as they listen. The United States National Archives allows users to dub onto their own recorders any material that are not restricted. Other archives have taken the opposite to the extent of disconnecting recording jacks on playback tape recorders to ensure that no illegal copies are made.

Conclusion

The current situation concerning access to recorded materials in North American sound archives is both complex and difficult. Archivists and librarians often present a formidable obstacle to the use of their collections by being overly protective or by generating an excessive amount of "red tape". The tendency to hide behind the protective shield of copyright ambiguities must be curtailed -- too often the statement "oh, it's illegal to copy that" is used as an excuse for not providing service. Clearly more flexibility is necessary as is the need to work collectively to make recordings more accessible. An intense effort should be made to develop appropriate legislation and/or contractual agreements with the recording / broadcast industry which would allow the interchange of duplicate tapes, for on-premises audition only, between institutional archives and library-educational organizations. Hopefully everyone associated with recorded sound will strive for the quick resolution of the many difficult factors so qualified users will have immediate access to all desired sound materials.

MANUAL: SOUND ARCHIVES / MANUEL: ARCHIVES SONORES

second edition / deuxième édition
Public Archives Canada / Archives Publiques
Canada
Ottawa, 1976

Many members of IASA will be in the possession of the first edition of the excellent MANUAL: SOUND ARCHIVES, produced by the staff of the Sound Archives of the Canadian public record office. The second edition has been enlarged with samples of the forms currently used by the Sound Archives, as well as sample catalogue and index entries. Subjects like oral history interviews, accessioning, cataloguing and indexing, preservation and restrictions have been treated in short and well written chapters, not only for the staff of the Sound Archives in Ottawa, but also for the benefit of other sound archives and oral historians.

The bilingual Manual is available from:
Information Services Division
Public Archives Canada
395 Wellington Street
Ottawa, Ontario K1A 0N3

PHONOGRAPHIC RECORDS

ANNUAL REPORT OF THE INTERNATIONAL ASSOCIATION FOR SOUND ARCHIVES

CONTENTS

Editorial

Preliminary programme of the annual meeting of IASA in Malmo, September 1977

1877-1977 THE CENTENARY OF THE PHONOGRAPH

The use of the early phonograph in popular research

Peter A. Visstra

THE PRACTICE AND PROBLEMS OF ACCESS TO SOUND ARCHIVES papers read during the annual meeting of IASA in Bergen August 1976

- | | |
|---|-----------------------|
| 13 History of copyright | Robert Vernisien |
| 16 Historique du droit d'auteur | Robert Vernisien |
| 20 Un essai de valorisation d'archives sonores | Claudie Marcel-Dubois |
| 23 Ein Versuch zur Aufwertung der Schallarchive | Claudie Marcel-Dubois |
| 25 BEC archive material for other than broadcast purposes | Laurence Stapley |
| 28 Practice and problems of access to sound archives in North America | Don L. Roberts |

ANNOUNCEMENTS

- | |
|--|
| 12 Unesco resolution about access to the archives of phonograms - 11 November 1976 |
| 24 Studies in Scandinavian-American discography |
| 25 Manual of sound archives/Méthode d'archivage sonore |