

ONE Heritage

The right to heritage—the right to explore music, literature, drama, painting, and dance that define both our nation’s collective experience and our individual and community traditions.

“Come Friday.”

“But Jack, it’s Monday now; we’ll have to get a truck.”

“Just come up this week. If we don’t move these things now, they’ll be gone.”

It was summer 1973. The caller was Jack Loetz, a graying senior marketing executive with Decca (now MCA) Records, based in New York City. I was director of the Country Music Foundation in Nashville; Jack was a dedicated fan of early country music, a trustee of the CMF who took special pride in Decca’s country legacy, a legacy that boasted classic recordings by Patsy Cline, Bill Monroe, Ernest Tubb, and Loretta Lynn.

He was calling about a record collection at risk. “Decca’s pulling out of New York, moving to L.A.,” Jack told me, “and I’m not going west with the company, I’m retiring, and I’m worried about the Decca archive of

78s. Why don't you come up here and we'll see if we can get the country material transferred to the Foundation in Nashville."

Loetz's offer was exciting. Under the guidance of record producer Owen Bradley and his predecessor, Paul Cohen, Decca was arguably country music's flagship label, and the early 78 rpm discs cut in New York and Nashville would be an invaluable addition to the CMF's Nashville archive. "The whole company is moving by the end of this month," Jack said. "Get up here quickly. I'll meet you Saturday morning."

So, with Danny Hatcher, a colleague from the CMF library staff, I flew to New York. Jack was gracious; he treated us to lunch at Jack Dempsey's, the legendary beefery and hangout for "Brill Building" songwriters, and he introduced me to Johnny Marx, the reclusive composer of "Rudolph, the Red-Nosed Reindeer," who kept a small office above the restaurant. We acquired a dusty U-Haul truck from a scraggly lower Manhattan gas station that ran a truck-and-trailer rental business on the side and pulled up to MCA's Broadway headquarters building at eight o'clock on Saturday morning. With the glaring orange and silver truck parked conspicuously in a Broadway loading zone (it helped that it was Saturday), we met Loetz at the door and were escorted past the guard, up the elevator to an eleventh-floor room crammed with shelves supporting the not insignificant weight of thousands of ten-inch 78s.

These were Decca's official file copies of commercially released pressings. The MCA executive had personally selected the mint copies of Decca country discs from the corporate archive; he had, by himself, packed more than 2,500 records for shipping. As we made trip after trip up and down the elevator, lugging boxes through the marbled lobby, past the guard, to the truck, which amazingly hadn't been towed away, Jack talked about his fears for the collection. He didn't think management cared about it and was concerned that the discs would be lost, destroyed, or damaged in the corporate move to Los Angeles. His worries were supported by the intuition that as a boutique division of a relocating media giant, Decca's record business might not get the attention it deserved from Hollywood bigwigs interested mostly in movies.

By mid-morning the task was finished, "good-byes" and handshakes concluded, and the truck loaded, ready for the drive back to Nashville. As

we worked our way out of Manhattan onto the New Jersey Turnpike, it dawned on me—there'd been no paperwork, no contract; no acknowledgment of a donation. Record company archives had long been mined by insiders who spirited away rare originals for sale to collectors. Jack, for a higher purpose, had simply "appropriated" those rare Decca 78s. By nightfall we were in Virginia, rolling south through the sunset-bathed Shenandoah Valley. Two years later we would sign an agreement making the "donation" legal. But tonight, while Danny drove, I leaned back against the seat and closed my eyes, nearly 3,000 "liberated" Decca file discs secured behind me. We'd stolen a record collection, and I was a certified guerrilla warrior in the battle to save America's cultural heritage.

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America's expressive life is a mirror of our society's evolving values and aspirations. Part of our expressive life is all about autonomy and achievement—art that conveys our individual voices, a marker of independence and personal authority. But expressive life also is a container for heritage—the accumulated creativity of our community and our nation. As historian Kevin Starr observed, "A culture failing to internalize some understanding of its past . . . has no focus on the promise and dangers of the present." Bonnie Raitt put it more succinctly: "Music is history you can dance to." And she might just as easily have mentioned movies or old radio programs.

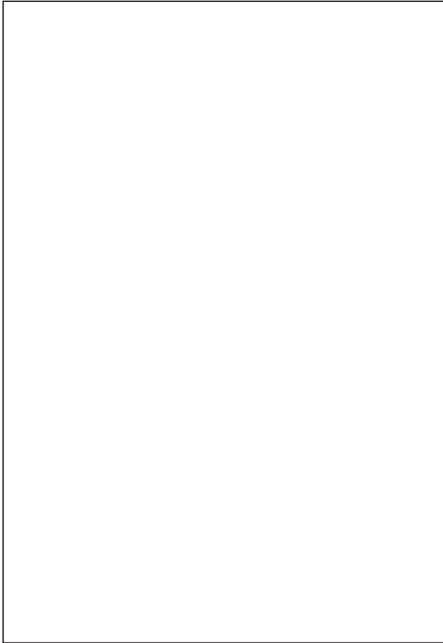
My folklore training, emphasizing continuity and tradition, gave me a special interest in how well Americans are able to stay in touch with music, drama, and images that link us to permanence and place. Once a movie has ended its run at the Roxy or a record or book dropped from lists of hits and best-sellers, each instantly becomes part of the accumulated body of music, drama, dance, comedy, literature, and visual art that constitutes our nation's cultural heritage. And just because some company owns a movie or a record, just because copyright lets it buy, sell, or lock away creative treasures, doesn't take away the citizens' right to know that our artistic heritage is secure and preserved for future generations. Americans have an equally compelling right to see and hear art from the past; a right of access sufficient to ensure that young citizens can gain

knowledge and understanding by actually hearing and seeing art from earlier eras. As record historian Tim Brooks put it, “Now more than ever before, preservation and access are inextricably linked.”

But the average citizen hasn’t fully grasped the alarming truth that our creative heritage is mostly owned, lock, stock, and barrel, by multinational companies that aren’t even headquartered in the United States. Parents today have no assurance that music, drama, literature, and dance created over the past century will be made available, or that, when we look for it, the heritage we seek will exist. Quite simply, to this day our arts system has not been subject to the kind of public scrutiny and policy pressure required to ensure preservation of and access to America’s cultural mainstream.

We’ve all seen the image of JFK Jr. saluting bravely as the casket of his slain father is carried from St. Matthew’s Cathedral to begin its journey to Arlington National Cemetery; it’s one of the most compelling and familiar images of twentieth-century American photography. For millions of Americans this photograph, cropped from a wide shot, conveys both the personal and national dimensions of the Kennedy assassination. The continuing significance of a decades-old photograph only underscores the capacity of a powerful documentary image to transport us over time, connecting us with a shared period of national tragedy and mourning. Images or sounds from the past often display this kind of cultural sturdiness, and photography was the first of several technology-based art forms—including movies, records, and radio programs—that expanded the reach and staying power of America’s national experience during the twentieth century. Once created or manufactured, such art products served as containers of America’s cultural heritage—a solid bridge of real-world sounds and images linking the present with decades past. In 1963 the JFK Jr. image could send a message all over the world almost instantaneously, but, more important, it preserved a distinct historical moment. What was *journalism* in 1963 became *history* only a few years later.

But the photograph is not reproduced here only because it highlights the importance of our nation’s expressive heritage—certainly it does. Its presence makes an additional point; regardless of its significance, the photograph appears in this volume because I paid for it. I paid because,



Photographer Stan Stearns's famous image of JFK Jr.'s salute at his father's funeral—first published in *Life* magazine—has always been owned by one corporation or another, offering a classic example of heritage as corporate asset. (Photo © Stan Stearns/Bettmann/CORBIS. Fee: \$330 for quarter-page inside book placement and a press run of 25,000.)

in the U.S. cultural system, that image—like most of the art that defines the American experience—is simultaneously *cultural heritage* and *corporate asset*. And, in pursuing my determination to incorporate this historic photograph in my argument on behalf of cultural rights, I first had to seek permission from the corporation that owns the image. You might expect that I would have sought permission directly from the photographer whose talent and imagination captured the moment in the first place, but that would have gotten me nowhere. In the world of technology-dependent art forms, the creator generally does not end up controlling, and sometimes even owning, the rights to his or her own work. Instead, anyone who wants to incorporate heritage art into something new must acquire the assent of the corporation where the *rights* to that creative work reside.

The JFK Jr. image was taken by Stan Stearns, using a telephoto lens with fast black-and-white film, on November 25, 1963. Today the copyright to the photograph has ended up among the millions of images owned by Corbis, the intellectual-property asset company created by

Microsoft founder Bill Gates. Long before the photo was taken, Stearns had bargained away any ownership rights to it, for at the time of the Kennedy funeral he was a salaried staff photographer employed by United Press International—the global news service that competed head-to-head with the Associated Press. Although copyright is designed to provide limited protection for the rights of artists, as a salaried employee, any of Stearns’s images created while on assignment were “works for hire”—creative work deemed to belong automatically to whatever entity was paying the artist’s salary. “I got \$25 for winning ‘picture of the month’ [at UPI],” Stearns said, “that and my regular paycheck.” The copyright to the JFK Jr. photograph first belonged to Stearns’s employer, UPI. Rights were transferred to the private Bettmann Archive when it purchased UPI’s entire photo collection in 1984; eleven years later Bettmann was absorbed by Corbis.

So the JFK Jr. salute photograph began its life in the sixties as the work-for-hire archival property of the number two international news service. Although Corbis now controls the image, the Stearns picture spent its middle years as part of a vast collection assembled in the Bettmann Archive, historically one of the largest and most well regarded photographic collections in the world. Founder Otto Bettmann was a quirky but not atypical pioneer of for-profit archiving. His collection of prints and negatives, packed in steamer trunks and spirited out of Nazi Germany by Bettmann in 1935, was initially housed in his Manhattan apartment on West 44th Street. By 1938 the collection had only 15,000 images. But the collector’s holdings grew steadily; by 1981, when Bettmann sold the archive to the Kraus-Thomson Organization, the transaction included more than 10 million photographs. Following the pattern established by Bettmann, Kraus-Thomson itself then acquired a number of additional, smaller archives, incorporating them under the Bettmann name. When the newly constituted Bettmann Archive absorbed the extensive UPI collection in 1984, the Stearns JFK Jr. shot went along. The additional UPI photographs expanded the total archive to 17 million images.

Today the JFK Jr. photograph can be viewed by any Internet-enabled citizen simply by opening the Corbis Web site. However, if you want to do anything more than look at a two-by-three-inch version of the

picture—should you want to reproduce the photograph in a book, for example, or exhibit a print in a museum, or include it in a documentary film—permission must be granted by the corporation that controls the copyright to Stearns’s photograph.

Corbis is aware of the unique value of the photograph; it was among the first Bettmann images digitized. Preset rates have been established by Corbis for a number of easily anticipated uses of the shot, and standard licenses can be secured with online efficiency. However, when a project is outside the scope of prepriced uses, the licensing fee becomes a matter of what the traffic will bear. For a company like Corbis, the going price for a particular use is determined by the character of the image itself in relation to the perceived commercial potential of a specific use: *People* magazine pays more than the *Journal of American History*, and the JFK Jr. image costs more than, say, a generic photograph of sunglasses. Similar calculations determine rates for licensing old movie clips, music for documentary films, and sound recordings for CD compilations. Executives who control historical cultural assets—often individuals with little understanding of what’s in corporate archives—ask themselves, “How indispensable is this item, and how much money might the licensor make?” If the JFK Jr. shot is essential to a project, or, heaven forbid, you’ve already printed the book or edited the film *before* securing rights, get ready to fork over significant money.

When an actual historical object—a disc recording, a piece of photographic paper, or a few hundred feet of film stock—has value only because of the image or sound it contains, the item is often referred to as *intangible* cultural heritage. The concentration of ownership of America’s intangible cultural heritage in fewer and fewer hands has followed the trend toward consolidation in our arts industries. Today how much we have to pay for access to the past is determined by a shrinking cohort of corporate players. But the growing global demand for media content has also increased the perceived value of iconic cultural assets. In fact, the *business* of archives—charging fees for new uses of copyrighted images, films, and recordings—is enhanced when a collection is sufficiently large to become the obvious “go-to” location for anyone requiring access to sights and sounds from the past.

It should thus come as no surprise that software pioneer Bill Gates was among the first to see that digital imaging and transmission would vastly increase the demand for visual material of all kinds. But Corbis was not initially in the business of acquiring existing archives, photographic or otherwise. Instead, immediately after its formation in 1989, the company set out to obtain the digital licensing rights to works of art in the permanent collections of prominent nonprofit and government-managed museums and archives. Gates was anticipating future opportunities to license artworks to owners of devices like flat-screen TVs. Taking full advantage of his insider's grasp of the commercial potential of content on the electronic frontier, Gates understood that art museums in effect controlled the copyrights to early paintings and photographs in their collections, and he also understood that the fine arts world hadn't yet grasped the import of licensing opportunities that would soon be created by the Internet and the digital revolution. Corbis sought to tie up exclusive rights in the digital domain to art treasures in museum collections.

In its negotiations with a museum community innocent of the dawning Internet age, Corbis was able to tie down exclusive rights to a number of important collections for a relative pittance. Early on, London's National Gallery, the Philadelphia Museum of Art, and St. Petersburg's Hermitage licensed their collections to Corbis. But the museum community quickly wised up; within a few years Corbis's ability to obtain bargain-basement digital rights agreements had nearly evaporated. That's when the company refocused on building its own collection.

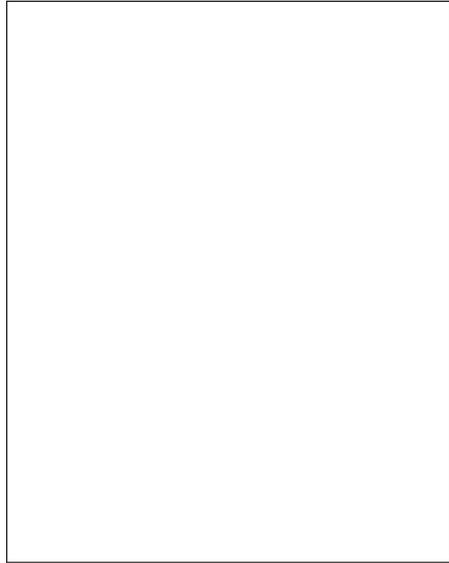
While Gates had initially envisioned Corbis as the company that would, for example, market digital images of great paintings for home display and had secured rights to museum collections accordingly, that model didn't take hold. As Gates recently observed, "Some of the [Corbis] vision won't be here for another five more years." Shifting to a natural plan B enabled Gates's company to absorb a vast collection of twentieth-century news and lifestyle images. It was to this end Corbis acquired the Bettmann Archive in 1995.

Bettmann, like Corbis, had always been a for-profit operation, charging a range of fees for the use of copyrighted images in books, magazines, television documentaries, and so on. In fact, *most* of America's

twentieth-century cultural heritage—movies, sound recordings, old television and radio shows—gets preserved and disseminated in exactly this way: a company foots the bill for storage, preservation, and retrieval, covering expenses and delivering a bottom-line profit by charging for every use of historical material. Obviously, in radio, TV, and movies, many archives are owned by the companies that created the films or records in the first place. Photo collectors like Otto Bettmann and owners of smaller private archives like Frank Driggs and Michael Ochs rarely paid to have photographs shot but instead purchased existing images, growing their collections over time. These entrepreneurial archivists were passionate about history, and sometimes about specific subjects. Driggs collected jazz images; the much younger Ochs focused on rock 'n' roll. Driggs still maintains his collection in seven tall file cabinets in a Soho basement. In an NPR interview he recalled scouring the alleyways behind New York record company offices in search of discarded photographs: "I noticed a big laundry basket of pictures that were being thrown out either because the artists were no longer under contract or they didn't want to keep the files. So I just raided it; I took everything I could." Early archives were like this—labors of love created by devoted fans of history and art. Today it's business. Corbis and other image archives are big moneymakers, policing copyright-protected revenue streams attached to products created as works for hire or financed by others, so it only makes sense that, as this chapter is being written, the Frank Driggs Collection is on the market.

The very success of Corbis in pioneering the control and exploitation of heritage property reveals the disturbing vulnerability of America's intangible cultural heritage: Corbis is positioned to make money by licensing the use of photographic images any way it pleases in part because it scooped up cultural assets without having to accommodate a public interest in photographs as heritage. Using marketplace clout to accumulate cultural assets, Corbis and its ilk operate in head-to-head competition against nonprofit organizations and government agencies that treat both preservation and access as high priorities on a public service agenda. And despite their dedication to preservation, public and nonprofit archives operate at a disadvantage: they almost never control the *rights* to items in their collections. The very existence of Corbis, and its ties to Microsoft's

My father's favorite jazz trumpeter was Bunny Berrigan, a respected soloist who grew up, not in New Orleans, New York, or Chicago, but in rural Wisconsin. This familiar 1937 shot of Berrigan is from the privately held Frank Driggs Collection. The tenor sax player in the background is George Auld. (Photo: Frank Driggs Collection. Fee: a mom-and-pop-archive price of \$100.)



Bill Gates, reinforces the notion that in the digital age the ability to *own*, or at least *control*, content—especially heritage content of cultural significance—constitutes an essential marker of market dominance.

Is our *right* to cultural heritage fulfilled if we're allowed to buy our way into access to the past? Does it make a difference that our familiar image of JFK Jr. is part of a global archive of more than 60 million images exploited for profit by a super-mogul of the computer software industry? Should the public see iconic images from our nation's past only if an author, magazine publisher, or television producer pays a price set by the marketplace and enforced by companies that control copyrighted heritage? In a hundred-year-old arts system defined by an unfettered marketplace, tension between culture as *asset* and culture as *heritage* is inevitable. But when a company makes available only what it thinks will sell and then demands the maximum payment possible, the public interest is not well served.

Are market forces enough, first, to *preserve* heritage and, second, to *make it available* to enrich the expressive lives of citizens?

Let's look at Corbis again. As already indicated, the company controls 17 million images in its Bettmann Archive alone, with total holdings having surpassed the 100 million mark. Of course, not all these are cultural treasures; as with any massive historical collection, a significant percentage of the whole probably possesses little or no lasting historical value. For purposes of argument we might surmise that 50 or even 60 percent of the Corbis Bettmann Archive is ephemeral and of little significance. However, that calculation would still leave 5 million or 6 million heritage images, and today Corbis is not actively making available ("rights managing") anything close to that total. In fact, citing the high cost of preservation and access, the company moved the great bulk of the Bettmann Archive from its midtown Manhattan site to an underground storage facility in Pennsylvania. At the time of the transfer, Corbis explained that it had "edited" about one-fourth of the collection and made available 225,000 images that had been digitized—selected on the basis of their "cultural significance" and "commercial potential." The digitized images constitute just over 1 percent of the Bettmann collection, the remainder of which is locked away in the Iron Mountain storage facility tended by a staff of two: one person conducting research, the other digitizing images.

Initially, in 1996, Corbis estimated that it cost the company about \$20 to digitize each photograph—an estimate that seems reasonable, even conservative. For obvious reasons, the image of JFK Jr. "made the cut" as one of the Bettmann photographs possessing the requisite commercial and cultural value. But is it in the public interest to assume that those 16.5 million additional Bettmann images locked away in an abandoned mine *do not* have cultural significance? And while a corporation might be adept at assessing the potential earning power of photographs licensed for reproduction, is there any reason to expect that it would maintain the expertise necessary to evaluate "cultural significance"? Is corporate control of heritage what the Founding Fathers had in mind when they gave Congress the right to "encourage Progress"?

These questions are far from academic, because heritage managed as corporate asset is today the default mechanism through which America's artistic past interacts with the present. Corbis is one kind of corporate actor on the heritage scene; as a retailer of the past, the company maintains a

commitment to preservation. Other heritage industries have a more ambiguous connection with their collections. Historical films belong to studios; original master negatives are shelved in corporate archives. Record labels control the copyrights to millions of musical and documentary recordings produced over the past century, and original tapes, master discs, are supposedly maintained in corporate archives. To these media industries, preservation will always play second fiddle to the core mission—creating shareholder value by selling *new* product in the entertainment marketplace. Can the public's right to our shared heritage truly be served if the preservation of records, movies, and broadcasting is left to the whims of a few multinational media companies?

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Orrin Keepnews understands the challenges of balancing copyright and the public interest firsthand. He leans back, heavy-lidded eyes scanning the stacks of paper, cassette tapes, and vinyl discs that cover the desk of his sunroom office in his San Francisco home. "What's gotten to me over the years is just how *arbitrary* it all is," he says, "how some obscure master disc survives and, on the shelf right next to it, everything's missing."

Keepnews should know. He has been producing jazz records for more than fifty years: Bill Evans, Thelonius Monk, Wes Montgomery four decades ago; McCoy Tyner and Joe Henderson in the 1970s and 1980s. Now in his eighties, Keepnews is rarely in the studio producing current acts, concentrating instead on the reissue of classic jazz discs he edits, remasters, and assembles into modern CD compilations. This afternoon, paperwork from his latest project, Stan Getz recordings from the 1940s, flows out across his cluttered desk to filing cabinets tops, extending (as he puts it while sweeping his arm toward what might be an imagined audience) "onto about every flat space on the first floor."

"Now, there's a bright side to the situation," he continues. "I'm constantly surprised by what is still around. But even what's left can be hard to find. You know, everything's computerized now, but that doesn't mean you can actually *find* it."

A passionate supporter of jazz heritage preservation, Keepnews holds special affection for 78rpm jazz discs recorded before World War II.

"That's a finite preservation project," he explains. "There were only three big record labels back then, so it's something we can actually get our arms around." But, according to Keepnews, the size of a record label is no guarantee that original recordings have been preserved: "There are huge chunks of material missing from the RCA vaults, and often nobody on the current staff knows for certain what is or isn't there. I've learned to be intentionally sloppy in my requests for master discs and tapes, just to make certain I'll get *everything* they have."

He laughs. "I guess, for me, sloppiness has actually become a technique. A few years ago, I was working on a Thelonius Monk project for RCA, and I said, 'Just send me everything with the word "Monk" written on it.' They did, and sure enough we found a tape from a Newport Jazz Festival that RCA had in the vaults, but they didn't have any paperwork. If I had asked for a specific master *number*, I never would have gotten anything."

He shakes his head again. "But it's just so damned *arbitrary*."

The preservation of America's musical heritage should not be left to chance, or even to preservation streetfighters like Keepnews. After all, taken in its breadth—Billie Holiday, Elvis Presley, Enrico Caruso, Arturo Toscanini, Bob Dylan, Hank Williams, Isaac Stern, B.B. King, and Thelonius Monk—no segment of America's artistic heritage more clearly mirrors our democratic heritage than does the record business. But our nation's heritage on record has already been placed at intense risk, and many original recordings of great American music have been lost. Keepnews's experience is the rule, not the exception; corporations that own heritage collections have simply not maintained tape and disc archives with care.

In 1980 CBS staff producer Michael Brooks was sorting through a stack of master tape boxes marked with a prominent "S." Intrigued by the label of one box—"Louis Armstrong—Unreleased Concert"—Brooks asked about the tapes and was told, "All that's old stuff getting thrown out to make room in the vault." The "S" was shorthand for a corporate command, "Scrap." Brooks saved the original tape, a rare live recording of a 1956 Chicago show featuring Louis Armstrong and His All Stars. The tape ultimately was released on a critically acclaimed CD boxed set. But a

discovered Thelonius Monk concert and a few Louis Armstrong tapes rescued from the scrap heap should not suggest that the dedication of a cadre of heroic professionals might somehow offset preservation bungles of the record industry. The problem is simply too big.

When my father bought his copy of Bunny Berrigan's "I Can't Get Started" (RCA Victor 36208) in 1938, it was, first and foremost, a popular jazz rendition of a hit song from the Ziegfeld Follies of 1936. But the recording, as well as the original metal master disc stored in RCA's archive, was also an instantaneous, incremental addition to America's accumulating legacy of vernacular music—a performance that would soon be seen as a jazz classic. Although record companies have been reluctant to release precise figures on their holdings of master discs and tapes, reliable estimates place the number of archived recordings at more than 4 million items. Major labels account for three-quarters of the total, with smaller independent company holdings estimated at about one million items. RCA, owner of the "I Can't Get Started" master, boasts a collection of at least 1.3 million discs and tapes, while Motown, a sixties-era newcomer, which has operated from seven addresses in three cities, holds about 30,000 master recordings, all created during the era of tape. And more than 30,000 *new* CDs still enter some form of distribution each year. Assuming ten tracks per album, we're adding a million new performances to some kind of archive every three or four years.

This massive cultural treasure, held not as a public trust but as corporate asset, is inherently at risk. Both the MGM and Atlantic labels lost holdings in vault fires. MCA (parent company of Decca and other vintage labels) had a near-miss in 1996 when a movie lot fire came close to engulfing the MCA audio archive. And film prints, master discs, and videotapes are worthless if you can't play them back. Today any corporate archive worth its salt is forced to maintain functioning antique playback equipment simply to make it possible to hear important originals. And, ironically, in this regard the recent past is more problematic than the first two-thirds of the past century; the dizzying pace of innovation in digital audio and video recording has created instant orphans. Where is that Betamax recorder we bought in 1985, and what of the Polaroid Land Camera that wowed everyone in 1958?

Also, archives are subject to pilferage, as well as just plain carelessness. For example, until the 1980s only a handful of individual collectors possessed a full appreciation of the value of historical disc recordings. In the 1970s it was widely known in the record-collecting game that a knowledgeable Columbia Records (now Sony-BMG) senior executive pursued a sideline business supplying his collecting compatriots with rare items he had simply lifted from company vaults—doing for profit what Jack Loetz had done for love. In fairness, at the time nobody assigned much value to file copies of 78s, and Columbia higher-ups winked at the departure of old records. But it was for years an open secret that a collector could, for the right price, obtain rare jazz, blues, and country originals straight from the company archive.

Of course, corporate collections of sound recordings (or of film negatives and prints) are expensive to maintain. So, because archives affect the bottom line, the largest real and potential threat to the survival of original recordings is record company policy—well-intentioned attempts to maintain shareholder value by controlling expenses, reducing the costs of storing, documenting, and retrieving discs and tapes. As an award-winning investigative series by *Billboard* correspondent Bill Holland made clear, corporate policy has been a big part of the problem. One label threw out all its pre-stereo monaural recordings; another scrapped sixteen-inch metal tape reels, arguing that for each tape destroyed the label saved “a nickel a month” in storage costs. Before the CD reissue boom of the 1980s, corporate archives were routinely staffed by low-level employees—individuals frequently careless and generally unaware of the significance of holdings under their control and ill prepared to resist well-intended efforts to reduce costs by disposing of discs and tapes, thus reducing the inventory of warehouse space.

As Orrin Keepnews learned, simple employee carelessness could have a devastating impact on an archive. Ten years ago the Country Music Hall of Fame was able to include a never-released cut by legendary singer Patsy Cline in a boxed-set retrospective simply because a request for “everything on Patsy” turned up a master tape that had been hidden away in a mislabeled box for thirty-five years. According to Holland, RCA demolished an entire warehouse in Camden, New Jersey, in the

1960s, dynamiting the contents—master discs and all—and bulldozing the mess into the Delaware River (a hard-to-duplicate “hat-trick” simultaneously trashing our built, natural, and cultural environments).

It’s all about what companies value, and in an unedited profit-driven arts system cultural heritage is valued only if it can sell in today’s market. In that regard the news is not all bad; outright destruction is unlikely, and the status of archived recordings, films, and TV shows has improved during the past two decades. For one thing, the increasing value of intellectual property generally and the aggressive policing of rights and protection of revenue streams have made companies more attentive to copyright-protected assets. New technology has also helped; for example, in the 1980s the advent of compact discs led many consumers to upgrade music collections by replacing vinyl LPs with CDs. In addition, when digitally rerecorded, packaged attractively, and accompanied by authoritative album notes, vintage blues, jazz, and country performances from the 1930s forward suddenly acquired enhanced commercial value. With each CD able to hold an hour of music, three or four CDs could gather up the entire career of even a legendary artist. Thus the CD emerged as an ideal medium for the rerelease of archival material, and as labels scrambled to mine the content of archives, boxed sets provided fans with unprecedented access to historical recordings. Encouraged by sales of historical tracks, the majors upgraded their preservation programs during the 1980s and 1990s. As early as 1979 the Grammy Awards, a sometimes-lagging but nevertheless dependable indicator of trends in the recording industry, recognized and encouraged this trend by adding the “Best Historical Album” category to its always expanding list of awards.

But the market for old art in new technologies is finite. The CD boom that propped up the value of historical product for two decades has today wound down, and it’s uncertain if music download services will generate sufficient business to justify preserving everything stored in ever-expanding vaults. It costs money and time to search out and digitize historical product, and silent movies and pre-1923 acoustical recordings just don’t justify the expense. In fact, a record executive recently told me that iTunes had complained about inventory that generated just eight or ten downloads a year. Attention still flows to product that sells in quantity.

Big media, big dollars, and carelessness—the very forces that have menaced America’s musical heritage are also at play in historical radio, television, and film. Of the hundreds of films produced by commercial studios through the 1920s, only about 20 percent survive. The figure is not much better for the entire first half of the twentieth century; only 50 percent of films produced through 1950 exist today. And many early studio films that do survive exist only on highly flammable nitrate print or negative stock. Ten million feet of nitrate film are housed in studio archives—every foot a fire hazard, every foot in need of transfer to a contemporary medium. But at a cost of more than \$3 a foot for the transfer work, the \$30 million price tag is beyond the capacity of the movie industry.

Frequently, individual studios have been reluctant to pick up preservation costs for their own collections. Dan Melnick, former head of production at MGM, was rebuffed by CEO Jim Aubrey when he proposed a million-dollar transfer of vintage prints to current stock. Melnick got around the decision by launching the *That’s Entertainment* retrospective; the low-budget compilation was ultimately popular and highly profitable, and it financed the archival transfers Melnick wanted in the first place. Big studios and savvy executives can find clever ways to pay for the management of vintage assets, but the status of many historical independent productions, documentaries, and educational films, whose master prints or tapes might be housed in a producer’s basement, is largely unknown. Here survival percentages are almost certainly worse than for studio-produced commercial movies.

As the CD boom of the 1980s produced a surge in the preservation and marketing of early recordings, technology today has given new life to old movies and television shows. DVD sales totaled \$2.3 billion in 2004 and were projected to reach \$3.9 billion by 2008. True, most of these are quick follow-up releases of films still playing the multiplex. But for companies that control significant historical assets, the burgeoning market for old movies repackaged intelligently can have a real bottom-line impact. The MGM film library generated \$440 million in cash flow in 2004, outpacing new production. At least for the moment, heritage film doesn’t need the intervention of leaders like Dan Melnick to survive.

But even the recent past often lies beyond the reach of citizens eager to engage artistic heritage. Parents who want to share the history of television with their children will find important landmarks missing; Johnny Carson's first appearance on *The Tonight Show* has disappeared, as have the first two Super Bowl telecasts. Patrick Loughney, head of the Moving Image Section of the Library of Congress, cites a conclusion reached by his institution's 1997 study of television heritage: "Much of American television history, well over 50 percent, has either already been lost or is in danger of being lost in the next decade." It should be no surprise that, a year before his death, pioneering television star Milton Berle sued NBC, charging that the network had somehow managed to lose 130 of his shows.

And remember, access and preservation go hand in hand. If intellectual property rights prevent citizens and artists from gaining access to movies, music, and historical media, old films and records might just as well be lost. Two of John Wayne's most important movies, *The High and the Mighty* and *Island in the Sky*, have been kept off the market by Wayne's heirs. A 2004 New York state court decision determined that sound recordings produced before 1972, when recordings were given federal copyright protection, fall under the provisions of common law and are thus protected by many states until 2067. The ruling even covers cylinders and discs cut in the nineteenth century and secures rights to many "orphan discs"—recordings for which no owner can be identified. Thus old recordings may be preserved, but intellectual property law makes them inaccessible, locking up heritage in what are in effect "dark archives." And, as I discuss below, restrictive music licenses commonly attached to vintage television productions have placed insurmountable obstacles in the path of DVD reissues.

Legal scholar Joseph Sax, in *Playing Darts with a Rembrandt*, makes the point that "unqualified ownership permits the indulgence of private vice to obliterate public benefits." Sax is talking about what might happen if art owners, on a whim, choose to deface or destroy work of lasting artistic and social value. But his observation makes an important general point: there exists no public interest "push-back" against irresponsible actions of individuals who own works of art. When a corporation is the

owner, the threat to heritage assets may be less capricious, but it's every bit as real. After all, it's unlikely that any arts industry CEO is going to suddenly demand that an archive of film or recorded sound originals be hauled to the dumpster; personal integrity and a faint sense of public purpose make such actions unlikely. Instead, the need to hold down expenses while continually eyeing the earning power of every asset in the contemporary marketplace creates a leadership environment in which it is all too easy to cut back on climate control, stop making digital transfers, and relocate an inactive catalog to off-site storage. Insidious erosion of the well-being of collections is the likely result. Corporate leadership chases quarterly earnings while setting policy in broad strokes, but, at the end of the day, it's often somebody with his name embroidered over his left pocket who looks across a warehouse floor and says, "Nobody's looked in those boxes since I started here back in '85; let's get rid of them."

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Most of America's twentieth-century culture was produced by for-profit arts industries, and much of our cultural heritage has been no better treated than assets such as buildings and furniture. But what about the network of orchestras, dance companies, theaters, and opera companies—organizations that grew up on the nonprofit side of America's cultural playing field? And what about libraries, archives, and personal collections—have they managed to serve the public interest by preserving intangible heritage and making it available to citizens? When it comes to preserving work they create, nonprofits haven't done very well, and our underfunded public and private archives have struggled to keep up with expanding collections, expensive technologies, and an increasingly burdensome intellectual property environment.

As record executive Dan Sheehy notes, tapes and films are "much more ephemeral than most other broad categories of human achievement," and, although operating under public service charters, most nonprofit cultural organizations have simply never had the resources required to adequately manage historical materials generated by their own work. Often boxed in by restrictive union regulations, orchestras, opera companies, and nonprofit theatrical production companies have often

found it difficult or impossible to legally memorialize their own work. Even when recordings of productions are generated, it's far too costly for the typical nonprofit to maintain archives of those film or tape recordings that can be authorized. Consider that the New York Philharmonic generates fifteen hours of new recordings each week; multiply that total by the two hundred or so orchestras that archive their own work, and add the fields of dance and theater, and the scope of the ongoing preservation challenge emerges.

Even museums and historical societies, nonprofits with stated preservation and public access mandates, have done a far from optimal job of preserving creativity from the past. This is *intangible heritage* we're talking about, in media possessing value only because of their content. Museums and historical societies have had their hands full simply dealing with buildings, artifacts, and monuments—*tangible* things you can walk up to and touch. In 2005 Heritage Preservation (a Washington-based heritage advocacy organization) surveyed 30,000 collections in museums, libraries, and archives and discovered that more than half had suffered damage from water or light and that "many institutions lack basic environmental controls that prevent photographs from losing color [and] keep rare books from crumbling to dust."

Financial pressures have not only prevented museums from protecting collections; they have encouraged museums to continually look to their holdings as potential sources of income. A number of orchestras have navigated copyright restrictions and union regulations to create record labels or one-off commemorative CD projects. But tight preservation budgets mean that sometimes holdings are simply sold, usually after a committee has quietly declared them "surplus," arguing that the artworks don't line up with core collecting policies of the museum. *New York Times* art critic Michael Kimmelman pummeled the New York Public Library following the deaccessioning (sale) of the Asher B. Durand painting *Kindred Spirits*. Noting that little public debate had preceded Sotheby's auction of the piece (which was purchased by the Arkansas-based Walton Family Foundation, of Wal-Mart fame), Kimmelman concluded that today, "in America, celebrity and money are the measuring sticks of cultural value." Historical assets attached to nonprofits that *aren't* in the

culture business have fared even worse: witness the dismal handling of speeches, letters, and other documents by the Martin Luther King Jr. estate. After decades of attempting to earn royalties by licensing the civil rights leader's words, the King collection was on the verge of being liquidated by, you guessed it, Sotheby's. (A consortium of Atlanta-based universities stepped in to acquire the King material at the last moment.) Although nonprofit status exists to serve the public interest, financial constraints, union policies, and contractual commitments have made it difficult for tax-exempt institutions to set a standard of preservation and access significantly better than what has evolved in for-profit arts industries.

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Preservation is not intuitive: how many of us have winced when we learned that Grandma or Aunt Sue discarded those old Ball canning jars or burned the letters Uncle Joe wrote home from the war? The impulse to save is especially elusive when we're not talking about preserving forests, old buildings, or the statue on the town square but rather considering the intangible contents of recordings and films. "Out with the old, in with the new," has emptied many an attic. Grandma's good china, Uncle Fred's comic book collection, and photographs of Junior's first fishing trip are too easily swept away with accumulated winter dust. A box of family treasures squirreled away in a corner can be lost to simple carelessness or to a periodic exercise of those "best intentions," cleanliness and order. But just as Americans have learned to honor and protect the nation's natural environment, we must acknowledge that our children will benefit from democracy's diverse artistic legacy only if we care enough to make it possible.

The twentieth-century body of film, sound recordings, photographs, and manuscripts gathered in corporate archives around the world constitutes America's collective family treasure, the cultural products that hold the tale of our nation's past hundred years. Rescues make exciting stories, but last-minute interventions by Orrin Keepnews, Dan Melnick, or Jack Loetz are nothing more than inspiring exceptions to a much larger trend. Orphaned to the shifting priorities of corporate owners, exposed to

the perils of theft, fire, flood, and deterioration, massive chunks of America's artistic legacy are already gone.

But we are not helpless, and the media industries know it; they're leery of the potential impact of a preservation movement. In 1998 the Recording Academy, in cooperation with the National Endowment for the Humanities, attempted to create a national database documenting the contents of the recorded sound archives of America's major record companies. To the surprise of many, the industry's trade group, the Recording Industry Association of America, just said "No!" Hillary Rosen, then RIAA CEO, claimed, "There's simply no reason for the record companies to categorize for public distribution . . . their privately owned recording masters."

But insiders knew the truth, and it wasn't about the absence of a "reason": media companies then and now fear a public drive toward preservation fueled by the same kind of energy that launched the environmental movement forty years ago. By revealing how much has been lost, how much has never been released, and, following decades of mergers and relocations, just how little record, film, and television companies know about what they do or do not own, the truth would produce public outrage.

We're *not* helpless.

In the preservation of artistic heritage, Americans can leverage significant influence, and law and public policy can help. The National Historic Preservation Act of 1966 created the position of "preservation officer" in every federal agency, calling for every agency head to take into account the impact of policy and programs on the preservation of historic treasures under their jurisdiction. The law has been widely ignored, but parts of the government responded with alacrity; the act launched impressive preservation agendas in the Departments of Transportation and the Interior, and the elaborate preservation efforts directed toward historic buildings, monuments, and landmarks by these agencies have transformed the American consciousness and the American landscape.

The National Trust for Historic Preservation has done a remarkable job of both preserving historic buildings and monuments and raising public consciousness about the value of America's *tangible* cultural

heritage. The Save America's Treasures program, launched in 1999 as an NEA-NEH-White House Millennium project, also focused primarily on the built environment. Similar "trust" or "treasures" programs dedicated to the arts products of our cultural industries, what one preservation trust executive, Charles Granquist, calls "less tangible" heritage, could over time organize public concern about recorded performing arts as a component of our expressive lives.

Both Orrin Keepnews and Joseph Sax are right: heritage can be lost through carelessness, or an owner can simply destroy an original or spirit a collection away. However, more frequently, the effect of corporate control of arts assets is more subtle: it is less about destruction or loss—issues of preservation—and more about access—actually making the past available today. In the realm of intangible heritage, preservation by itself doesn't mean all that much. If a master negative, disc, or tape is on a shelf in a corporate storage facility, it is technically being preserved, but if we citizens are to actually see or hear a performance from the past, an array of contractual relationships and legal rights must be honored before we get a chance to watch or listen.

Some cultural observers argue that the challenge of access to heritage—how things get preserved and how citizens connect with art products from the past—will automatically be overcome by technology. Law scholar Paul Goldstein imagines a "celestial jukebox"—a vast, all-inclusive digital archive from which citizens can extract (mind you, for a price) any song or film or television or radio program that has ever been produced, to say nothing of novels and knowledge; it'll all be at hand in a world of bits and bites. Writer Chris Anderson envisions a "long tail" of twenty-first-century cultural consumption, arguing, "You can find everything out there on the Long Tail." For Anderson, the low cost of digital availability is so economically efficient that it will make everything available online; the distinction between a best-seller and a book, DVD, or CD that sells a single copy will be erased. Perhaps the Long Tail, or maybe the mixed metaphor of a long-tailed celestial jukebox, will open a magical gateway to heritage.

There's some truth to these arguments; the digital world *can* store words, images, and music at less cost than ever before, and the resulting

longer tail will give knowledgeable consumers an opportunity to buy obscure works that might never be “published” in a conventional sense in a competitive, hit-driven marketplace. But companies still must choose to digitize what they view as viable, even in a brave new economy, and, as in the case of Corbis, those choices can be surprisingly narrow. By the time this volume is published, iTunes will offer more than 2 million recordings on line. That’s a significant “tail,” but iTunes remains a hit-driven model that inevitably zeroes in on new product. How impressive is the length of the iTunes tail when more than 300,000 new performances are released each year? And who will make available the truly obscure or noncommercial—for example, pre-1923 acoustical sound recordings that simply can’t be made to sound remotely modern?

Any institution or private company that attempts to flesh out the tail (so to speak) must navigate the rapids of our bloated copyright system. Farhad Manjoo, writing in Salon.com, has described how Google’s attempt to “make every printed book as accessible as a web site” has foundered, predictably, on the shoals of digital rights. The library today features gobs of pre-1923—read: copyright-expired—material, but it has run afoul of publishers’ and authors’ rights to the millions of volumes issued between 1923 and the present. Manjoo describes the resulting Google online, Long Tail offering as “truncated,” suggesting that “if copyright law stands in the way of Google’s grand aim, isn’t it time we thought about changing the law?”

The inventory of cultural goods *can* be expanded by technology, but the hit-driven mentality of our cultural industries and the minefield of intellectual property rights will still keep the system tilted away from heritage and the public interest.

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What can we do to make certain that what remains will be preserved and that what is preserved will be reasonably available to future generations?

The Preservation Act of 1966 provides one kind of model. The legislation used congressional leverage to steer federal agencies toward appropriate treatment of their self-generated historical assets. But it only applied to the government. Most of America’s cultural heritage is owned by

private companies, and public policy has not been deployed to ensure responsible care and reasonable access in regard to collections of historical assets. Nonetheless, regardless of ownership, it is the right and obligation of the present to select what is best in the past in historical film, jazz, classical recording, and radio and television drama and then to bundle this legacy of artistic excellence for future generations.

To link heritage assets to public purposes we must engage the handful of international companies that own millions of old discs, tapes, and film prints. This conversation between corporate and public interests will not only demand special preservation legislation but a fresh look at copyright and intellectual property law as well. Somewhat ironically (since Congress has enacted the rat's nest of copyright-related laws that make access to heritage so difficult), it has been Congress's own institution, the Library of Congress, that has operated for decades on the front lines of media preservation. In fulfilling its preservation mission, the Library has also done its best to assert a public interest in access to arts products from the past. Of course, it is no surprise that our national library would maintain vast collections of historical arts products, but in the past decade the Library has actually gone further, assembling expert committees to develop lists of historically significant films and recordings that are deserving of special preservation efforts.

The National Film Preservation Act (1988; renewed 1992, 1996, 2005) and the National Recording Preservation Act (2000) each established programs that use expert panels to designate historical material of special importance and at the same time created nonprofit organizations with authority to raise funds to ensure the preservation of those movies and recordings that end up on the "most significant" lists. The Library of Congress has the staff expertise and breadth of collections required for a broad preservation and access program. As Librarian of Congress James Billington observed, through copyright deposits the Library has preserved "a mint record of America's private sector creativity."

However, when it comes to advancing the access rights of the American public, the Library of Congress is poorly positioned to initiate head-banging negotiations with media industries. It is, after all, an arm of Capitol Hill, and Congress can be all too easily influenced by trade

associations representing the film, broadcasting, and recording industries. In fact, with regard to the digitizing of film and recordings, Billington has noted, "We have to be scrupulously careful about existing laws." And because it can be "gotten to" through Congress, my early-on guess is that the Library and our new film and recording registries will be strong on singling out great work from the past, strong on the technology of preservation, but weak when preservation and access call for a push back against the hegemony of copyright dependent arts industries. For example, the film program has concentrated its preservation efforts on non-commercial or out-of-copyright "orphan" films. While media orphans are important material deserving of attention, an emphasis on obscure films and recordings deftly sidesteps possible conflicts between the Library and major studios or record companies. If the Library remains on the cutting edge of preservation policy, it will need to be fortified by a sturdy dose of public support; right now it's just too easy for arts industries to have their way with the institution by lobbying Congress.

In addition to the work of the Library of Congress, a handful of non-profit organizations have taken on the task of preserving specific segments of our arts heritage: the American Film Institute, the Institute of Jazz Studies at Rutgers University, the New York Public Library for the Performing Arts, the Country Music Foundation, the Museum of Radio and Television, and the UCLA Film and Television Archive all maintain significant collections documenting our arts-industry heritage. Like non-profits that create new work, these organizations face all the challenges of the overbuilt and underfunded cultural sector. In addition, current copyright law doesn't accommodate preservation work. Legally, an archive can only make three preservation copies of a copyrighted work, and only after the original has begun to deteriorate. The law thwarts wholesale duplication for preservation purposes, and in testimony before a Library of Congress committee in late 2006, a number of archivists and librarians indicated that they assigned high preservation priority not to the oldest or rarest items but to materials to which they held legal rights, simply because those collections could be duplicated with impunity and reconfigured into new products for release to the public. And despite the obvious value of our historical vernacular art as a metaphor for the character of

American democracy, there has been barely a trickle of public, foundation, or individual financial support directed toward the preservation of twentieth-century popular culture. But institutions such as AFI and CMF—a step or two removed from industry intervention and political pressure—can join forces to play an expanded role in pressing for the public interest in preservation issues—but only if money can be found to support their work.

In addition to the absence of funding for preservation and access, present-day intellectual property law places too many restrictions on the work of preservation nonprofits. For example, we must repeal the section of Title 17, U.S. Code, that exempts pre-1972 sound recordings from federal coverage. Remember, the copyright in recordings controlled by record companies resides in common law enforced by the states, and absent overarching federal authority, court interpretations of some state laws appear to protect all recordings made between the 1880s and 2067—a period of nearly two hundred years! As Tim Brooks discovered in a Library of Congress research project, record companies have not made available the oldest recordings; less than 10 percent of “important” pre-1930 music has been reissued. In fact, of pre-1920 discs featuring African American music, almost nothing is in circulation today. The public interest demands that the copyright in sound recordings produced after 1972—now extended to more than ninety years—must be shortened, and at the same time early orphan films and tapes need to be freed up so archivists, scholars, teachers, and fans of early popular culture can make rare material part of America’s active cultural memory. Absent the obstacles represented by copyright and corporate policy, nonprofit libraries and archives would immediately begin to make rare items of limited commercial value available on CDs or DVDs or as affordable downloads.

If some version of a department of cultural affairs were in place, regularly checking the pulse of the U.S. arts system, no doubt access to heritage, like other aspects of a vibrant expressive life, would be a high agency priority. Absent a cultural policy hub, new legislation and modified regulation—even reconfigured policies within foundations and state and local governments—can make a difference. Kimmelman has

suggested that before a painting or sculpture of special significance to a community is deaccessioned, “local museums should be given a reasonable time to match the sale price.” Such an intervention might require reworking provisions of the federal tax code or changes in the rules governing public support for local institutions.

In other circumstances it is possible that existing public policy tools—regulations and legislation affecting corporate mergers and acquisitions—might be deployed to advance a preservation agenda. The environmental movement has long employed impact analysis to influence policy leaders and flesh out regulation, and similar “cultural impact” studies could be required in advance of Federal Trade Commission approval of a media-industry merger or the sale of one of our arts companies to a non-U.S. parent. FTC attorney Neil Averitt has argued that the FTC should move beyond only considering impact on *price* when considering a merger, noting that in the media industries price might be unaffected in this situation, but consumer choice might be diminished. For example, the merger of Sony and BMG—which, among other things, combines ownership of the two largest archives of historical American music—is unlikely to affect the *price* of CDs and downloads, but it is very likely to reduce the number of historical compilations, thereby limiting *consumer choice*. Companies holding significant heritage collections could be required to submit preservation plans to ensure that these collections would be preserved and remain available if companies merge, or if a U.S. film studio or record company is acquired by foreign interests. A serious congressional hearing on the possible application of modified regulations to mandate preservation and access, by itself, might be sufficiently encouraging to make the big players a little more enthusiastic about the public access component of Library of Congress programs.

Lawrence Lessig and other legal scholars have offered mechanisms for expanding fair use and the public domain. They have suggested that copyright holders periodically pay modest fees in order to maintain copyright ownership, a practice that would inevitably expand the public domain as rights of little perceived value were not renewed by current owners. Copyright holders have been, to say the least, less than enthusiastic about such ideas. But if genuine public concern pushes legislators to

recalibrate the balance of rights of owners and citizens, we may find that the return of old requirements like copyright registration, renewal, and an expanded public domain will gain traction.

It's not the fault of film studios, record companies, or broadcasters. I'm not in favor of beating up on cultural industries about preservation or of complaining that media giants should divert resources to archival storage. These companies are organized to secure shareholder value; it's simply unfair to force them to take on more than a modest role as cultural conservator. More important, we will fail to secure heritage if all we do is try to force media companies to yield ownership rights while simultaneously pressuring them to take on a costly preservation agenda. If the American people want to make certain our heritage will always be with us and that our children and grandchildren will have reasonable access to art from the past, we need to mix mandates with incentives, to give corporate leaders every reason to maintain archives and find creative ways to link heritage with the lives of young citizens. We also need to adequately fund those nonprofit institutions that have already taken up the challenge of preserving pieces of the heritage puzzle.

In addition to government support for preservation, it is reasonable to expect enlightened public policy to counter the power of intellectual property rights with sufficient vigor to secure America's cultural mainstream for the future. It is reasonable to expect that we, as citizens, will have access to the pluralistic, creative past that defines us as a nation and as a people.

But even while yoked to shareholder value, big companies can do better. Too often, instead of a broad safety net, our arts industries deploy a preservation strategy based on current market value. The result is at best a leaky sieve. Some treasures are saved, but others are mislaid, poorly stored, or locked up in service to profit. For many treasures, starting tomorrow is already too late; our artistic heritage greets us with a gap-toothed smile.

Heritage is the part of our expressive life that tells us where we came from by bringing forward voices from the past, grounding us in the linkages of family, community, ethnicity, and nationality, giving us our creative vocabulary. It is the heritage half of our expressive life that

provides permanence and continuity; the half that connects us to other voices, providing the resilience that comes with a sense of self in a particular place. Americans have a right to our diverse artistic heritage even if access must be achieved by setting new public policy goals that push back against the ownership rights of market-driven cultural industries.