

Federal Copyright Protection of Sound Recordings Fixed Before February 15, 1972

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

Comments submitted by the Starr-Gennett Foundation, Richmond, Indiana

The Starr-Gennett Foundation is a 501 (C) (3) organization, with the mission to preserve and promote the legacy of the Starr Piano Company and its Gennett Records Division. It carries out this mission through the collection and interpretation of surviving documents, images, recordings and other artifacts and through exhibits, publications, concerts, reissued recordings, print and broadcast media and the internet.

In the mid-19th century, the Starr Piano Company of Richmond, Indiana, was a national leader in what is now called the home entertainment industry. Starr pianos won awards at the 1893 Chicago World's Fair and were sold abroad as well as in the U.S. The company also produced player pianos and the music rolls they required. In 1915, the business plan expanded first to phonographs and then to the production of phonograph records. In 1921 the Gennett Records studio, named after the Henry Gennett family that owned the company, opened in Richmond. This history is a classic example of industrial growth in turn-of-the-century America, but in fact it became much more than just an example.

The entrepreneurial spirit of the Gennetts led them to record popular American artists that other studios such as Victor and Columbia ignored and to market those recordings to the general population. The result was that early jazz bands, popular in the clubs of New Orleans, Chicago, and St Louis, took the train to Richmond to record their first records. These included Jelly Roll Morton, King Oliver, Louis Armstrong, Hoagy Carmichael, and Bix Beiderbecke. Early blues performers made the trek from the Mississippi Delta, among them Charlie Patton, Blind Lemon Jefferson and Big Bill Broonzy. Country performers Uncle Dave Macon, Earnest Stoneman, and Wendell Hall, and gospel singers Homer Rodeheaver, Thomas A. Dorsey, and the Pace Jubilee singers came to Richmond. As a result of the Gennetts' business acumen, the recorded sounds of these American musical pioneers and many others helped shape a truly American musical culture that has since changed world music. This is the significant legacy left by Starr Piano and Gennett Records.

Our interest is in the copyright status of the recordings made by Gennett Records Division of the Starr Piano Company between 1915 and the demise of the Division in 1934, and in sound effects recordings made by members of the Gennett family after

that date. It is our understanding that recordings made prior to 1923 are in the public domain while those made in 1923 until the Company ceased recording in 1934 are subject to state copyright laws.

Our goal as a not-for-profit educational institution is to interpret the contributions of Gennett Records partly by making digital versions of its recordings (as well as the actual records) available to researchers and by streaming the digital versions of the recordings to the general public through our own website or through arrangements with third parties. To accomplish this we have acquired and digitized over 400 recordings, 200 of which are available at the Archives of Traditional Music at Indiana University Bloomington. The remaining recordings will be posted in the near future.

However, because of the copyright uncertainty, access to these recordings is severely limited, available only at the Bloomington and East (Richmond) campuses of Indiana University. Students and researchers must be physically on these campuses to access the recordings. The Foundation wants to continue to collect historic Gennett recordings, digitize them and make them broadly available to interested parties from around the world through the internet and at public sites in Richmond, such as a Starr-Gennett interpretive site.

With regard to questions 1, 2, and 4, we believe that bringing these recordings under federal jurisdiction would be a major step forward in supporting educational institutions, such as the Starr-Gennett Foundation and Indiana University, to collect and preserve these recordings and enable them to make the recordings available for research and educational purposes without fear of accusations of copyright infringement. At the very least, placing them under Federal copyright statutes would mean they would become part of the public domain between 2018 and 2029 according to the information in question 22 given that the Gennett recordings were made between 1923 and 1934.

With regard to questions 8 and 9, it is our belief that, while Gennett recordings have great historical significance, they have no or at best limited commercial value. Only the recordings of well-known performers, such as those mentioned above, have any commercial value. This is the case partly because the records themselves are actively exchanged among collectors and are easily available on websites such as E-Bay, and also because CD collections of Gennett recordings have been released by non-US companies, such as the recently release four CD set of 105 Gennett recordings by JSP in the United Kingdom and obtainable over the internet. While some of the actual records are rare and might command high prices on the market, much of this music itself is readily available. The vast majority of Gennett recordings, however, have no current commercial value.

Therefore, with regard to questions 11 and 12, we believe that there would be no negative economic effects as a result of the extension of federal protection, given the already extensive commercialization of these recordings. In fact, were the

historical importance of the recordings to become more widely known through the efforts of the Foundation and other educational institutions, there could be a positive impact on the commercial value of reproductions of the music. **With regard to question 13**, there would be important positive educational consequences if digitized versions of the recordings were to be made available online to researchers and interested members of the general public. **And, regarding the issues raised in question 23**, it would be advisable to allow educational institutions to make these recordings of no or limited commercial value available to the interested public. The Starr-Gennett Foundation is committed to the greater availability of these recordings to the general public, but **as suggested in Question 29** the questionable copyright status has created an unwillingness on the part of those we have asked to provide CD reproductions that we could sell in our Gallery or over the internet. The greatly restricted availability of the digitized versions of the recordings at Indiana University is another example of the impact of questionable copyright status.

Question 19 asks how should ownership be determined. Ownership is attributed in the Notice of Inquiry, question 16, to the performers and/or to the producers of the recording. For Gennett recordings, ownership in both senses is difficult to establish. In all instances, the performers have passed away but in several cases we have identified descendants or foundations established in memory of the performers that might put forward an ownership claim. The Starr Piano Company, which was the owner of Gennett Records, the producers of the recordings, was sold piecemeal and our efforts to determine an entity with ownership rights to the recordings has produced no definitive answer. Therefore, we believe that restricting public access to these significant recordings based on the possibility that ownership could be claimed is a clear disservice to those seeking understanding and appreciation of this important element of the cultural history of the United States.

We think that the ownership issue has additional consequences for us. **Question 28** suggests that there might be some reliance on state laws to provide sufficient security for entities such as ours to make the recordings broadly available. However, in the case of Starr Piano and Gennett Records it is unclear which state laws might apply. The company was incorporated under Indiana law but the transfer of ownership of the various parts of the company to entities outside of Indiana could suggest that other state laws may take precedence. Transferring copyright jurisdiction to Federal statute would obviate these potential difficulties.

In conclusion, the Starr-Gennett Foundation is very supportive of changes proposed in the copyright laws for pre-1972 recordings. Prior to 1934, Gennett Records had a significant impact on American culture by recording and selling to the general public performances of the greats in jazz, blues, country, and popular music. Unfortunately, today, because of the confused copyright status of these recordings, the Foundation is prevented from making that music broadly available to the general public. For us, the proposed changes are long overdue.