

Volunteer Ruth Rusie helps children prepare for a lifetime of learning.

CLICK HERE TO FIND OUT HOW YOU CAN HELP.

Ad Council GIVE. ADVOCATE. VOLUNTEER. LIVE UNITED United Way

Who Owns the Live Music of Days Gone By?

More Articles in Technology »



SOFA Entertainment

A producer has bought and boxed episodes from "The Ed Sullivan Show," including performances by Elvis Presley.

By ROBERT LEVINE
Published: March 12, 2007

When it began in 1973, the "King Biscuit Flower Hour" was very much of its time. Bob Meyrowitz, who ran the show during its heyday, had the idea to start a weekly rock concert radio program as an alternative to chaotic festival shows after a fan was killed at the [Rolling Stones](#) performance at Altamont.

"I thought people would bring their cars into big parking lots and dance to the music," Mr. Meyrowitz said. The first episode featured the Mahavishnu Orchestra, Blood Sweat & Tears and a barely known singer from New Jersey named [Bruce Springsteen](#).

Back then no one thought much about what would happen to the King Biscuit recordings, which grew to thousands of hours featuring nearly every top act in '70s and '80s rock.

Now, more than 30 years later, the archives of radio and television shows like "King Biscuit," "Don Kirshner's Rock Concert" and "Later ... With Jools Holland" have become valuable prizes in the desperate search for new content for Web sites, DVDs and video-on-demand services.

"It's all about supply and demand, and with all these new media — broadband, mobile phones, video on demand — there's more of a need for content," said Pat McDonald, co-president of Northstar Media.

Northstar recently brokered a deal for a company called Concert.TV to license video-on-demand rights to "Later ... With Jools Holland," a British music program that has featured performances by R.E.M., Beck and scores of other artists.

But live recordings can come with thorny legal questions. They were often made outside

MOST POPULAR - TECHNOLOGY

E-MAILED BLOGGED VIEWED

1. A Legacy Feud in Tech
2. Novelties: Bequeathing the Keys to Your Digital Afterlife
3. Bits: Disruptions: At Odds Over Privacy Challenges of Wearable Computing
4. Technophilia: If My Data Is an Open Book, Why Can't I Read It?
5. Tool Kit: Swindles and Spam, Lurking in Your Search Results
6. Gadgetwise: Tip of the Week: Touring the Library of Congress Digital Collections
7. Bits: Laurene Powell Jobs and Anonymous Giving in Silicon Valley
8. Bits: Vintage Apple-1 Sells for Record \$671,400
9. Europeans Press China Over Trade in Telecom
10. Gadgetwise: Q&A: Paying Extra for Phone Freedom

Go to Complete List »

TWITTER

LINKEDIN

SIGN IN TO E-MAIL OR SAVE THIS

PRINT

REPRINTS

SHARE

THE WAY WAY BACK WATCH TRAILER

the studio under contracts that did not clearly assign copyrights to a record label. Now the content owners are scrambling to get the permissions needed to sell the material in formats that did not exist when the music was recorded. And labels and musicians are also asserting their rights to such recordings — in one instance, in court.

The King Biscuit property, which has changed hands twice, is now owned by Wolfgang's Vault, a company involved in a particularly important dispute about how such recordings can be used.

The company also owns the archive of the late San Francisco concert promoter Bill Graham, and is being sued on charges of copyright infringement and bootlegging, among other things, by a group of musicians, including the [Grateful Dead](#) and members of Led Zeppelin and the Doors.

Mr. Graham's collection of recordings is remarkable, with performances by those acts and dozens of others in their prime. After Mr. Graham died in 1991, his production company was sold to [Clear Channel Communications](#), which in 2003 sold a warehouse of Mr. Graham's music memorabilia to William E. Sagan, a businessman in Minnesota, for more than \$5 million.

Mr. Sagan started the Web site [Wolfgangsvault.com](#) to sell items from the museum-worthy collection, which includes original posters, tickets and photographs (Mr. Graham's given name was Wolfgang Grajonca.) Last year, to draw potential customers, Wolfgang's Vault began streaming over the Internet some of the concerts Mr. Graham had recorded.

The streaming audio, according to Ashlie Beringer, a lawyer with Gibson, Dunn & Crutcher who is representing the bands suing Wolfgang's Vault, "was the straw that broke the camel's back."

The legal duel involves a number of issues, including the rights to sell reproductions of the items in the warehouse that feature the likenesses of the artists or the bands' logos. But the most important issue, given the value of what is at stake, is precisely what Mr. Sagan owns. In a statement released when the suit was filed, Bob Weir of the Grateful Dead said that Mr. Sagan's actions amounted to stealing.

"Just because you own the tapes doesn't mean you have the copyright to the music on them," said Ms. Beringer, who argues that Mr. Graham never had a copyright to this music in the first place. "The copyright act says that the performers are the presumed owners of the copyright." Since some artists were under contracts that specifically granted live recording rights to the label, [Sony](#) BMG Music Entertainment has also joined the suit.

In a counterclaim filed this month, Mr. Sagan asserts that Mr. Graham acquired these rights by making these recordings, with the explicit or implicit permission of the artists, who knew of his reputation for taping performances. In a sign of the acrimony the case has stirred up, the filing includes a defamation claim against Mr. Weir.

"A copyright owner is someone who contributes to that work, and our position is we contributed to the development of the sound recording," said Michael S. Elkin, a lawyer with Winston & Strawn, which is representing Wolfgang's Vault. He said that Mr. Graham had used some of the recordings over the years, and that the artists had not objected.

Mr. Graham could not have anticipated the ways it is now possible to market music and the legal confusion that would follow. Standard record company contracts give the label rights to artists' recordings, but some older contracts don't specify what kinds of performances that might include. The number of rights required to market a live recording without fear of litigation can make one's head spin as much as some of the music played at Mr. Graham's concerts.

"You have to look at the artist's contract with the record company to see who would own recordings not made in the studio," said Robert L. Sullivan, a lawyer with Loeb & Loeb who represents the estate of Johnny Cash. In the case of a performance originally



intended for broadcast, he said, “you’d have to look at the radio show contract, and those vary widely.”

For decades, the expense and hassle of clearing all of those rights made it impractical to sell old live recordings.

“These are niche products and they’re not for the casual fan,” said Danny Goldberg, president of the artist management company Gold Village Entertainment. But Internet marketing and online stores have made it easier and less expensive to reach fans, and Mr. Goldberg said that he was considering buying a catalog of live recordings, even though he might acquire the rights to release only a fraction of them.

At a time when music sales are declining, many expressed frustration that it was so complicated to find a way to make money on these kinds of recordings. In an odd twist, material by older artists is especially desirable, since their adult fans tend to buy music rather than download it illegally.

“At some point it becomes irrational not to figure out a way to exploit this stuff if the parties involved will benefit,” said Greg Scholl, president and chief executive of the Orchard, a digital distribution company. “There’s no question this stuff is more saleable than it was.”

To get a sense of the value of historical musical performances, consider what Andrew Solt has made of the archive of “The Ed Sullivan Show.” As a director and producer of rock documentaries, Mr. Solt kept returning to the Sullivan archives to license footage from Mr. Sullivan’s family, which owned the rights to the program under the terms of Mr. Sullivan’s deal with [CBS](#).

Mr. Solt’s licensing costs became so expensive that he inquired about buying the rights to the show, which he did in 1990, for a price said to be below \$10 million. “I paid every penny I had to lawyers and borrowed all the money from a bank,” he said. “I would wake up at night and say, ‘What did I do?’ ”

But it seems that Mr. Solt got a very good deal. He has used the material in the archives to produce television specials and DVDs, but he said that the most valuable material is the musical performances, including historical appearances by [Elvis Presley](#) and the [Beatles](#).

He has released a DVD featuring the Beatles’ performances on the show, which he said has sold 200,000 copies; last fall, he released a similar Elvis package that he said has already sold 100,000 copies; and he licensed the material for “Ed Sullivan’s Rock ‘n’ Roll Classics,” a box set distributed by Rhino, a subsidiary of Warner Music.

Mr. Solt, who also bought the rights to “Don Kirshner’s Rock Concert” with a partner a few years ago, believes such content will eventually generate even more revenue on the Internet.

“You won’t need Andrew Solt to make you an ‘Ed Sullivan Show’ anymore,” he said. “You’ll be able to go to a menu, choose your own favorites and use what you want.”

Sphere It!

[More Articles in Technology »](#)



Save 50% on a 16-week Times Subscription. Sale Ends Today. Act Now.

Ads by Google

[what's this?](#)

[YouTube Comedy Week](#)

New Videos From Your Favorite

Comedians. Watch Now!

youtube.com/comedyweek

Tips

To find reference information about the words used in this article, double-click on any word, phrase or name. A

new window will open with a dictionary definition or encyclopedia entry.

Past Coverage

[CIRCUITS; A Touch of Gold to Keep Treasured Discs From Degrading \(April 27, 2006\)](#)

Related Searches

- [Archives and Records](#)
- [Recordings and Downloads \(Video\)](#)
- [Computers and the Internet](#)
- [Television](#)

INSIDE NYTIMES.COM



N.Y. / REGION »



At School Papers, the Ink Is Drying Up

OPINION »



Draft: Gesture Writing

HEALTH »



'Fat Talk' Compels but Carries a Cost

BOOMING »



Sunblocks Came Late and Cancer Too Soon

OPINION »

A Quest for Cleanliness
 Room for Debate asks: Is it healthy to keep our bodies and homes squeaky clean, or should we relax a bit?

TELEVISION »



On 'Brooklyn DA,' Never a Crime-Free Moment