

# Performers First: Gift Exchange and Digital Access to Live Folk Music Archives

Paul Conway and Robert B. Markum

## ABSTRACT

Archives commonly hold full, unedited, and unpublished recordings of live musical performances, particularly those archives that focus their collecting on local communities. Much of this content resides on deteriorating magnetic tape with highly restrictive intellectual property constraints that threaten its digital future. This article explores a possible resolution of this dilemma of preservation and access by giving preference to the perspectives and prerogatives of the musical artists represented on live folk music recordings. The article characterizes The Ark in Ann Arbor and the at-risk recordings made at this nationally recognized coffeehouse between 1969 and 1980 in the context of the late-era folk revival scene in the United States and the challenges that copyright restrictions pose for making digitized copies available to contemporary audiences. The authors present and discuss the findings of innovative memory triggering interviews with folk music performers that point toward a way to extend into the realm of digital surrogates a philosophy of the gift exchange cycle. The article argues that archives could embrace asynchronous digital streaming as an extension of the well-established folk process that is so central to the intimacy of the coffeehouse and sidestep if not completely mitigate the barriers imposed by today's intellectual property framework.

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## KEY WORDS

Intellectual property, Folk music recordings,  
The Ark in Ann Arbor, Audiovisual digitization

On a typical weekend night, The Ark in Ann Arbor, Michigan, the blue Victorian-era house at 1421 Hill Street, was open for practically free music, coffee, donuts, popcorn, and comradery. Word of mouth, hand-drawn printed fliers, and regular monthly notices in the *Ann Arbor Observer* drew college students, townies, and serious fans of the late-stage folk revival music scene. Week after week for decades, proprietor David Siglin booked an eclectic mix of rising stars on the folk music touring circuit, local and regional musicians, and better-known singer-songwriters who cherished the intimacy of The Ark's living room (see Figure 1), with ninety appreciative fans cross-legged on the floor and that many more in the wings.

Beginning in 1969, sporadically at first and then very consistently through the 1970s, 1980s, and into the next decades, Siglin obtained verbal permission to record visiting artists for personal use. The result of his diligence is a serendipitous, nearly unique (albeit selective) aural record whose distinctiveness and value extend well beyond the events at a midwestern coffeehouse. Upon his retirement from The Ark in 2008, David Siglin donated his extensive archive of recordings, flyers, and photographs to the Bentley Historical Library at the University of Michigan.<sup>1</sup> The Ark archive constitutes one of the richest records of a single folk music venue in the United States; an essential primary source for understanding the evolution of popular music through the second half of the twentieth century that is, unfortunately, nearly inaccessible to both academic researchers and to the wider public.



**FIGURE 1.** Audience at performance of the High Level Ranters, The Ark in Ann Arbor, January 29, 1971 (photo: Al Blixt)

Technological obsolescence and media decay threaten the Ark recordings and other unique audio performance archives widely held in archives. Without concerted effort, the music and the associated knowledge will be lost in a few short decades because the magnetic tapes will have become too fragile to play back.<sup>2</sup> Digital reformatting of these and other source archives is a technically standardized but still-costly strategy for rescuing the live performances stored on obsolete and rapidly degrading magnetic tape.<sup>3</sup> Yet, in this era of wholesale digital transformation, sound recordings from The Ark pose a dilemma that is social in its formulation and in its possible resolution. Simply put, current US copyright regulations (along with most international regulations) establish term limits on open access that in most cases are well beyond the life expectancy of the recording media upon which the music is stored.<sup>4</sup> The tension between preservation and access forces archivists, librarians, curators, and some private collectors to choose between the high risk of inevitable physical loss (by delaying digital rescue) and the crushing limitations on the use of digital copies (due to avoidance of legal jeopardy).<sup>5</sup>

In this article, we develop a model of access (“Performers First”) to musical resources that may have copyright restrictions and offer it for consideration and debate. Performers First is simultaneously a philosophical stance toward risk assessment and management, a reorientation of preservation and access toward the nature of musical heritage transmitted orally, and a process-procedure regarding access decision-making in an archival context. Performers First recognizes that performers in the folk music tradition are the primary (and in many cases, the sole) stakeholders in the ongoing transmission of their live performances captured on tape. The Performers First model draws on the unanimous views of a diverse group of folk musicians to suggest that certain forms of live musical performances should be released in digital form without the need to clear each and every possible right embedded in the musical compositions. Indeed, this article concludes by suggesting that a Performers First model might also apply liberally to other collections of oral (intangible) heritage that exist in archives only because someone captured this heritage on a recording medium at some point in the past for purposes that only in part encompass transmission over time.

We first characterize the challenges that practices of intellectual property management pose for making available digitized copies of at-risk live music recordings such as those made at The Ark in Ann Arbor. Then we present and discuss the findings of in-depth interviews with folk music performers that point toward a way to extend a long-standing and well-understood philosophy of the gift exchange cycle across time and into the realm of digital surrogates. Embracing asynchronous digital streaming as an extension of the folk process

so central to the intimacy of coffeehouses may sidestep if not completely mitigate the barriers imposed by today's intellectual property framework.

### Intellectual Property Barriers to Listening

The barriers to making digitized live musical performances openly accessible online are part of an intellectual property infrastructure that privileges private economic rights over an open commons of creativity.<sup>6</sup> Legal enclosure and the threat of litigation create a "chilling effect" that reinforces rather than confronts limitations on online digital access.<sup>7</sup> As one scholar of the ethical complexities of these issues writes, "The public domain has turned out to be highly vulnerable to private capture."<sup>8</sup>

Since 1976 in the United States, the rules and regulations governing published works apply equally to *unpublished musical works* created since 1972, including the absence of all requirements for registration and documentation, and greatly extended term limits before works pass into the public domain. The 1992 Home Audio Recording Act and the Digital Millennium Copyright Act, enacted in 1998, further regulate digitized analog recordings. The recently passed (and widely praised) Music Modernization Act of 2018 only partly resolves issues related to digital access because of its focus on pre-1923 recordings.<sup>9</sup> As it currently stands, unpublished musical recordings created before 1972 will not pass into the public domain until 2067, while unpublished recordings created since 1972 are restricted for seventy years after the death of the musical artist. "The bottom line," copyright expert Peter Hirtle writes, "is that almost all sound recordings, regardless of when they were made, are protected to some extent."<sup>10</sup>

The dilemma of wider access to recordings of live performances of folk music threatened by physical loss originates in the nature of folk music itself. Such music is community heritage with little or no regard for the prerogatives of authorship that accrue to creators in the formal copyright tradition.<sup>11</sup> The most salient characteristic of folk music is its roots in oral tradition. According to the International Folk Music Council's 1968 definition, established well before contemporary copyright laws complicated digital delivery, "Folk music is the product of a musical tradition that has been evolved through the process of oral transmission. The factors that shape the tradition are: 1) continuity which links the present with the past; 2) variation which springs from the creative impulse of the individual or the group; and 3) selection by the community, which determines the form or forms in which the music survives."<sup>12</sup> This definition clearly places all aspects of the music, its composition, and its performance in the hands of folk musicians themselves. Without access to these recordings or others like them, there can be no continuity, variation, or selection. As such,

wide access is central to, and consistent with, the values at the heart of the folk music tradition.

Anthony McCann, who has closely studied musicians in a small Irish community, quotes the claim of a musician that “the music doesn’t belong to anybody, so if somebody’s trying to learn it and you can help them, it’s not yours, so it’s not like you can hold back, because it’s not yours anyway.”<sup>13</sup> Alex Cummings amplifies this point about control in the context of arguments over antipiracy statutes and technologies. “The artist figured little in these debates, and then only in terms of the [commercial] value of his reputation or popular appeal.”<sup>14</sup> These and other scholars are suggesting, without saying so directly, that values may exist within the folk community, which is the primary vehicle for the transmission of folk music culture, that are at odds with the ways in which current copyright policies are administered.

The established path for the use and republication of musical works is through an increasingly complex and opaque permissions process. Copyright scholar Jessica Litman asserts that the permissions structure built into the US intellectual property regime is too rigid. She reflects that the enforcement strategy of copyright owners (largely vested in commercial publishers) so far “has been limited to threats, litigation, and slick and unpersuasive campaigns to educate Americans to disapprove of unauthorized use.”<sup>15</sup> Confronted with the risk of litigation (or outright threats) and a complex permissions process, archivists who collect and preserve unpublished musical recordings have responded in combinations of three ways. The first response is to do nothing, that is, to assemble collections of original sound recordings on a variety of obsolete and deteriorating media and “wait and see” for others to find a path forward. A second response to risks and complexity is to invest resources in trying to obtain permission for a small number of the most valuable recordings (“greatest hits”) or to place responsibility for rights clearance on the end user.<sup>16</sup> The third and most common response to external constraints placed on archival collections of unpublished sound recordings is to make a digital reproduction of the physical recording but require listeners to “come and get it” by limiting access to in-building use with few options for personal use. Each of the three institutional responses to copyright restrictions effectively places the digitization of at-risk sound recordings in direct tension with the principles of open circulation of music and the use of these recordings for creative purposes.

Martin Scherzinger shows that restrictions on the sharing of musical works, particularly unpublished recordings, produces “social agency” in various forms, including resistance to the law; independence from the law; strategic mobilization of the law to counteract its excesses; and creative adaptation to it.<sup>17</sup> The first three forms of agency involve a direct engagement with legal

process, whereas the fourth form of social agency, “creative adaptation,” holds possibilities for new approaches to limitations on access to digitized live music performances. McCann and others argue persuasively for shifting the paradigm of authorship and ownership “from the dominant folklore-as-materials to folklore-as practice.”<sup>18</sup> They insist, however, on making change inside the (international) legal system rather than invoking what Scherzinger and others call “critical praxis.”<sup>19</sup> Critical praxis comprises an intervention on ethical or moral grounds designed to address dilemmas that may have technical or procedural roots.

Jeremy Evans and Melissa Hernández Durán propose one way to increase access and use of unique historical recordings: a “genre-based rights review process combining fair use evaluation with a risk management approach.”<sup>20</sup> In this approach, archivists assign materials contained in a collection to one of five genre designations (spoken word, oral history, music, documentary, and literary) to determine the relative risk (no, low, medium, and high) of making all of the materials in that collection available. Evans and Durán demonstrate that, in many cases, entire collections can be “cleared” through this process because they represent low or no risk. They assert that “all music and literary sound recordings . . . begin at the high-risk level and rarely escape it” because risk is intrinsically tied to genre.<sup>21</sup> Their risk-sensitive clearance model simultaneously takes musical recordings nearly completely off the table and ensures that archives are likely to take approaches to preserving, digitizing, and releasing musical recordings that place them in further jeopardy. In fact, this is a given in an approach that argues for “restricting a few to open many,”<sup>22</sup> an approach that means that recordings from The Ark (and similar unpublished live musical recordings) are likely to mold as a consequence of being part of “the few.”

In the context of digitized recordings at high risk of loss, this article argues for and demonstrates that embracing digital streaming as an extension of the gifting model is an effective way to marshal professional self-reflection as well as individual and collective reflective action. The Performers First model does not sentimentalize the theory of gift exchange, but rather embraces gifting as a fundamental practice whereby archives participate in the transmission of oral culture.

### The Ark Archive in Context

Four churches in Ann Arbor, Michigan, pooled their resources in 1965 and launched The Ark as a “coffeehouse ministry” to attract young people for discussion and entertainment. Church leaders encouraged folk music performances from the start as a way to distinguish their ministry from other community

youth services in town. When the founders sought a residential manager to handle bookings and supervise the space during performances, they offered the job to local musician Dave Siglin and his wife, Linda (see Figure 2), who moved into The Ark in November 1968.<sup>23</sup> Through to their retirement in 2008, the Siglins lent The Ark their distinctive personal vision, which encompassed emphasizing local and regional musicians and generally eschewing big name acts and the “almost famous” in favor of creating an intimate and transcendent musical exchange between performer and audience. The setting of the original Ark on Hill Street (1965–1984) was a combination of folk music coffeehouse, community center, and private home.<sup>24</sup> The Ark continues today in its third location, in downtown Ann Arbor, as one of the country’s premier listening rooms.<sup>25</sup>

The Ark was the only truly successful and sustained acoustic music coffeehouse between New York City and Chicago from the 1960s to the end of the twentieth century. Few such venues made recordings of performances on a regular basis; even fewer collections of live recordings survive. Exceptions include Caff  Lena in Saratoga Springs, New York, run by Lena Spencer;<sup>26</sup> Club Passim in Cambridge, Massachusetts, managed by Bob and Rae Anne Donlin;<sup>27</sup> and Phil Ciganer’s Towne Crier Caf  in Pawling, New York. On the West Coast,



**FIGURE 2.** Linda and Dave Siglin on the porch of The Ark, September 11, 1974

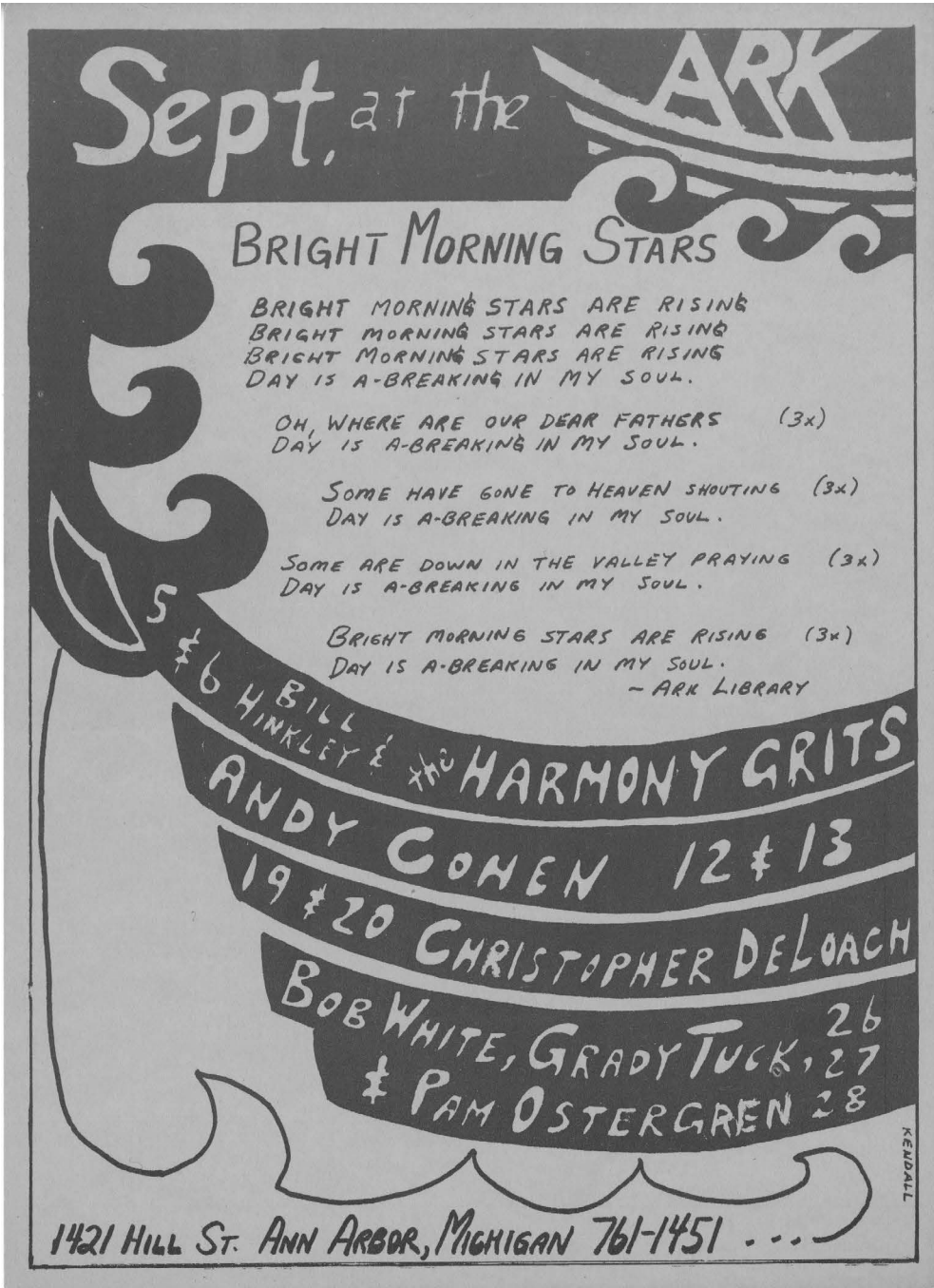
the Lou Curtiss Sound Library contains an extensive collection of live recordings of folk festivals and an unknown number of early 1960s performances at the Sign of the Sun bookstore or the short-lived but fondly remembered Heritage in San Diego, California.<sup>28</sup> One distinctive feature of these and many long-surviving local folk venues was a “singular person with a vision” who provided continuity for performers while creating a distinctive listening environment for dedicated and casual fans.

The Dave Siglin Collection (1969–2008) at the Bentley Historical Library consists of over 3,000 hours of recordings on magnetic tape, nearly 1,000 programs and flyers, and some 1,800 black-and-white photographs taken by Siglin, local photographers, and publicity agents.<sup>29</sup> Within this larger corpus, those performances recorded primarily on reel-to-reel tape at The Ark between 1969 and 1980 are the most distinctive, the rarest, and the most endangered portion of the overall collection of recordings. These recordings from the larger archive, which Siglin began creating over forty years ago, are the focus of this article.

In almost all cases, the recordings on each tape contain a specific “program-event”: a temporal sequence of one or more days during which an artist performed publicly at The Ark. An example of a single program-event, illustrated in Figure 3, is the combination of one show on Friday night, one show on Saturday night, and a Sunday morning children’s show by the combo of Bob White, Grady Tuck, and Pam Ostergren. A database of performers (individuals and bands) and program-events identifies 405 individual musical artists performing at The Ark from 1969 to 1980 plus an additional 94 bands. Metadata derived from physical evidence on tape boxes and printed programs yields 857 discrete performance dates during this period that combine into 393 program-events of one or more days in duration. Of this number of events, 216 program-events (55%) are captured all or in part on tape in the Siglin Collection.<sup>30</sup> The overall performance frequency distribution of the artists represented on the tape recordings during the period 1969 to 1980 conforms to a classic “long-tail distribution,” where most artists appeared one or two times during the period, while a handful were frequent performers.<sup>31</sup> Table 1 names the fourteen most frequent performers at The Ark.

North American folk revival historian Gillian Mitchell considers the complementary worlds of the coffeehouse and the folk festival to be embodiments of “locale” in the folk music revival as it expanded beyond the urban coffeehouse scene of New York City in the early 1960s.<sup>32</sup> The artists represented on recordings from The Ark show the varieties of music common to the late folk revival that was simultaneously expanding the range of genres and incorporating a transition to singer-songwriters oriented toward popular music. The most common musical performers at The Ark included eclectic folk song revivalists, musical





Downloaded from http://meridian.allenpress.com/american-archivist/article-pdf/82/2/566/2458913/arc-82-02-08.pdf by guest on 03 March 2024

FIGURE 3. Handmade printed postcard flyer for The Ark in Ann Arbor, September 1969 (courtesy of David Siglin)

**Table 1. Most Frequent Performers at The Ark, 1969 to 1980**

Artist	Program-Events	Dates Documented	Tapes Made	Proportion of Dates Recorded
Michael Cooney	24	63	50	79.4%
Barry O'Neill	21	44	37	84.1%
Bob White	15	31	25	80.6%
David Bromberg	14	41	27	65.9%
Joe Hickerson	14	37	32	86.5%
John Roberts	14	30	18	60.0%
Tony Barrand	13	27	14	51.9%
Deede Palazola	13	15	4	26.7%
Laszlo / Sandor Slomovitz	12	5	0	0.0%
Paul Geremia	11	20	8	40.0%
Peter "Madcat" Ruth	11	17	0	0.0%
Rosalie Sorrels	11	17	6	35.3%
Norman Blake	10	28	21	75.0%
Martha Burns	10	14	1	7.1%

troubadours cut from the cloth of Lead Belly and Woody Guthrie; string band musicians from the Appalachians and Ozarks; folklorists who combined story with song; numerous Irish, Scottish, and English folk acts; and artists from the wellspring of regional music beyond the Midwest. Quite a few of the performers who frequented The Ark were emergent singer-songwriters, who interspersed their sets at The Ark with a mix of traditional songs and original compositions emulating a particular genre of music.

Because relaxed performers at The Ark engaged an enthusiastic and appreciative audience, the live and unedited recordings contain a wealth of contextual information about the songs, the genres, and the performers themselves—largely in the form of extended introductions and banter between songs. Scott Grills examines the richness of this contextual knowledge and concludes that talk intervals serve at least four purposes:

... provide additional information to the audience that would otherwise be unavailable, provide the artist with an opportunity to influence audience interpretations, allow for legitimating strategies to be utilized and, importantly, allow artists an opportunity to invoke disclaimers, accounts, and justifications to situate the performance at hand.<sup>33</sup>

Performers not only regularly named the song titles. They also frequently regaled the audience with stories of the “folk process,” including the origins of the songs, how they learned them, how they modified them, and what the

songs meant to the performers. This seemingly tertiary material is an important primary source on the social, economic, and political environments within which the songs and their performances reside.<sup>34</sup> Indeed, talk interspersed with songs renders the performance complete; the two components are inseparable sources for understanding the transmission of musical knowledge between musicians and within communities across time, while also complicating the neat genre boundaries offered by Evans and Durán between music, oral history, and spoken word.

### The Ark Archive and the Gift Exchange Cycle

The recordings from The Ark offer *prima facie* evidence of how the intangible gift of live music performance has functioned for decades and could continue to function through digital transformation.<sup>35</sup> Finnish scholar Alf Rehn reviews the multiplicity of disciplinary perspectives on the construct of the “gift” and provides useful definitions that distinguish between the gift, gifting, gift exchanges, and gift economies.<sup>36</sup> In considering the folk process as manifested in live performance before an audience, “music and lyrics” are the gift, “performance” is the gifting, and “gift exchange” is the wider cycle of gift movement that anthropologists, economists, and philosophers describe as fundamental. For ethnographer Anthony McCann, “the gift is the risk of self, the tunes, the songs, the chat, the shared experience, the history of personal endeavor.”<sup>37</sup> McCann notes that, for the musician engaged in such a personalized performance, the authorship or ownership of the tune recedes in favor of the “non-commodified musical moment, in a process of forging and acts of personal courage.”<sup>38</sup>

Lewis Hyde’s philosophical treatment of the gift exchange cycle postulates that a gift, such as a musical talent, is given without expectation of return. “My general point here,” writes Hyde “is that a transformative gift cannot be fully received when it is first offered because the person does not have the power either to accept the gift or to pass it along.”<sup>39</sup> In the context of a folk music performance in an intimate setting such as The Ark, the act of giving carries with it the potential of receiving. “Sometimes, then, if we are awake,” writes Hyde, “if the artist really was gifted, the work will induce a moment of grace, a communion, a period during which we too know the hidden coherence of our being and feel the fullness of our lives.”<sup>40</sup> Hyde’s philosophy of the gifting cycle provides for a time lag between giving, receiving, and continuing the cycle as a forward motion of transfer. “In fact, it is better if the gift is not returned but is given instead to some new, third party. The only essential is this: the gift must always move.”<sup>41</sup> A gifting cycle, such as that embodied in musical performance,

insists on movement across space and time, and, just possibly, across an asynchronous technological divide provided by today's digital streaming media.

Hyde sets the gift exchange cycle of traditional music apart from commercial marketplace that seeks its audience through the circulation of goods. "Because the spirit of the gift shuns exactness and because gifts do not necessarily move reciprocally . . . contracts of the heart lie outside the law, and the circle of gift is narrowed, therefore, whenever such contracts are converted to legal relationships."<sup>42</sup> Archival theorist Brien Brothman draws on the theory of the gift and gifting to justify the very long-term value of the archival enterprise beyond the immediacy of "cybermarket situated consumable objects." In envisioning archival work as an act of giving the past to the future, Brothman places archival decision-making "as a societal act that seems to occur somewhere outside the pragmatic realm of rational, contractual, and transactional life."<sup>43</sup> Brothman's work lacks the specific user/creator context provided by music but provides a useful alternative position for archival agency outside the legal boundaries that hamstringing digital access.

In the case of recordings made at The Ark and other live-performance folk music venues, the challenge for archival theory and practice is creating a bridge between the nature of the folk music as oral tradition and the risk-aversion practices of the custodians of that tradition. Such a bridge can and should draw upon, where possible, the perspectives of the folk musicians represented in the archive. The Performers First model derived from the research investigation reported here is an exercise in "critical praxis" that explores an ethically grounded alternative focused on the gift exchange cycle inherent in the transmission of folk music over time.

## A "Performers First" Interview Project

The primary issue at hand for the specific research investigation is the extent to which a diverse group of now-aging performers represented on a selection of recordings of live shows characterize their performances forty or more years ago as conforming to the gift exchange cycle and, if so, the extent to which they support the digital release today of their gift-performances to a wider contemporary audience. Specifically, the research explores the implications for the broad management of access to unpublished live musical recordings of two interrelated questions.

1. How do folk music performers in the decades of the 1960s, 1970s, and 1980s characterize their own musical artistry in the context of performing live at The Ark in Ann Arbor? Given the coffeehouse culture of The Ark, the insights of performers on engagement with each other

and with the audience may help clarify the nature of the real-time gift exchange among performers and between performer and audience.

2. How do musical artists who performed at The Ark characterize the transmission of American folk music over time and into the digital environment? Given the decades-long lapse between an original live performance and hearing a digitized recording of that performance, the stances that performers take on copyright and digital access to the once-heard performances will test the feasibility of extending the gift cycle through to the digital stream.

For the project, Dave Siglin initially chose sixty-five endangered recordings (each roughly 3.5 hours in duration) for preservation-quality digitization. His selection criteria for initial digitization combined an appraisal of the distinctiveness of the content (including rare, first-time, or particularly memorable performances) and the representativeness of the types of performers and musical genres common to The Ark in its formative period from 1969 to 1984.<sup>44</sup>

Following initial digitization, when it was then possible to listen to the performances without risk to the original fragile tape recordings, the project team worked with Dave Siglin to narrow the list of programs to ten program-events. Each recording stands out for the quality of the sound captured on the tape, the completeness of the performance recorded, and the variety of performances represented. Additionally, the research project sought recordings that featured at least one living musical artist who could be located for a possible interview or ready access to a relative who could convey the meaning of the recorded performance.

We characterize our primary investigative method as “modified oral history with an explicit memory trigger.” The project’s method follows closely the procedural guidelines of the Oral History Association regarding advance contact, transparency, and permissions while departing from some of the organization’s core principles.<sup>45</sup> For example, the goal of traditional oral history work is to create an archival record of the past, as free of interviewer bias as possible, by eliciting memories in oral form and so is relatively unconcerned with contemporary issues. Our interviews, in contrast, elicit memories from historical actors whose views can inform solutions to contemporary problems. Our methodology is closely aligned with Kathy Charmaz’s qualitative methods that seek to build meaningful theory and face-value understanding incrementally and iteratively from accumulated testimonies.<sup>46</sup>

A key aspect of our methodology is to elicit memories of a specific musical event that may or may not have been part of the interviewee’s close memory. Petr Janata notes that “the evocation of autobiographical memories and associated emotions by music counts among the most poignant experiences associated with music.”<sup>47</sup> These memories, known as music-evoked autobiographical

memories, “are triggered when hearing an excerpt of a piece of music from one’s past.”<sup>48</sup> Researchers have demonstrated that hearing such a song can evoke powerful and emotionally laden autobiographical memories.<sup>49</sup>

This study, however, breaks new ground in the area of music-evoked autobiographical memories by triggering the autobiographical memories of musicians with their own music, specifically in the form of recordings they themselves have never heard. By using these performances as a type of “memory trigger” to relocate the memories and emotions of the performers and performances to a more immediate and accessible space in their minds, we elicited through the interview questions specific contextual details (e.g., touring, the folk scene, The Ark, the performance itself, etc.), specific song-related details (e.g., name, origin, arrangement, ownership, etc.), and specific attitudes toward making these performances available. While the information elicited from the interviews regarding songs helps in attempts to seek permissions for copyrighted materials, the central goal of the interviews was to place the performers, to the greatest degree possible, into a moment that transpired approximately forty to fifty years prior to allow them to reexperience the prevailing sentiments associated with that time period and, thus, to make a determination on what appropriate actions should be taken with regard to access in the present.

Our expectations are supported by the work of Martin A. Conway, who writes that “memories are encoded in terms of the self . . . and experiences with strong self-reference may receive privileged encoding that render them highly accessible and capable of evoking intense experiences of recollection.”<sup>50</sup> We also expected that the recordings would not only trigger in the artists general autobiographical memories (of their time as touring musicians, etc.), but also evoke semantic memories (facts about the songs), procedural memories (specific information about how the music was played), and episodic memories, which Conway defines as “experience-near, highly event specific, sensory-perceptual details.”<sup>51</sup> Taken together, evoking this set of four types of memories through the explicit memory trigger allows a performer to reengage with the multifaceted nature of the performance in a way that transcends sheer information recall (e.g., who had the rights to a specific song). Our memory triggers allow the performers to reflect critically on the meaning (and meaningfulness) of the time and place, the songs, the performances, and the ethics of folk music in a way that might inform their approach to contemporary access to these performances.

For each recorded program chosen, the project team located as many living musicians as possible, contacted them by phone or email, and obtained permission to collaborate on the project. Two weeks prior to a scheduled interview, we sent a digital copy of the recording to the performer, a list of song and talk tracks, and an outline of the interview protocol. Each performer interview, which lasted forty-five to sixty minutes by telephone, featured prompts

to elicit stories, sometimes on point, sometimes meandering. We recorded each interview and arranged for verbatim transcripts. We compared each transcript with the interview recording to ensure the accuracy of the transcript. As is typical with open-ended interviewing, the inherent differences between the spoken word and the transcriptions result in a somewhat messy, scattered narrative that may proceed in fits and starts. Following the recommendations of University of Toronto qualitative methods scholar Blake Poland, the authors edited the transcripts in the interests of readability, omitting some details or partially truncating extended passages.<sup>52</sup>

Table 2 lists the names of the performers (or relatives) interviewed for the project. The table also lists the number of documented performances at The Ark and the date of the performance-event highlighted in the interview. Each performer interviewed spoke on the record and granted us permission to include attributed excerpts from the interview in future publications and a project website.

Our objective in extracting insight from the interviews is to give the performers their say, while our role as researchers in the mode of Scherzinger's "critical praxis" is to structure the statements as a collaborative narrative. The storyline starts with impressions of The Ark as a refuge and an environment for musical gifting, including the exchanges among musicians in "sessions" after-hours that have the social and musical character of an Irish "céilí."<sup>53</sup> Performer testimonies then expand the gift cycle to include the musical performance itself, engagement with the audience, and the special circumstances of the sing-along in furthering how audiences receive and return musical gifts synchronously. The performers' stories end with reflections on issues of authorship, copyright,

**Table 2. Interviews with Musicians who Performed at The Ark**

Artist	Interview Date	Program-Events	Program-Event Reviewed	Dates Documented	Dates Taped	Proportion of Dates Recorded
Roma Baran	3/1/2018	4	10/2/1970	6	5	83.3%
Ray Bierl	7/25/2014	3	10/4/1969	4	4	100.0%
Norman & Nancy Blake	5/23/2018	10	5/31/1975	28	21	75.0%
David Bromberg	7/25/2016	14	3/13/1971	41	27	65.9%
Candie (Guy) Carawan	8/15/2016	1	3/29/1974	2	2	100.0%
Michael Cooney	7/23/2014	24	5/23/1969	63	50	79.4%
Joe Hickerson	8/6/2014	14	11/14/1969	37	32	86.5%
Pam Ostergren	5/11/2018	6	9/27/1969	7	3	42.9%
Tai (Hedy) West	3/1/2018	5	1/24/1975	12	12	100.0%
Bob White	7/28/2014	15	3/13/1971	31	25	80.6%

and the prospects of extending the gift exchange cycle into the realm of digital streaming.

To determine the possible risk associated with making these performances accessible, we analyzed the copyright status of the songs and the associated talk tracks performed on the ten program-events, one performance for each of the artists contacted for interviews. The analysis covered 393 discrete songs and 375 talk tracks interspersed among the recorded performances. We began by attributing all of the talk tracks to the performer represented on the recording. Then we grouped the songs performed during these program-events into four types of rights: 1) songs in the public domain; 2) songs written by the performer (singer-songwriter); 3) songs created by someone other than the performer; and 4) songs of undiscoverable origins. We then further subdivided these categories into solo and group performances.

The analysis reveals that 30.5% of all songs performed on the sampled recordings (34.1% by solo performers; 25.7% by groups—120/393 songs) are in the public domain. The performers represented on the recordings created an additional 4.1% of the songs (4.4% by solo performers; 3.6% by groups—16/393 songs). As such, 34.6% of all songs in these performances (and all of the associated talk tracks) present no intellectual property risks beyond the perspectives held by the performers themselves. Additionally, 26.0% of the songs recorded on the ten sample performances (20.4% by solo performers; 33.5% by groups—102/393 songs) are of unknown or unclear provenance, likely signaling low (or no) risk of copyright claims. Taken together, a full 60.6% all of the songs performed (plus 100% of the talk tracks) present no (or extremely low) risk of a copyright claim. What risk remains is largely from possible rights claims on songs by other identifiable musical artists (or by heirs to those performers). If such distribution of performer rights exists broadly in the collection of recordings made at The Ark over a forty-year period, performers hold the key to interpreting access to these recordings.

## The Ark as Gift Exchange Site

Folk-oriented coffeehouses in the 1960s often acquired their reputations for intimacy by jury-rigging spaces never designed as performance spaces. The Ark was no exception. Folk singer and multi-instrumentalist Michael Cooney and the people who regularly came to see him thrived in the Victorian-era home:

The Ark was in a house, and it was a small audience situation, a rather odd one, because a performer stood in the living room. People sat in the living room on cushions and whatnot, and then behind the living room was a dining room and people sat on benches there. On crowded nights, they also sat in the entryway, and up the stairs going up to the second floor. There were people



who had their favorite places, and they always sat there. I would see them in the same places year after year.

The exchange of musical gifts between performers and among performers and audience members extended beyond the officially publicized program-events. Folk singer, librarian, archivist, sound editor, and radio host Joe Hickerson, who performed regularly at The Ark even while directing the Archive of Folk Song at the Library of Congress's American Folklife Center, recalls the hours after the formal program ended: "On good Saturday evenings after the last set, a bunch of people [would] just hang around sitting in the front room on the floor to sing," including members of the audience and the performers booked for the evening. "After-hours just sort of melded into a quiet sing-around with a few stories thrown in." Nearly fifty years later, Pam Ostergren retains a vivid memory of after-hours at The Ark:

After 10 or 11 [pm], people would kind of straighten things up, pick up trash, and make sure there was plenty of coffee, and we could just sit down and have a big singing living room full of people. Anyone who wanted to lead a song, or offer a song. Sometimes we would go 'til three, four in the morning. Then we would call up Joe Hickerson, who was then the manager of the folk archives at the Library of Congress; it was really late for him, but he'd answer and he'd talk with us.

Folk singer Michael Cooney, who is a walking encyclopedia of folk music tradition, also ranks as the most frequent performer at The Ark during its first two decades. In his interview, he portrayed the intimacy that fostered the exchange of musical gifts in the after-hours as "quite magical."

Several hours later, in the wee small hours of the morning, the lights are all off, and the songs are longer, and the time between the songs can be really long, and then suddenly somebody will start singing a song in the darkness.

Gift exchange is always context sensitive, as typified in the rituals of birthdays and anniversaries. Gift exchange is also sensitive to places and organizations that embody and support "graceful" giving, understood as existing within a commercial economy but motivated and administered as its own form of exchange. The Ark and similar live folk music venues strived to be those "graceful" spaces. Following Brothman's invocation of the archive as the "perfect gift" that reflects both a commitment to the past and the future, might not archives also be places of gifting in the digital environment?<sup>54</sup>

## Gift Exchange among Performers and Listeners

Each of the performers we interviewed was well aware of the gift exchange cycle, but expressed their sense of the gift-as-object in varied ways, often emphasizing intangible qualities. Folk singer and regional music interpreter Ray Bierl cast his gift in terms of new knowledge. “I was able to bring something to people that they didn’t know about before, which was kind of nice to be able to do.” With a similar sense of aspiration, Norman Blake reflected with a degree of humbleness on his performances at The Ark in the language of gifting: “The people didn’t know what we were doing, but we didn’t either, and we were just showing them what we did know, and they were open-minded enough to receive it, and somehow worked it into their lives. I think that’s marvelous.” In juxtaposing his effort with the receptiveness of the audience, he confirmed the immediacy of the musical gift exchange.

Guy Carawan performed at The Ark in March 1974 while accompanying Bessie Jones and the Georgia Sea Island Singers. Carawan was a singer, guitarist, folklorist, songwriter, and community organizer who, with Pete Seeger, allegedly bequeathed the song “We Shall Overcome” to the civil rights movement.<sup>55</sup> In her interview, his widow, Candie Carawan, noted that he joined the gift of new music with a new social and cultural context:

Guy was, in his performances as a folk revivalist, trying to carry a larger message about what was going on in the country, and what kind of cultural resources that there were that people should know about.

For Carawan, as well as for as Woody Guthrie and other folk troubadours of the preceding decades, this music offered new knowledge to the listeners, knowledge that carried with it implicit calls for activism and social change. For Carawan, the gift of knowledge intertwined the form of music and activism, just as they had been for Woody Guthrie and the generation of folk troubadours during the preceding decades.

The physical proximity of performers to listeners at The Ark created opportunities for gift exchange. Every musician interviewed remarked on the absence of a stage or any barrier between performer and listener. “You were right there close to them. Not up on a stage or something” (Joe Hickerson). Week after week, the audience at The Ark impressed the performers, encouraging them to extend themselves beyond the barrier of their traditionally “staged” relationship. David Bromberg appreciated playing for an audience that projected a collective sense of knowing. “The Ark was the most fantastic place to perform, because it was the most educated audience you could play for. They were educated in terms of the music. They understood what it was they were hearing. This is not always the case.” Folk singer Roma Baran, who regularly accompanied her friends,

the singers-songwriters Kate and Anna McGarrigle, amplified Bromberg's sentiments about the audience as intense listeners: "The audience was really wonderful. They listened. They were quiet. They knew what they were listening to. They stayed. They asked questions. They wanted more."

The mutual respect between musician and listener, while not completely eliminating the status differentials in the room, established a nearly reciprocal gift-giving environment. Such banter between songs fully conforms to the four-part typology established by Grills.<sup>56</sup> Cellist Nancy Blake enjoyed the attraction to virtuosity but also respected the exchange between audience and musician. "They recognized cello freaks, which we were at the time, and they would come out of the woodwork and listen to us, and so we were having a conversation and a rapport with our listening audience." Listening to the unedited recording of a January 1975 performance at The Ark by the deeply traditionalist folk singer and songwriter Hedy West, Tai West was easily able to detect the rapport that her mother had with her audience. "She had a pretty high comfort level with this audience. It almost felt like she was really conversing with the audience. I found that endearing."

Proximity and mutual respect together enabled performers to create a dynamic gift exchange with the audience in live performance. What could appear as spontaneous give-and-take between two or more performers at The Ark reveals its own form of gift exchange, similar in character to the traditional Irish "sessions" described by McCann.<sup>57</sup> In their joint interview, Norman and Nancy Blake traded points on how they adapted a traditional fiddle tune so that the two of them could perform it for guitar and cello.

Nancy: "Fisher's Horn Pipe," which is traditional, but it's worthy to note that the third part that Norman plays is a Hattie Forrester part.

Norman: A variation, yeah.

Nancy: A variation which is of interest to fiddlers who might be listening to this [recording of our performance].

Norman: Because that part is not written. That tune is written in all the old fiddle tunes books in the key of F in two parts, but we added the third part. What we play on the tape [from The Ark] is in the key of B, which is where a lot of fiddlers play it.

Nancy: Well, that's for cello.

Norman: And this is an easier key than F. I can play it on the mandolin in F, but on a fiddle, I had to play it in D.

Singer-songwriter Kate McGarrigle and folk singer Roma Baran's performance creativity extended to the complex harmonies of "Windham," an eighteenth-century Sacred Harp song. In describing their adaptation, Roma Baran noted:

[Windham] . . . has four parts you know like most of those, and there's only two of us. So we divided up the four parts and we assigned one to the fiddle and one to the cello and one to each of the vocals, and each verse we trade off. . . . If you just listen to each verse, in the first verse Kate has part one, I have part two, fiddle part three, cello part four, and then maybe the second verse, she's singing part four and I'm singing part two and the fiddle's doing. . . . You know what I mean, and so it keeps switching, but they're all the same. It's just the lyrics change and who's taking which part changes whether it's an instrument or a vocal.

These are two examples of the gifting between musicians that kept the musically “educated” audiences (David Bromberg’s term) coming back to The Ark repeatedly to receive.

In his interview, folk song interpreter Ray Bierl, who typically performed solo, reflected that the cycle of giving and receiving can be instantaneous when the performer (giver) is able to channel directly the listening experience of the audience (receiver):

One of the things that I've been noticing more recently about when I'm singing is to listen to yourself as you do it. Then the responding, just with your tone of voice and your gestures and everything, as if you're one of the audience members, and the listening audience picks up on it. You can give yourself chills sometimes and it gets into the performance.

Perhaps the most salient manifestation of the gift exchange cycle in live folk music performance is the sing-along, which folklorist and singer Joe Hickerson notes is handed down directly through Pete Seeger. When done in the character of musician-audience bonding, the sing-along is immediately reciprocal gifting. In his interview, San Diego-based folk singer Bob White recalled the audience at The Ark and their ability to sing harmony “like a choir. Eighty percent of the songs I performed in the early days I expected the audience to sing along.” Folk-song interpreter Joe Hickerson found inspiration in reversing roles in the performance of melody and harmony: “I love to sing harmony, but you don't sing harmony when you're leading the song or people learn the wrong melody. At The Ark the singing was so strong I just harmonized with it.” Pam Ostergren, the now Denver-based master of the claw hammer banjo, recalled the singular significance of singing as a unifying function that allows the audience to give back to the musicians in real time:

Singing also is really important and harmonizing, because you can feel your chest and you can feel everyone's chest, we are all making vibrations in the air when we're singing together and it's like being part of a sponge. . . . It's the musicians, and the audiences, you know? You could not only sing to them, but they could sing for you.

In the musical gift exchange cycle in live performance, the sing-along created the “moment of grace” that Lewis Hyde asserts is the critical component of gift receiving, a moment of grace made possible at The Ark but now inaccessible given the restrictions to access placed upon these and other similar recordings. The fundamental issue, then, for extending the life expectancy of digital surrogates of decades-old live performances is the extent to which listeners separated by space and time from the original performance can experience that moment of grace, “know the hidden coherence of our being and feel the fullness of our lives.”<sup>58</sup>

### Authorship, Copyright, and Permissions

By design, we interviewed the performers about issues of authorship of folk music in the context of intellectual property ownership and the folk process over time. All of the performers we interviewed are well aware of issues of authorship of the music they perform, but (with one exception) they uniformly place the rights of authorship in the service of transmitting the music to fellow musicians and listeners. Folk singer Michael Cooney, who claims not to write songs but only to transmit oral traditions, was most blunt: “If you know who wrote it, it’s not a folk song.” When pressed for nuance, he argued for the fruitlessness of tracking authorship.

People write songs, and they almost instantly enter the oral tradition, and people forget who wrote them, and they start changing the songs, or the songs begin to change because people don’t always remember them word for word, note for note. Some songs get changed dramatically in a short time. In the old days those people were anonymous; we didn’t know who made the changes.

In appealing to the anonymity (or un-discoverability) of the author-owner of any part of a traditional song, Cooney is relatively dismissive of information technology’s power to track, trace, and record both tunes and lyrics over time. For him, the power is in the performance. Similarly, David Bromberg, who is assiduous in obtaining permission to record songs for commercial release, retains the prerogative to perform what he wishes, without regard for ownership. “Someone else might feel differently, but I don’t care what the source of the song is.” Folk singer Bob White expressed a similar sentiment when it comes to choosing songs to sing. “Nobody cares where the songs came from. If they’re good I’d play them.” All three of these artists can afford to be a bit cavalier about their song choice prerogatives because they have the legal right to perform a song regardless of who wrote it. The questions arise when that performance is committed to tape, particularly when such recording is done outside the boundaries of a commercial recording studio.

Joe Hickerson and Ray Bierl, the two folk singers we interviewed who most represent the interpreters of the folk tradition, both distinguished between the lack of ownership in the underlying tune and originality in the lyrics. Hickerson finds the distinctiveness (and ownership) in the lyrics: "Folk singers are not songwriters, with some exceptions like Woody Guthrie and Lead Belly. You sing the old songs, but you write new ones often using the tunes of the old ones." Ray Bierl, perhaps, places originality more squarely on the underlying tune while allowing himself flexibility to vary the lyrics. "Folk music resists categorization, particularly by the artists. It's hard for me to market myself as a performer, because I don't know what to call what I do, because I do everything. . . . One thing that I've never been able to quite become was a singer-songwriter, because I've never written songs." Bierl may be suggesting that artists who compose tunes and write lyrics must be concerned about the source of their creativity while artists who interpret the work of others, known and unknown, do not.

Although they recognized the complexity of copyright, all of the performers we interviewed gave their consent to release the specific performance that we had provided them in advance, some formally and some more casually. Folk music interpreter Ray Bierl enthusiastically endorsed the research project: "I appreciate what you are doing. It's going to be great." He agreed to the release of his performances at The Ark, even though shortly before the interview, he had performed at The Ark to promote a new group of traditional songs that he was preparing to record for commercial release. "Almost everything I did, somebody has a copyright on it."

Norman and Nancy Blake gave their approval after fretting aloud during the interview about the incompleteness of some of the tracks and travel weariness they revealed. "Breaking up the talk just destroys the whole thing" (Norman Blake). Both artists expressed pride in the performance captured by proprietor Dave Siglin at The Ark: "I'm very pleased with what's there. I'm proud of what I was able to do there. However, I can't do it today, nor would I want to do it today. That was a time and a place, and an experiment, and it came out in the music" (Norman Blake). "The recording captures the era of the time perfectly" (Nancy Blake).

In encouraging digital distribution, Tai West acknowledged the benefit of recording contracts that help enforce copyrights. "To a certain extent copyright is valuable, because it helps performers make a living. Certainly, it helped my mother make a living. And has helped me as well." Upon further reflection at the same point in the interview, she recognized the complexity of copyright issues while approving the release of her mother's performances at The Ark in the 1970s. "I can see how it can get very hairy. I do think things can get trapped behind copyright."

In his interview, Michael Cooney came down firmly on the side of releasing his many performances at The Ark to a wide audience. “No, I don’t care.” He expressed concern about the excessive or even capricious copyright claims of folk artists whose work derives from the folk process itself. “In America you can take a song, not a composed song, but something like a folk song, change three notes, and three words, and copyright your new version of it. People do that all the time, and so the song I sing may not be public domain, but it was definitely a folk song.” Cooney shares the beliefs of the other musicians interviewed that copyright protection of recordings of live performances should be severely limited.

In granting their permission to release their performances, the musicians or the heirs we interviewed provided a variety of arguments in support of wide digital distribution. Tai West channeled and seconded what she thought would be her mother, Hedy West’s, position. “I think she would have been happy to have people who were interested in listening to this music, have access to it. I feel good about it. I feel good about having people who have a genuine interest in this music be able to hear it and get access to previously unavailable performances.” Candie Carawan also conveyed what she thought her husband would have wanted. “I think that’s the world we’re moving into, where there’s access to almost everything anyway, now. I think it’s great to have access to the material. I feel like Guy would have felt the same way.” Pam Ostergren said that she could speak for the other performers, not just on her recording, but also at The Ark more generally:

I think it’s a good thing. I can’t see if any of us would be objecting to it, because it would only just enrich everyone just to be able to hear that; any of it. I’ll be so happy to hear everybody. . . . I’m betting that Bob White would feel the same way. I think it should be available just for free just to go listen to online.

As she suspected, Bob White was just as direct in his interview as Michael Cooney was in calling for the digital release of all of his recorded performances from The Ark. “The answer is ‘I don’t care.’” White tied his view to his resistance to the commodification of folk music: “Music should belong to everyone.” White sees greater value in retaining a connection to the place of recording. For White, it is about “keep[ing] a line of pure thought . . . [more] than on the potential of economic benefit,” a space where the music is “not sullied by the almighty dollar.”

Reflecting the positions of a number of performers, David Bromberg stated matter-of-factly that the recorded performances captured long-ago moments in their lives do not now threaten his self-image or his commercial interests. “I’m fine with that. If someone wants to listen to what we did back then, let them listen.” Folk singer Roma Baran also emphasized the passage of time as a factor.

“Lots of people are dead and very little of it is from anybody who ever got rich and famous and would object to anything.” As such, Baran’s and Bromberg’s support for wide digital distribution via streaming could be extended to the performances of deceased musicians who graced The Ark’s living room.

The support by musicians for digital release of decades-old live performances also reflects a deep satisfaction with the performances they heard on the live recordings themselves. Pam Ostergren reacted with surprise: “And just to listen to myself, I wonder if I could ever play banjo like that again. I must have been a genius!” Ray Bierl found himself remembering the artists he covered. “. . . I thought, ‘Oh my God. I had no idea that I was doing so much Buck Owens and Hank Williams and stuff.’” Tai West recalled her mother’s skill. “I really enjoyed the banjo playing on this recording. I found it to be an excellent example of what people refer to as her virtuosity as a banjo player.” Norman Blake expressed pride in the quality of the recorded performances with his wife, Nancy, which in some cases represent superior renditions of songs still available on their commercial records:

I don’t think that my guitar playing of that period of time could be represented any better than it is on this set that you’ve got of Nancy and me. I just say, if they want to hear what my guitar playing sounded like at the highest point in time before a live audience that was it. I don’t know of a recording that I made that’s any more spectacular.

According to Candie Carawan, transmitting a cultural message through folk music reflects the same gifting impulse. “Guy’s motivation wasn’t for his own sake, or for making any money, or for getting a lot of credit or any of that. His motivation was ‘Here’s some rich material. What’s the best way to have it more accessible?’”

The most significant element in the philosophy of the gift cycle—after a generous giver and an open-minded (if not fully aware) receiver—is ample time for the cycle to play out such that the receiver accepts the gift and is motivated to do the work of continuing the cycle. The decades between the original performances at The Ark and their digitization for possible open access is one compelling gap during which the gift of the original music can transcend time and space. The nature of the music performed at The Ark lends itself to building an asynchronous gifting cycle between past performances and future audience. Thus, the presence of a time lag in the gift exchange cycle allows for the intervention of digital transformations to play an important role in the transfer of musical heritage via digital streaming. The Performers First model of risk abatement turns on the passage of time and most likely does not immediately apply to recent recordings, particularly when performers are young and active. However, Performers First is optimal for the (increasingly common) situations



where the risk of loss through media obsolescence and decay intersects with the reality of human life expectancies and the longing for remembrance and legacy.

Across a gap of more than four decades, folk musicians recognize that the musical gift exchange between performer and listener is laden with uncertainty about long-term impact. According to Nancy Blake, “We did our best. We sent our love out there as good as we could and we just tried to make a difference in the world. . . . But, from what I’m seeing around, some folks got the message.” She expressed faith that the musical gift is like a pebble tossed onto a still pond. For listeners ready to receive, she surmises, there is a “ripple effect; once you start something it’s not up to you to put the end roll credits on it. It’s not your job.” At its core, the folk process does not end with retirement or with the commitment of a song to an album, but lives on through a recording of the folk process in active performance. Such is the archival record represented on the hundreds of complete and unedited tape recordings of program-events at The Ark. Given the desire of folk musicians to make an individual or societal impact beyond the limits of the performance venue, extending the potential of impact on listeners beyond the limits of the archives reference room is simply giving preference to (and respecting) the prerogatives of the artists represented on the recordings.

### Performers First Implications

In practice, the Performers First model focuses the attention of archivists on their ethical responsibilities to the content of their holdings of live musical performances. Performers First embraces the default assumption that unfettered and open digital access to these musical performances is integral to a gifting cycle that started even before the recordings were made and continues indefinitely into the future. The Performers First model recognizes that the risk of losing older recordings on decaying media requires proactivity that begins but does not end with digital rescue and locally restricted access. Even though the Performers First model turns on a case study that explored access permissions, the model itself argues for a broader stance on digital access that does not depend on seeking and obtaining permission, even from performers. Instead, we have demonstrated in our small pilot study with folk musicians that the risk of not providing digital access to live musical performances when the performers are the primary stakeholders in the music itself is tantamount to relegating decades of these recordings to obscurity and loss.

Application of the Performers First model may also speed the rescue and delivery of recorded live musical heritage beyond the folk process captured at The Ark, including ethnographic field recordings of musical heritage and a

variety of impromptu recordings of events that were “for the record” and never intended to serve as raw materials for publication.

In this way, the Performers First model could be a viable alternative to the three types of barriers to wide, fluid, and open access inherent in the way archives implement current US intellectual property regulations. Each of the three standard responses to copyright restrictions, which we have dubbed “wait and see,” “greatest hits,” and “come and get it,” has a legal and administrative logic that in practice guarantees the loss of the very heritage that archival organizations are charged with protecting and that the musicians themselves want to see perpetuated into the future.

The legitimate preservation argument for a “wait and see” strategy is the unassailable benefit that a secure, properly air-conditioned, and well-ordered archival storage facility can bring to at-risk sound recordings.<sup>59</sup> Of the major collecting organizations of popular music identified in Andrew Bottomley’s 2016 study,<sup>60</sup> seven of nine programs have preservation-grade storage environments, while two programs provide clean, compact, and secure storage at office temperatures.<sup>61</sup> The vast majority of distinctive sound-recording collections, including those named in Bottomley’s study, live under suboptimal storage conditions where the life expectancy of the media is decades shorter than the copyright terms of the musical content. As such, “wait and see” poses an existential threat to the nation’s musical heritage.

The “greatest hits” option typically results in the availability of a tiny selection of original sound recordings, while vast numbers of items deemed of lesser value (by someone in a position to make these judgments) await the consequences of benign neglect. The Caffè Lena History Project has taken this “greatest hits” approach in clearing rights for and releasing a selection (three-CD set) of live recordings digitized from well over 700 hours of unreleased materials recorded between 1963 and 2013.<sup>62</sup> However, the net result of the “greatest hits” strategy is a skewing of digital access (through sale) toward remastered live performances by well-known artists while lesser-known, regional, or raw live performances remain largely “orphaned” and unheard as these less privileged recordings disappear.

The “come and get it” approach conforms to the limitations imposed by the Digital Millennium Copyright Act (DMCA), which permits a library or archives to make digital copies of an obsolete medium for preservation purposes but limits the use of those copies to the organization that holds the original physical source.<sup>63</sup> The net result of this “come and get it” approach is the overt avoidance of formal or informal digital publishing along with the creation of an alternative form of commercial paywall. Such a paywall takes the form of costs incurred by the aspirational listener and the risk that sought-after access may fail. A person who wishes to hear the music must travel with little advance

knowledge of which recordings (if any) may be heard, which (if any) may be copied, and which (if any) may be used for his or her intended purposes. “Even scholars willing to travel personally to archives’ premises may find copyright roadblocks thrown in their path.”<sup>64</sup> These recordings may indeed be preserved, but they are not part of the cycle of transmission and sharing intrinsic to the folk music process and the gift exchange cycle.

Each of these three responses plays on the institutional insecurities of the archives, as typified by the Evans and Durán genre model that sets aside musical performances for genre-based copyright review.<sup>65</sup> Each of these three responses privileges legal procedures over efforts to provide access in keeping with the creative needs of a wider public and the prerogatives and perspectives of the performers. The Performers First model is an ethically responsible response, or “critical praxis,” to the conditions of access to live recordings of folk music performances. A “copyright first” approach as opposed to a “performers first” approach ignores the nature of the content of live recordings of folk music and turns its back on entire cultures of open sharing of musical heritage that are so important to its transmission across generations and its creative transformation. A nearly exclusive emphasis on rights clearance, tracking down the “parents” of orphaned works, and divining the existence of decades-old recording contracts represents an ethical failure of the responsibility of the archives to the artists represented on the recordings it has collected. By taking a Performers First approach to music that is by its nature common cultural property, archives can seize an important opportunity to rebalance the relationship between economic property and sociocultural values.

In practice, Performers First is a strategy that allows archives that collect and preserve live recordings of music that conforms to the folk process to digitize for preservation and then release through digital streaming whole and unedited performances. Performers First encompasses digital access but does not include repackaging of these performances for resale or restricted access. Performers First modifies but does not eliminate risk of legal action, but instead grounds digital access decision-making on the nature of the underlying musical content in the context of strong expressions of support by the musicians with the most to lose if the decision is wrong. The extensive and fully vetted procedures by the HathiTrust Digital Library and other large collaborative collections to take down digitized books when complaints or concerns are registered about open access further insulate archivists from legal jeopardy.<sup>66</sup> The rhetorical outcome of the research with musical performers reported here is neither technical nor legal; instead, it fosters the development of a limited gift exchange economy by making these and other similar performances widely available while respecting the continued existence of a commodified and commercial exchange of recordings made with the intent for profit. Our argument for comprehensive online

access to the recordings from The Ark essentially extends the 1960s folk music coffeehouse culture and gift exchange, which itself was coexistent with the increasing commercialization and commodification of music at that time. As such, a Performers First approach reinstitutes the parallel values that have been lost with increasing copyright protection.

To a person, the musicians we interviewed for this research project, regardless of the genre of their artistry, see their life's work as conforming to the norms and ethics of the folk process. Their primary motivation with regard to access to these recordings is to transmit (gift) a cultural heritage that exists and thrives apart from the commercial world protected by intellectual property laws. Musical performers, scholars, and the wider public pay a steep ethical, intellectual, and cultural price in the absence of creative ways to hear a musical heritage that by its very nature is born, handed down, and thrives by unfettered exchange primarily among musicians but also between musicians and listeners who are open to receiving the gift of music. Performers First is a direct application of the norms and ethics of the folk music transmission process itself, extended to the online digital environment.

Folk musician Roma Baran perhaps best summarized the perspectives of performers on the digitization of live recordings of folk music:

I think it's really valuable to not just preserve but make available this early work at a time where Kate [McGarrigle] was just a really fresh young evolving version of what turned out to be a really long and important body of work and career. . . . It's flawed but I think it's who we were in 1970.

Nancy Blake expressed well the creative impulse that keeps folk musicians on the road taking risks as they pursue the folk process in live performances and in the supportive gift giving environments of coffeehouses, house concerts, and other community-based venues. "We were just out there looking for that lost note or that tune that had never been written yet; and there was a lot of other folks doing exactly the same thing. We were just out there."

Taken together, folk musicians, whose creativity and self-identity formed through and around the late folk revival of the 1970s, consider the gift exchange among musicians and between a performer and his or her live audience as central to their artistic legacies. This insight provides an opening for archivists to adjust their processes and policies to preserve digitally and then release the resulting files openly, but to do so within rather than apart from the existing market-driven intellectual property system.

Viewed through the perspective of decades, it is clear that risk is a two-way street. The musicians whose creativity and livelihood turned on embracing gift exchange under the rubric of the folk process in live performances took risks. The stewards of our folk music heritage have the ethical responsibility to

take their own principled risks to extend the musical gift exchange beyond the boundaries of space, time, and media into the digital realm. As Lewis Hyde so succinctly puts it: “The only essential is this: the gift must always move.”<sup>67</sup>

## NOTES

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<sup>1</sup> Bentley Historical Library, University of Michigan, Ann Arbor, “Finding Aid for the Dave Siglin Papers, 1968–2008,” <https://quod.lib.umich.edu/b/bhlead/umich-bhl-2009115>.

<sup>2</sup> *Capturing Analog Sound for Digital Preservation* (Washington, DC: Council on Library and Information Resources, 2006), v.

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**ABOUT THE AUTHORS**

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**Paul Conway** is associate professor at the University of Michigan School of Information. His research and teaching focus on archival studies, the ethics of new technologies, and the digitization and preservation of cultural heritage resources, particularly audiovisual materials. Prior to joining the University of Michigan faculty in 2006, he was an archivist at the National Archives and Records Administration, preservation program officer for the Society of American Archivists, and a senior administrator for the libraries at Yale University and Duke University. He holds a PhD from the University of Michigan (1991) and is a Distinguished Fellow of the Society of American Archivists (1997).



**Robert B. Markum** is a PhD student at the University of Michigan School of Information where he studies data, information, and computer ethics. His prior work includes research on autobiographical memories and narrative identity and on the effects of digital technology use on meditative and contemplative practices.