In the late 1920s a new breed of listener entered the scene of American popular culture—the jazz record collector, who appreciated jazz as an art form and sought to hoard the artifacts of its early evolution. Most of the early jazz recordings were produced in limited numbers by small or unstable companies. The records collectors loved best had been targeted largely at African American consumers, who played the discs until they were nearly rubbed raw. “Your sole consolation was that early jazz was like folk music, a people’s music,” collector Charles Edward Smith reflected years later, “and the grooves were sometimes all but gone, only because people who had loved it had listened to the records again and again.” In any case, the early recordings of jazz were fragile and few in number. Major companies like RCA Victor and Columbia could not see much to be gained by keeping obscure records in print. “The large mass-distribution organizations can handle, to their own satisfaction, only those large-selling items which have mass appeal,” collector Wilder Hobson observed in 1951, when the movement for collecting and preservation that he and his colleagues had started years before was bringing music copying to a head as a legal issue. “The pirate may be ethical or unethical, as you choose, but he is frequently engaged in offering time-tested, out-of-print works of art which the big recording interests have not felt it worthwhile to issue.”

Zealots like Hobson had discovered how scarce the relics of Bix Beiderbecke and other collectors’ favorites really were, and they duplicated these records for their friends. Then, in the late 1930s, collectors began the Hot Record Society to reissue classic recordings as an indifferent music industry looked the other way, establishing a precedent for record copiers who catered to jazz enthusiasts after World War II. In the
process, the spirit of collecting collided with the dubious ethics of copying. Collectors gathered up things that were valuable because they were rare, while bootleggers saw the same rare goods less so. While bootlegging might seem to contradict collecting, in this sense, the two practices often coincided, meeting on one side of the law and then the other.

Record collectors and bootleggers reinterpreted the economic, legal, and social meaning of sound in the twentieth century, offering their own answers to the question of how to deal with the accumulating backlog of recorded music. Working with shellac and vinyl, they preserved the sounds they copied, compiled, and shared recordings through media such as magnetic tape and computer networks in the twentieth century. Bootleggers highlighted the potential for recorded sound to have long-term commercial value at a time when the music industry still treated recordings as products of the moment, aimed at contemporary markets and abandoned as consumer tastes shifted. "Records made music a kind of consumable good," notes David Suismans in his history of the early music industry, "whether their limited lifespan was constrained by the ephemeral nature of fashion, the continual attraction of innovation, or the physical properties of the records themselves," which could break or wear out.

Collectors insisted that performances from the past ought to remain available, and if large companies could not make a profit by keeping such recordings in circulation, individual fans and entrepreneurs would copy and distribute the music themselves. They exploited a curious loophole in copyright law that remained open until Congress passed the Sound Recordings Amendment in 1972. According to the U.S. Constitution, copyright can protect only the fixed expression of an idea in the form of a "writing," a broad term that encompasses books, maps, photographs, sheet music, and more. In the Copyright Act of 1909, Congress declined to recognize phonograph records as writings, leaving record companies without copyright protection for their "mechanical reproductions" of written music. As a result, neither companies nor artists technically owned the unique performances captured on a record. However, by buying, selling, and copying the out-of-print discs of yesteryear, collectors showed that recordings did have an enduring value that the original producers—artists and record companies—would have had an incentive to protect. In the process, bootleggers tested the limits of how listeners could legitimize the use of products of modern culture industries, while provoking a reconsideration of the meaning of recorded sound as both art and property.

**The Emergence of Collecting Culture**

Intellectuals began to reevaluate jazz during the 1930s, a moment when the public embraced swing as popular music. "One of the outgrowths of the popularity of jazz in the 1930s," historian Eric Porter observes, "was the consolidation of jazz criticism in new trade publications such as Down Beat and Metronome, small journals for record collectors, and left-wing organs such as New Masses." As Porter notes, this discourse was "by and large created by whites for a white readership." In 1934 Frenchman Hugues Panassié broke ground on theorizing an aesthetics of jazz, and another Frenchman, Charles Delaunay, soon inaugurated the project of cataloguing jazz recordings. Americans took note and began publishing "the little jazz reviews," according to folklorist Alan Lomax, who remembered "frightfully serious and sophisticated jazz criticism" descending on Jelly Roll Morton at the Jungle Inn, a club in Washington, D.C. Morton saw his early innovations like "The Pearls" and "Wolverine Blues" played on the jukebox. Jazz magazines sprouted up in the late 1930s in response to the growing public interest in swing music. The new craze prompted the emergence of a breed of connoisseurs who preferred small group improvisation and badmouthed the tastes of the mainstream. Some critics believed that popular swing was compromised by commercialism, while earlier and less popular forms of jazz were more authentic or artistic; some perceived jazz as an earthly "folk" genre, while others envisioned it as a high art that could compete with European classical music. Whatever their vision, such jazz aficionados in the 1930s and 1940s disdained swing as artless pop music, and their journals resemble the tiny, self-published "zines" of the late twentieth century, which frequently favored independent or avant-garde subcultures. These small jazz journals cultivated a market for rarities, with the value of a recording determined by the number of copies that had come into the hands of collectors.

Affluent white collectors described their search for the scattered remnants of early jazz as if they were anthropologists doing exotic field research. Often enough, the field consisted of the homes and neighborhoods of black Americans, who made up much of the initial audience for the music. "Many of the collectors' items were originally issued purely for Negro consumption," collector Steve Smith wrote, "and consequently were sold only in sections of the country which had a demand for them." White men canvassed black neighborhoods in Philadelphia, Chicago, and Kansas City, often going door to door. One collector in New York abandoned this method and just left his card "with all the janitors in Harlem," who were asked to contact him when they came across an item of interest. Collector Dick Rieber described one such excursion in an early jazz fanzine; "First Thrills in Beulah Land" described a Philadelphia neighborhood that proved to be a "collector's Eden" because the residents were willing to part with their records for much less than their potential value. The local children followed Rieber
collectors flaunted their rarities and knowledge of doo wop in competitive displays of symbolic capital both privately and publicly through the medium of specialist magazines," Jamieson writes. Possession of an authentic, original recording carried considerable cachet, and collectors published photos of their records to show that they did own the real thing. Entrepreneurs issued copies of rare records, taking care to mimic the exact packaging and style. Even these imitations were sought after by collectors, especially if they were the "original repros," removed from the initial recording by only one degree. "If anything these repros enhanced the value of the originals from which they were taken," Jamieson reasons, "since they showed they were considered worthy enough to be copied illegally." He contrasts the doo wop collectors with the fans of jump blues in Jamaica and of American soul music in the United Kingdom during the 1960s and 1970s. In those cases, pirates rarely tried to duplicate the original package of a recording, which few listeners had ever seen anyway. The significance of the copied music lay in its approval by respected disc jockeys ("specialists," in Jamieson's terminology) who informed their audiences that a record was rare or special. A disc was enjoyed for its sound and the currency it held in a social scene rather than kept and fetishized for its innate qualities.

The variety of 1930s jazz collectors suggests that Jamieson's association of each style of music with a certain pattern of collecting might be too simple a model. In Steve Smith's time, some fans focused on history and authenticity and would accept only an original recording. A diehard follower of a particular performer such as Bix Beiderbecke, in contrast, might settle for any reproduction of an unheard recording, no matter what it looked like. For his part, Smith defined mainstream collectors (e.g., the Hot Record Society crowd, for which he spoke) in contrast to both these kinds of men of narrower motivations. "The majority of hot collectors are quite normal human beings who do not go to extremes," he wrote. "They look mainly for the classics of hot, for the thrill of possession and enjoyment. They, too, keep up the search for rare records, but solely in the hope of finding something satisfying to the ear, as well as something they consider to be of historical significance." Here Smith identified a mix of reasons behind the movement. Aesthetic appreciation, historical preservation, and the fetish of possession all drove him and his fellows to collect.

While some collectors did insist on having the original disc, the small-scale copying of records during the 1930s suggests that others would accept a copy. "There are those who will have nothing but the original label," Smith observed, "and who will turn down a clean copy of a record in preference to [the original] in bad condition because the latter has what is known to be an earlier label." However, fans who cher-
ished a record not only for its historical character but also for the sound it contained would settle for unofficial copies of these rare works. "Or, it often had acetates made from discs owned by a fellow collector," according to Charles Edward Smith. "These were called 'dubs' and were brought out on display apologetically, like fish bought in the market instead of caught properly with rod and reel." The word "dub" originated in the late 1920s, meaning "double" an object. The term connotes a practice of making individual copies, doubling an item one at a time, rather than mass producing it in large batches. The verb was fittingly used by those pragmatic collectors who made copies of rare records for each other. Speaking of the music of Sidney Bechet, George Hoefer wrote, "The original record is so rare that it is almost impossible to even find a copy from which to dub an acetate." The collector, critic, and producer John Hammond once had to seek out the New Orleans musician Meade "Lux" Lewis personally because he could not find a Lewis record of good enough quality to copy.

Although personal disc-cutters found greatest use among wealthy consumers like Hammond, a Vanderbilt heir turned activist and jazz impresario, record-copying technologies appeared on the consumer market as a response to the economic woes of the Depression. RCA confronted the calamitous drop in music sales during the early 1930s by marketing record players that could connect to a separate disc recorder. Presumably, consumers would make their own recordings if they could no longer afford to buy records. "The new recorder utilized a small, pre-grooved, 6-inch disc made from a piece of cardboard with celluloid plastic laminated to each side," writes historian David Morton. "Later, solid plastic blanks were sold in 10- and 12-inch sizes. The recording attachment used an electromagnetically driven stylus to emboss the recording into the pre-grooved disc." The engineer S. J. Begun noted that a few companies offered radios with built-in disc recorders in 1940, but to little avail. "Disc home recording requires a great deal more skill than magnetic home recording, and if a mistake is made in the process of recording, the record is lost," he argued. After World War II, the cumbersome and delicate operation of a disc recorder, available to those with the money and inclination to record and copy music, would give way to the more flexible, user-friendly medium of magnetic tape, particularly with the rise of the high-fidelity home recording market in the 1950s.

Manufacturers improved disc recording sets and lowered prices slightly throughout the 1930s, but in an era of economic distress consumers were unlikely to exchange their old record players for new ones with fancy new accessories. Indeed, people were hardly buying records, opting instead to listen to the radio for free. Remco's Babytone recorder, introduced in 1936, cost $125, and Universal Microphone offered models ranging from $92 to $375 soon after. A few well-heeled music aficionados, such as Hammond, could afford to purchase a disc-cutting machine to reproduce records and share them with friends, but home recording technology failed to take off in a big way until after World War II, with the emergence of reel-to-reel magnetic recording and the high-fidelity market.

While dubs were a necessary evil for collectors, groups of jazz enthusiasts launched their own programs to reissue classic recordings soon after collecting emerged as a hobby. England's Brunswick label copied some "classic swing" records in the early 1930s, and collecting impresario Hugues Panassié led the reissue charge in France with his magazine Jazz Hot. Panassié visited the United States for the first time in 1938 and joined with Steve Smith, William Russell, and others to start the Hot Record Society, which distributed copies of old tunes to its members and irregularly issued its own journal, the HRS Rag. "The reissue adherents made like Don Quixote on a hot kick," Charles Edward Smith recalled; they took on the task of reissuing recordings that the major labels had let lapse into obscurity years before, a job they considered noble and, perhaps, quixotic. The New York-based HRS got permission from record companies to copy their old records, he explained, because "(1) no one had discovered any loopholes in the copyright situation, and (2) pressings often had to be done through record companies, subsidiaries or firms in some way associated with them." Permission did not mean cooperation, though. The labels conditioned the activities of HRS with indifference; the only evidence of their tacit support is the fact that the Society never suffered any legal retaliation, unlike later bootleggers who also made copies of out-of-print recordings available to the public. HRS had to seek out the best copies of records, since firms such as Decca and Columbia would not let them use their masters. Society members tracked down the original musicians and urged them to share their knowledge about the recording sessions, suggesting that the buzz around a rediscovered classic might raise their profile in the music world. That said, "a hot chorus blown through a bust-up horn in 1924, whatever its merit, didn't bring home the bacon a decade later," Smith admitted, but many old pros were willing to contribute anyway. In 1941 Columbia told the Society it could reproduce the Red Onion Jazz Babies record by Clarence Williams. HRS made new masters of the record, and Williams joined in to provide historical context for the recording. However, Columbia withdrew its consent shortly before the record's release date. In fact, the whole HRS program ended soon after, as the three major labels decided to try producing their own reis-
sues in the early 1940s and the outbreak of a new world war put everything on hold.28

In its time, the Rag strove to be "strictly for, by and about collectors," and featured in-depth articles on its members, such as Hammond, "Dean of the Swing Critics," and Wilder Hobson.29 The portraits show that the HRS crowd hailed from Ivy League schools and thought of itself as an elite of music lovers. William Russell had studied classical violin in Chicago and taught music before becoming obsessed with hot music.30 He was also an accomplished avant-garde composer whose work influenced John Cage. Of Hobson, Frank Norris observed that "he had the most inclusive collection of jazz records"—in 1929, before the collecting craze got into full swing—though it was hard to say whose collection was best since "a lot of jazz philatelists have muscled into the tribe."31

Writers in the Rag scorned mainstream critics, sometimes contrasting their own views with the ignorant pronouncements of other music reviewers.32 At the same time, though, they disdained pedantic terminology and impenetrable jargon in the discussion of music, putting a populist spin on an otherwise elitist enterprise. The Society's first bulletin proclaimed its pursuit of a middle path between snobbery and populism: "We will choose to reprint discs that are distinguished both by greatness of performance and by rarity, leaving the corn to the hillbillies and the more accessible hot records to the assiduousness of individual collectors."33

This statement rings with the self-assurance that characterized the collectors' division of jazz music between good and bad, legitimate and illegitimate. The white critics and collectors of the HRS sought to perpetuate recordings that they considered to be worthwhile, and they could use their status and resources to impose particular standards of value on the work of some African American musicians. In this sense, the Society represented as much of a cultural gatekeeper as the record company that neglected to keep a certain recording in print. What they chose to copy and distribute would continue to be available, while music that did not meet their standards would succeed or founder according to the fortunes of the marketplace. Hammond, in particular, played such a gatekeeper role. As Porter observed, "Hammond championed blues players, gospel singers, and New Orleans jazz musicians whose expression was not yet diluted by musical training or the marketplace as well as those commercially successful artists—such as Count Basie, Billie Holiday, Fletcher Henderson, and Benny Goodman," with whom he had worked in his side career as a producer.34

The Hot Record Society was caught between the desire to spread the good news about jazz and its own role as a band of experts, specializing in the intricacies of obscure, out-of-print rarities. Steve Smith might have written off the compulsive fact-checkers as a minority out of step with the spirit of collecting, but the Society could not escape a certain lust for details. When Charles Edward Smith first delved into the hobby, he ran into Frederic Ramsey, Jr., Russell, and Steve Smith examining old records in a junk cellar. They managed to fool the young novice out of some of his finest records. "I knew nothing about master numbers and condition of labels," Smith observed. "With me, everything was in the groove, and I could see that was all wrong." In other words, he came to believe that listening to the music was only one part of enjoying it. Still, the other men let him into "the game" and gradually shared their secrets with him.35 As Jamieson argued about doo wop, a collector who was fully acquainted with the ins and outs of this esoteric discipline was often reluctant to disburse his own "symbolic capital" by sharing information with others.36 Indeed, Steve Smith observed that collectors tended not to provide needed information to other seekers, "since a little information to certain collectors is enough to set them up in business across the street." Thus, finding information was hard, and finding what records were available was harder.37

Despite claims to the contrary, the Hot Record Society was indeed preoccupied with the value that age, authenticity, and rarity gave to an object. In a whimsical example, the Rag once featured an ad for a fictional group called the Original All-Star Dig Band. The band's songs consisted mostly of inside jokes about the organization ("Hustlin' for HRS") and the collectors' favorite jazz clubs ("Sulking at Solo Art," a Chicago venue). One member played "clavicytherium," and another excelled at the "downright trombone." The odd instruments did not matter, of course, for the ad explained that their recordings consisted of men who could not read music making animal noises. The humor would amuse only loyal readers of the HRS Rag, as it alluded to their own specialized knowledge of jazz and collecting. The gag does reveal two key priorities of the Society: membership in an elite group, and the value of obscurity and rarity. "I did become a bit suspicious of the advertisement announcing the Clackingola album—which would have been my greatest find," Smith commented in the same issue, "since the band was never even organized."38 Here was rarity in the extreme. The ultimate collectible would be a recording that never existed.

The Rise in Bootlegging After World War II

"Now there is a babel of labels," Ramsey wrote in the popular Saturday Review in 1950. A wave of new entrepreneurs had succeeded Ramsey and his friends in the Hot Record Society, catering to collectors by reissuing the scarce recordings of early jazz. Labels such as Biltmore, Jazz-time,
and Jay were based in post office boxes. A former baker in the Bronx had started turning out copies of jazz classics through a variety of labels, such as Anchor, Blue Ace, and Wax, in order to confuse any lawyers who came sniffing down his trail. So many labels had popped up to meet demand for the old records that some were copying the products of other pirates. Their evasive tactics indicate that, unlike HRS, these businesses did not operate with the sanction of the record companies that owned the original masters. Still, Ramsey argued that the bootleggers prospered under a policy of benign neglect. One New York pirate showed him a letter from the Copyright Office, which stated that recordings were not protected by law. “That means that anyone can dub a recording and sell pressings,” the man insisted. In any case, Ramsey felt that the majors were not paying attention. Why, he asked, did the mainstream music industry let bootleggers have the reissue market? “Ah, it wasn’t worth the trouble to put out that moldy stuff,” one executive told him. “It never sold anyway.”

When sales of the moldy oldies got too high, though, the major labels saw an interest in testing their rights in court. “Guys were afraid of the big companies, and the big companies were afraid of each other,” one pirate explained. “But now, they’re getting bolder. They found out there’s sort of a feeling with big record company brass that it’s O.K. for a little fellow to dub and sell if his sales just don’t get too good”—a ceiling of about 1,000 records, in his estimation. Sales did indeed look good in 1950. The bootleg boom received more sympathetic coverage in the Saturday Review than in jazz journal Down Beat, which condemned the copiers as “dirty thieves.” Fellow HRS alum Wilder Hobson followed up on Ramsey’s piece a year later, observing that “the recording seas are now full of piracy.” By then, the three main companies—Columbia, Decca, and RCA Victor—had begun their own series of reissues to opt the collectors’ market.

Interest in the origins of jazz had attained new heights by the early 1950s. Alan Lomax’s efforts to document folk, blues, and jazz had led to the 1950 publication of the oral history Mister Jelly Roll, in which Morton recounted the heterogeneous array of musicians and styles that had developed in fin-de-siècle New Orleans. (The memoir was also Jelly Roll’s bid for a starring role in the origin story.) Working at the Library of Congress, Lomax had tried to prevent the work of Morton and his contemporaries from vanishing, and others assisted in this task by illicitly copying the recordings. “I am informed that every known commercial record cut can be purchased—if not on original labels, at least as unauthorized reissues,” Lomax wrote. “Jazz, even in its antiquarian phase, operates a bit beyond the pale.” The popularity of Mister Jelly Roll, which influenced the later oral histories of Studs Terkel and Theodore Rosengarten, attests to the surging interest in “antiquarian” jazz at this time.

As Lomax’s words suggest, bootleggers highlighted the profit potential of reviving old recordings. They were not the first to do so, however. Milt Gabler had pioneered the concept of reissues through his Commodore Music Shop on New York’s 42nd Street. “In 1954, noticing that a few jazz titles had gone out of print, [Gabler] licensed the music and produced a few hundred copies at his own expense,” writes Ashley Kahn, in a memorial of Gabler’s long career as an entrepreneur and producer. Gabler was only one man, however; though the Commodore Music Shop became a hot spot for jazz enthusiasts in New York, the small batches of reissues were limited to his store and a mail order catalog. The “hipoisie” who hung around Commodore, which moved to a bigger store on 52nd Street in 1938, included HRS members such as Bill Russell. Gabler continued reissuing old records until the major labels took notice of the music’s profitability and determined to start their own reissue programs. Once record companies started to take reissues seriously, they stopped permitting small-scale, legitimate reproduction of records from their catalogs.

After World War II, illicit bootleggers jumped into the niche for out-of-print music that the likes of Gabler and the HRS had opened up. As Ramsey observed, listeners had “for the past fifteen years . . . been thirsting to hear certain rare records by the great maestros of jazz.” During the war, when supplies of shellac were limited, the music industry could not afford to waste resources on marginal, niche records, making the prospects for historically significant reissues dim. Even when the limitations of war ceased, major labels chose to resurrect only a handful of

Fig. 4.1: The music from an African American musician’s horn becomes a disc and is passed from the record company to consumers, collectors, and bootleggers in this visual representation of bootlegging from Record Changer’s January 1952 issue. Courtesy of the Brad McQueen Collection, Center for Popular Music, Middle Tennessee State University. Reprinted by permission of Richard Hadlock.
older recordings as "prestige items," failing to satisfy the demands of collectors and antiquarians. "It is assumed that such items will both pay their own way and have promotional value for the entire list," Charles Edward Smith observed in 1952. "The suggestion that the major record companies accept a position of custodianhip for recorded hot jazz performances must be regarded as unrealistic. Unless it were presented as something more than a gratuitous notion, it would quite likely meet with tolerant smiles from those who stand to profit more from the exploitation of a current craze than the rediscovery of a Bessie Smith." Thus, bootleggers stepped in to meet a demand that had once been met legitimately by licensed reproducers like HRS.

As bootlegging spread during the late 1940s, a court case tested the limits of property rights for recorded sound, resulting in a decision that left the door wide open to piracy. A decision of the U.S. District Court for Northern Illinois, Shapiro, Bernstein v. Miracle Records (1950), dealt with the ownership of a particular interpretation of a musical idea, as embodied in a record. Boogie woogie pianist Jimmy Yancey held down a job as groundskeeper at Chicago's White Sox stadium most of his life, but he helped pioneer a genre of jazz that focused more fully on the piano than any other form. He taught the style to Meade "Lux" Lewis, who wrote the tune "Yancey Special" in honor of the eponymous musician. When Lewis later sued Miracle Records for selling a disc, "Long Gone," that allegedly imitated "Yancey Special," Yancey himself came forward and insisted that "Special" was a copy of his own work, rendering Lewis's claim against Miracle meaningless. The judge agreed that Lewis had no legal claim to the composition; it was substantially similar to Yancey's work, and, more importantly, "Lux" had given away any right to control his performance when the record "Yancey Special" was released to the public. Lewis had not registered the written composition of the tune for copyright protection prior to the record's release, which meant that he effectively "abandoned" his rights to the tune, while the sound of the recorded performance itself was not eligible for copyright. Judge Michael Igoe acknowledged that the recordings of "Yancey Special" and "Long Gone" shared a similar baseline, but he concluded that this creative element did not create any grounds for Lewis to enjoy a copyright for his work. All the two recordings had in common, Igoe wrote, was "a mechanical application of a simple harmonious chord."

In other words, the performance recorded by Lewis was not a copyrightable expression. "The purpose of copyright law is to protect creation," Igoe ruled, "not mechanical skill," which is all the innovations of boogie woogie amounted to in the eyes of the court. If anything, what was copied was not a song, but a style of playing. On the Second Circuit Court of Appeals, Judge Learned Hand had ruled similarly in 1940; the case RCA v. White man held that the U.S. Copyright Act did not allow record companies or performers to own the recordings they sold to the public. While Hand conceded that a recording might contain elements of genuine creativity, the law simply did not provide copyright for various interpretations of the same composition. In Igoe's view, Yancey and Lewis were merely arguing over different ways of playing a tune, not a copyrightable expression.

As Bill Russell observed in the earliest scholarly analysis of the new genre, many critics alleged that "the Boogie Woogie has no melody." Yet melody was the solid core of written music, as traditionally protected by copyright. If the Miracle opinion held, there would be nothing copyrightable about the frenetic improvisation that made up a recording by boogie artist Pine Top Smith or Cripple Clarence Lofton. The rapid-fire piano pieces danced around a theme, consisting "of simple and logical yet satisfying patterns of notes in a limited range, usually proceeding conjunctly," in Russell's words. "Often in the more elaborate melodic texture there is incessant arabesque and figuration based on the essential notes of the melody." Igoe's ruling would seem to rule out protection not just for "Yancey Special" and its imitators, but also for a whole species of jazz whose originality derived from nimble involutions of a tune that sounded only like "mechanical skill" to the judge's ears. U.S. copyright law protected only written compositions, and if boogie woogie musicians recorded unique variations on what sounded like a similar melodic pattern to a judge's ear, the creators could not own any of those individual performances as a distinctive creative work. The decision showed how existing copyright law failed to address elements of distinctiveness and value that could be found only in a recorded performance, such as the improvisation that distinguished Yancey's work.

The Yancey case also resulted in a wave of anxiety in the recording industry about whether their products would be copied by other firms. Since the decision came from a district court in Chicago, Variety suggested that it spawned a bootlegging boom in the Midwest. Some firms did take the ruling to mean that other companies' recordings could be copied and sold within the limits of the law. Whether they were really sure about the legality of their actions is unclear. When producer Norman Granz sued Colony Records for selling parts of his Jazz Scene album, Colony said that the records were actually made by El Torro in Canada. Detectives soon discovered that El Torro was owned by Joe Marlo, a Colony employee, and the court ruled for Granz. The album in question featured Charlie Parker and an all-star lineup, capturing for the first time the sound of live improvisational jazz. Jazz Scene emphasized the primacy of interpretation, variation, and the serendipity of a particular performance—all hallmarks of jazz as we know it today. All were features of
music, also, that Congress and the courts had declined to recognize as protectable under U.S. copyright law.95

Fears of a fresh wave of bootlegging were realized in 1951 when a major label was caught pirating its own records. "RCA Victor, sworn enemy of disc piracy, is currently engaged in pressing illicit Victor and Columbia LPs for one of the most blatant of the bootleggers!" howled the Record Changer, a jazz collectors' magazine, on the cover of its November 1951 issue. RCA ran a custom pressing service that manufactured small batches of records for labels that were too small to have their own facilities. One such outfit was Jolly Roger, which had contracted with RCA during the summer of 1951 to press hundreds of records at a cost of sixty-five cents apiece.96 "Without exception, this material consisted of master acetates made from old Victor and Columbia sides strung together to form long-playing records," Record Changer observed.97 Jolly Roger compiled unique LPs of recordings that the likes of Sidney Bechet and Jelly Roll Morton had made for Victor, as well as some tunes from the Columbia catalog. The outfit also had RCA press records of Louis Armstrong, who remained, unlike Morton and Bechet, one of the biggest stars of contemporary jazz. Anyone in the industry should, Record Changer argued.98

The situation was particularly embarrassing because the record companies had just started making noise about piracy, or "disk-legging."

Variety reported that the Harry Fox Agency, representative of song publishers, had begun investigating bootleggers at the behest of the labels in August 1951. The entertainment industry rag reported that the records were being wholesaled in batches of five hundred at thirty cents apiece.99 The number of records accords with the accounts of other pirates, who spoke of a range of up to one thousand copies. RCA had actually become one of the loudest critics of piracy in the months prior to the Jolly Roger revelation. The company announced in September that it would begin retaliating against pirates. "Up until recently, the bootleggers had more or less confined themselves to the jazz field, where they sold dubs of the out-of-print Victor collector items," Variety said. "In recent months, however, several bootleg firms have been distributing straight copies of current Victor hits under a variety of labels."100 Little did the company's leaders realize that their own employees were helping the bootleggers raid the Victor catalog, using their own facilities. As the Record Changer wryly noted, "One high RCA spokesman had heatedly informed us that they would 'seek injunctions and damages, prosecute, throw into jail and put out of business' not only the operators of bootleg labels but also those processing and pressing plants that serve them (apparently considering the latter as guilty as the former)."101

The bootleggers' chutzpah had pushed their activities into the open. Dante Bollettino, a young jazz enthusiast, had run Jolly Roger's parent company, Paradox Industries, for three years prior to his run-in with the law in 1951. Prior to Jolly Roger, his Pax label had released elegant reissues of musicians such as Cripple Clarence Lofton, the Chicago boogie woogie pioneer who influenced the likes of Meade "Lux" Lewis and Jimmy Yancey.102 The back covers of Pax records featured detailed liner notes by Bollettino and jazz writers such as George Hоеfer that described the historical significance of the music and, in many cases, told of when and where the performances were recorded.103 The label, based in Union City, New Jersey, promised "Records for the Connoisseur," compiling anthologies like New Orleans Stylings and Americans Abroad: Jazztime in Paris, which culled the best of lesser-known artists.104

Jolly Roger, in contrast, dared to go further. There was the swagger of the name, and the fact that Bollettino had marched right into enemy territory to have his records made. "[RCA] apparently did not react at all when confronted with a label that every schoolboy would know meant, by definition, 'a pirate flag,'" marvelled the editors of the Record Changer. "Record bootlegging is just as often referred to as record piracy... catch on, Victor?"105 The label also reproduced fare that was not quite as obscure as Pax's. A Jolly Roger catalog from the early 1950s lists one Frank Sinatra, two Bessie Smiths, and seven different Louis Armstrong

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Fig. 4.2: The December 1951 issue of Record Changer lampoons RCA Victor's unwitting involvement in bootlegging by showing the iconic dog "Nipper" walking the plank. Courtesy of the Brad McCuen Collection, Center for Popular Music, Middle Tennessee State University. Reprinted by permission of Richard Hadlock.
records. While some of the performances were out of print, names like Armstrong and Sinatra were bound to raise some eyebrows eventually. Jolly Roger records featured the same style of starkly colorful and iconic covers as Pax records had, but they lacked the liner notes and other identifying features. Their back covers were blank. Perhaps Bollettino realized that the Jolly Roger venture might elicit more attention and wanted to minimize his own mark on the records.

In any case, he had gone too far. Armstrong and Columbia sued Paradox in February 1952, and the story made headlines in Business Week and Newsweek. Seeking an injunction, the plaintiffs cited the 1950 decision Metropolitan v. Wagner-Nichols, in which the New York Supreme Court ruled against a company that had sold unauthorized recordings of the Metropolitan Opera’s radio broadcasts. This marked the record industry’s first major reaction to the bootlegging problem,” Business Week noted. Facing the legal might of the music business, Bollettino decided to settle out of court. “My lawyer insisted that we had a good case and could win, but I knew the record companies would feel they couldn’t afford to lose and would throw in everything they had,” he reflected in 1970, sitting in a fabric shop he had started in Greenwich Village. “I was only twenty-three and didn’t have the money for a long expensive court case...” But afterwards the big companies began to reissue more jazz records, so maybe I accomplished something after all.” For Bollettino, the bigger goal was to ensure that at least some of the music he copied would continue to be available to the public.

Perhaps Bollettino and his fellow pirates went too far, got too greedy, and drew too much attention. They proved the viability of a market that the big record labels had left fallow and, in fact, relinquished to collectors for years. “Disk bootleggers, who have been coming considerable profit from their operation of selling dubs of cut-out jazz sides, are being rapidly squeezed out of business,” Variety declared, as the major labels started their own reissue programs. However, Bollettino shot back at the industry. “Columbia and the ‘majors’ have failed to make or keep jazz records available to the public,” he told the press. “Their few reissue programs have started out with a big hullabaloo and fizzled out simply because it is not profitable to try to sell a few thousand copies of a record... Only a small firm with low overhead can profitably reissue such records.”

Though torn, the jazz writers echoed this criticism of the major labels, saying that the companies had failed to honor their responsibilities as custodians of culture. Some of the majors had tried reissues, but “usually it only served to emphasize the gap between their standards and ours,” the editors of Record Changer opined. “There is much more to jazz than Armstrong and Goodman and a scattering of sides by a few other people, although obviously you can come closer to breaking even or showing a profit with those names.” An obscure Bix Beiderbecke record was not worth the time and money of a promotional machine that was accustomed to manufacturing records en masse and hyping them nationwide. Regardless, Record Changer publisher Bill Grauer, jazz writer John Hammond, and bootlegger Sam Melzer all claimed to have been rebuffed when they sought to reissue old recordings legally by obtaining licenses from the major labels. In doing so, these critics maintained, the companies denied the American people a portion of their heritage. “It involves a moral and artistic burden that they automatically took on when they first decided to make their money in part by the commercial recording and distribution of material that ‘belongs’ (by virtue of its cultural significance) to the people as a whole,” a Record Changer editorial argued. Elsewhere, the editors wrote, “We are not so naive as to believe that all, or even many, bootleggers are motivated solely, or even partly, by noble impulses.” Still, their activities served the public when scarce music was preserved and perpetuated.

Numerous bootleggers scrambled to get out of the business after the public demise of Jolly Roger, but piracy persisted. In some instances organized crime sought to take advantage of the ephemeral popularity of a hit single by dumping its own copies of 45s on the market. In 1960 Robert Arkin of the Bronx and Milton Richman of Queens were charged with copying Cameo singles of rock and roller Bobby Rydell’s “Ding-a-ling” and “Wild One.” Operating out of Fort Lee, New Jersey, their Bonus Platta-Pak company worked with an accomplice in Hollywood named Brad Atwood. In October seven men were arrested in Los Angeles, including Atwood. “More than half the shelf stock in [Los Angeles] county of one particular recording were bogus reproductions,” the Los Angeles Times reported. “Undercover agents wormed their way into the ring and were actually helping load records purchased by two other agents of the district attorney when yesterday’s raids were made. [District Attorney] McKessan said the bootleggers were making their reproductions using facilities of legitimate record manufacturing firms at night and on weekends.”

More persistent were the small entrepreneurs who copied records that the major labels saw no interest in reissuing. During the 1960s, many bootlegs entered the United States from abroad. Pirate Records of Sweden made available the likes of Barbecue Bob and Blind Lemon Jefferson, blues singers of the 1920s and 1930s. The label pressed records in batches of one hundred and requested correspondence in English or French. Swaggie, based in Melbourne, Australia, reprinted records from as far back as 1917, including recordings by well-known performers...
rather than offering the public a wide range of records that each sold fewer copies. A reissue of an obscure Sidney Bechet side, catering to perhaps a few hundred avid collectors, seemed a waste of RCA's sales staff and productive capacity. Since the means of production—record-pressing plants—remained concentrated in the hands of a few major labels in the 1950s, those firms could exercise a wide degree of discretion about what music was available to the public. As music historian Robert Burnett has noted, the American music industry of the 1940s and early 1950s was highly consolidated in a few firms that sought to vertically integrate production and to deter competitors from entering the market.

The Jolly Roger case shows how entrepreneurs who wanted to market recordings to smaller niche markets had to turn to the custom-pressing services of companies like RCA to have their records made, drawing on the infrastructure of the major labels to copy records that those firms no longer had an interest in selling, for consumer tastes that seemed too minor for them to fulfill. The persistence of outfits such as Swaggie and Pirate Records suggests that the mainstream industry's efforts to satisfy such demand, once they recognized it, with reissue programs failed to provide the full range of out-of-print recordings desired by fans and collectors. Confusion about the ownership of recorded music left it unclear who should get to decide whether a record would remain in circulation, and the Jolly Roger flap marked the beginning of the industry's effort to protect a newly revealed value in recordings from the encroachment of unauthorized reproduction—a campaign that would bear fruit with the provision of copyright for sound recordings in 1972. Until then, the labels sought to deter anyone from copying the records that they no longer wanted to sell, with the aim of keeping such music unavailable until the established firms decided to reissue it.

This struggle occurred only because bootlegging showed the labels that their back catalog might be worth something. Collectors insisted that there was something uniquely valuable about each recording, each variation, that copyright law had treated as incidental to the essence of the work. It was collecting that led to bootlegging, and bootlegging that led to legal suppression and, eventually, an expansion of copyright restrictions that would make collecting more difficult. The unique attention to variability in jazz helped prompt this reconsideration of copyright. Some elements of creativity could not be captured in musical notation—the characteristic playing of an instrument with an unusual timbre, for instance—although American copyright law did not recognize them until 1972. The wave of successful anti-bootlegging litigation in the 1950s followed a spike in the popularity of jazz bootlegs that jolted the record companies into action. But the industry's victory over Jolly

Ed Kirkeby's request did not find a sympathetic ear. The letter ended up in the files of RCA's Brad McCuen, who had been investigating allegations that labels such as Folkways were reissuing Victor's old blues, folk, and jazz records since 1964. During his research, McCuen had learned of the Jolly Roger incident and the surge of piracy in the early 1950s. Writing to Sholes, he compared the new wave of bootleggers to Blue Aces and Jazz Panoramas of old. "There are now at least a dozen labels openly offering for sale our masters without permission," McCuen wrote. "Included are the labels Palm Club, Swaggie, OFC, Historic Jazz, Limited Editions, Pirate (Sweden), etc. I feel we should discuss making a stand against these illegal labels if for no other reason than to protect our Vintage futures." McCuen's goal was to protect his employers' long-term corporate interest in securing exclusive control of their recordings, which unauthorized competitors undermined. The prevalence of firms like Swaggie indicated that the desire for old records had not slackened, as entrepreneurs moved to fulfill the demand formerly met by the likes of HRS and Jolly Roger.

The ultimate question remained: who should be the stewards of the ever-growing legacy of recorded music? Should the companies that originally recorded and marketed such music decide whether it would remain available to the public, beyond the worn-out relics hoarded by collectors? Should music lovers be able to keep copies of old recordings in circulation, in the face of the industry's indifference or active opposition? Given the up-front costs involved in recording, advertising, and distributing an original recording, large firms such as RCA Victor could maximize profits by selling large numbers of a few popular releases
Roger was short lived. During the 1950s and 1960s, new media such as magnetic tape made recording cheaper and easier than before, and low-
erous of opera and other unprofitable genres argued that their copying served a wholesome purpose by capturing and preserving music that would otherwise sink in the commercial marketplace. And in the late 1960s, not long after McCuen hunted the copiers of folk and jazz, boot-
leggers turned to rock and roll, provoking a bigger legal battle than seen in the skirmishes of the 1950s.

Chapter 5
High-Fidelity Sound as Spectacle and Sublime, 1950–1961

Eric D. Barry

"Picture, if you will, a tour through the halls of a music school, past 100 practice rooms each with its occupant singing or playing at top volume, and you will have some idea of how the Audio Fair sounded last weekend," wrote the New York Times of the third annual New York Audio Fair of 1951. Ten thousand "electronics experts, high-fidelity fans and home-style music lovers" descended on the Hotel New Yorker that fall, constituents of a high-fidelity boom that took off with the introduction of the long-playing record (LP) in 1948, grew from a do-it-yourself hobby into a 1950s fad, and entered the mass market in the 1960s. The fair-goers came to see and hear equipment that delved into the deep bass and produced the tones above 5,000 hertz that define sound's timbre, unlike obsolescent phonographs that played 78 rpm records and radios tuned to the AM band. The most popular exhibit was given by Emory Cook, who "attracted crowds with his spectacular recordings of train sounds, music boxes, and an organ." According to High Fidelity, Cook "made history" with his sensational demonstrations of Rail Dynamics (Cook 1070), an LP in his "Sounds of Our Times" series. "For three days," said the magazine, "the hall outside his exhibit room . . . was jammed solid with fevered audiomanics, bleaching with ecstasy at the tremendous whooshes and roars of Cook's locomotives." Audio Fairs were the most visible examples of high fidelity's culture of demonstration, inculcated in retail showrooms and in magazines, and brought home by audiophiles who continually evaluated and showed off the quality of sound they experienced.

What drew customers to high-fidelity audio in the 1950s was not merely the prospect of "reproduced music indistinguishable from actuality." True, "this idée fixe," as audio writer Roland Gelatt called it,