

Special Project: A System of Citation for Phonograph Records*

Music has long exerted a powerful influence over Man's cognitive and emotive faculties, and many of the humanities and social sciences have been enriched by recognition of this influence. Scholars in fields such as religion, anthropology, art, and computer science have examined musical forms and expressions in attempts to gain deeper understanding of their respective disciplines.¹ Law, apart from its specialties concerning the public and private regulation of music,² has not followed suit. Although music is undoubtedly capable of lending support and giving insight in the examination of many legal doctrines and social problems, only one citation of a musical work on its modern embodiment, the phonograph record or phonorecord,³ has been discovered.⁴

* The editors thank Douglas L. Baldwin for his assistance in preparing for print the examples used in this Article.

1. See, e.g., J. FRAZER, *THE GOLDEN BOUGH* (1890-1915) (religion); C. LEVI-STRAUSS, *LE CRU ET LE CUIT* (1964) (anthropology); K. CLARE, *CIVILISATION* (1969) (art); D. HOFSTADTER, *GODEL, ESCHER, BACH: AN ETERNAL GOLDEN BRAID* (1979) (computer science).

2. Writers in fields such as copyright have long found it necessary to refer to music. See, e.g., *Arnstein v. Porter*, 154 F.2d 464 (2d Cir. 1946); *Bright Tunes Music Corp. v. Harrisongs Music Ltd.*, 420 F. Supp. 177 (S.D.N.Y. 1977); *Fred Fisher, Inc. v. Dillingham*, 298 F.145 (S.D.N.Y. 1924); see generally R. BROWN, KAPLAN AND BROWN'S CASES ON COPYRIGHT, UNFAIR COMPETITION, AND OTHER TOPICS BEARING ON THE PROTECTION OF LITERARY, MUSICAL, AND ARTISTIC WORKS 219-247 (3d ed. 1976).

3. The term "phonorecord" has been adopted by Congress in the Copyright Act of 1976. 17 U.S.C. § 101 (Supp. IV 1980). It is accordingly used in this system of citation.

4. Tushnet, *Darkness on the Edge of Town: The Contributions of John Hart Ely to Constitutional Theory*, 89 YALE L.J. 1037, 1037 n.2 (1980) ("Cf. B. SPRINGSTEEN, *DARKNESS ON THE EDGE OF TOWN* (Columbia Records, Inc. 1978)."). This citation form is mystifying. Why is the name of the publisher given, when this information is omitted from most other types of citations? For the citation under the system proposed by this Article, see *infra*.

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The reason for this apparent absence of musical inspiration and explanation may be the absence in the otherwise comprehensive structure of law review citation⁵ of any system of citation of phonograph records. The obsession in legal scholarship with proper form of citation⁶ may well have inhibited such references in the past. This situation must not be allowed to continue, especially in the wake of the outburst in this half-century of music addressing social issues.⁷ Accordingly, the editors of this Journal set forth a reasonably complete system of citation of musical material on phonograph records, together with related written material, for the consideration and use of the profession.

5. See A UNIFORM SYSTEM OF CITATION (13th ed. 1981).

6. See, e.g., 95 HARV. L. REV. (strict scrutiny standard). But cf. 91 YALE L.J. (harmless error standard); 49 U. CHI. L. REV. ("common sense dictates otherwise" standard).

7. Although music embodying theories of political philosophy has existed for some time, see, e.g., R. STRAUSS, ALSO SPRACH ZARATHUSTRA (H. von Karajan cond. 1974) (phonorecord) (first performed in 1896), and ancient folk music often has dealt with problems of social justice, see, e.g., Good King Wenceslas, in EDWARD BARRINGTON CHORALE, SPIRIT OF CHRISTMAS I, track 3 (n.d.) (phonorecord), the emergence of rock and folk-rock music since the 1950's has represented a qualitative leap in the applicability of phonograph records to legal discourse.

17A Phonograph Records

Cite phonograph records according to rule 17A.1; cite liner and cover material according to rule 17A.2.

The citation forms for authors, titles, editions, and dates specified for books (rules 15.1, 15.2, 15.4, and 15.5), should be followed to the extent applicable when citing records.

17A.1 Phonograph Records

Cite phonograph albums by disc number, if more than one (cf. rule 3.2); performer or composer (either an individual, multiple individuals, who are cited similarly to joint authors, or a group); title of album or album set; side and track number, if only part of a disc is cited (rule 17A.3); a parenthetical identifying (i) the transcriber (transc.), conductor (cond.), performer (perf.), or soloist (solo.), if needed, and (ii) the date of the release; and the parenthetical "(phonorecord)".

Most "serious" music (e.g., works for orchestra, classical music) should be cited by composer, while most "popular" music should be cited by performer. When in doubt as to which name to use, refer to the record itself and its jacket and spine; follow the designation used by the publisher.

SIMON & GARFUNKEL, BOOKENDS (1968) (phonorecord).

But:

P. SIMON & A. GARFUNKEL, CONCERT IN CENTRAL PARK (1981) (phonorecord).

L. VAN BEETHOVEN, SYMPHONY NO. 3 (K. Böhm cond. 1962) ("Eroica") (phonorecord).

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M. MUSSOURGSKY, PICTURES AT AN EXHIBITION (M. Ravel transc., H. von Karajan cond. n.d.) (phonorecord).

Only the name performer need be cited, unless a reference to a backing performer is desired.

B. SPRINGSTEEN, DARKNESS ON THE EDGE OF TOWN (1978) (phonorecord).

N. YOUNG, RUST NEVER SLEEPS (1979) (phonorecord).

Or:

N. YOUNG & CRAZY HORSE, RUST NEVER SLEEPS (1979) (phonorecord).

Use the title given in J. OSBORNE, RECORD ALBUMS 1948-1978 (2d ed. 1978), the Schwann Record and Tape catalog, or a similar publication to cite an album that does not have a title provided by the publisher. If a popular name is commonly used, provide the name parenthetically:

THE BEATLES, THE BEATLES (1968) (phonorecord) ("White Album").

LED ZEPPELIN, LED ZEPPELIN IV (1971) (phonorecord).

If citing a particular work within an album, a rule analogous to rule 15.5.1 is used. If all the works in the album are by the same composer or performer, the name, including an initial, of the composer or performer is given, in large and small capitals. If the works are not all by the same composer or performer, or if it is relevant to cite the particular work to an individual or group that is not being cited as the composer or performer for the entire album, then only the last name of the composer or performer is given, in regular roman type. In this case, it is necessary to provide the performer or composer for the entire album before the album name. In either case,

the individual work title is printed in italics and the album title is printed in large and small capitals.

SIMON & GARFUNKEL, *I am a Rock*, in SOUNDS OF SILENCE 2, track 5 (1965) (phonorecord).

J.S. BACH, *Six-Part Ricercare*, in THE MUSICAL OFFERING 1, track 9 (Claves Bach Soloists perfs. 1970) (phonorecord).

Springsteen, *Talk to Me*, in SOUTHSIDE JOHNNY AND THE ASHBURY JUKES, HEARTS OF STONE 2, track 1 (1978) (phonorecord).

When referring to specific material within such a source, include both the side and track on which the source begins and the side and track on which the specific material appears, separated by a comma:

W. MOZART, *Symphony No. 41*, in SYMPHONIEN NR. 40 & NR. 41 (H. von Karajan cond. 1978) 2, track 1, 2, track 2 ("Jupiter" symphony) (2d movement, *Andante cantabile*) (phonorecord).

When possible, cite to omnibus collections by a composer or performer rather than to "greatest hits" collections. Thus:

J.S. BACH, MASS IN B MINOR (K. Münchinger cond. 1971) (phonorecord).

Not:

J.S. BACH, EXCERPTS FROM MASS IN B MINOR (H. Achenbach cond. 1970) (phonorecord).

Bach, *Mass in B Minor*, in BAROQUE TUNES THE WHOLE WORLD LIKES TO HUM 1, track 3 (Anon. cond. 1967) (phonorecord) (not available in stores).

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17A.2 Liner and Jacket Material

Cite liner and jacket (cover) material according to the form for prefaces and forewords (rule 15.2).

Springsteen, *Jacket Notes* to SOUTHSIDE JOHNNY AND THE ASBURY JUKES, I DON'T WANT TO GO HOME (1976) (phonorecord).

Liner Notes to BLONDIE, PARALLEL LINES (1978) (phonorecord).

Ohlsson, *Jacket Notes* to F. CHOPIN, THE TWENTY-FOUR PRELUDES, OP. 28 (G. Ohlsson perf. 1974) (phonorecord).

17A.3 Subdivisions: Sides and Tracks

Give the side number after the album title, but before the parenthetical phrases, without any introductory abbreviation. Give the track number, if needed, after the side number, with the notation "track".

C. BOLLING, SUITE FOR FLUTE AND JAZZ PIANO 2, track 3 (J.-P. Rampal & C. Bolling perfs. 1975) (phonorecord).

L. VAN BEETHOVEN, *Sonata No. 21*, in VLADIMIR ASHKENAZY PLAYS BEETHOVEN SONATAS 1, track 4, 2, track 1 (1975) ("Waldstein") (2d movement, *Molto adagio*) (phonorecord).

Never use "side"; use "at", preceded by a comma, if the side number may be confused with another part of the citation:

Fassert, *Barbara Ann*, in THE BEACH BOYS, BEACH BOYS '69, at 2, track 5 (1976) (phonorecord).

Do not give a disc number in a multi-disc set in which the sides of all discs are numbered in one sequence:

Mendelssohn, *Trio No. 1*, in FOUR FAVORITE TRIOS 6 (Istomin-Rose-Stern Trio perfs. 1968) (phonorecord).

Page, *Bron-Yr-Aur*, in LED ZEPPELIN, PHYSICAL GRAFFITI 3, track 2 (n.d.) (phonorecord).

But:

Wonder & Wright, *If You Really Love Me*, in 3 THE GREATEST 64 MOTOWN ORIGINAL HITS 2, track 4 (n.d.) (phonorecord).

17A.4 The Hear Signal

In citing phonograph records, replace the signal "see" with "hear", "see also" with "hear also", "but see" with "but hear", and "see generally" with "hear generally" (rule 2.3). When more than one signal is used in a string citation, signals containing the word "hear" should appear immediately after the corresponding "see" signal. Thus:

See T. WOLFE, YOU CAN'T GO HOME AGAIN (1940). *But hear* SIMON & GARFUNKEL, *Homeward Bound*, in PARSLEY, SAGE, ROSEMARY & THYME 1, track 4 (1966) (phonorecord); *hear generally* Ten Years After, *Goin' Home*, in WOODSTOCK (1971) (phonorecord).