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THE BUSINESS OF POPULAR MUSIC

SIMON  
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**unbound**

**TA-RA-RA-BOOM-DE-AY**  
**THE BUSINESS OF POPULAR MUSIC**

*Simon Napier-Bell*

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# FOREWORD

The man in front of me was a jelly gorilla. His short-sleeved white shirt revealed flabby runnels of spare fat flowing down the underside of his arms like melting liver sausage. Sitting at his desk, the top of his stomach reached right up to his neck. He was three hundred and fifty pounds of collapsing flesh. How he could manage to pull all this weight upwards and get it balanced on two legs was amazing. But he did. And we shook hands.

This was Mike Stewart, president of United Artists Music, New York. Standing next to him was his sidekick, the company's vice-president, Murray Deutch, polished and petite, like a life-sized porcelain figurine.

Just five foot seven, Murray was packaged in an exquisitely cut charcoal suit with a perfectly knotted tie and a stiffly pressed collar. At the bottom of his suit, his shoes shone like black onyx. At the top, his rose-apple face stuck out like a dollop of pink mayonnaise on a prawn cocktail. This was Mike Stewart's pet sycophant - a plaything for the boss. In the middle of our meeting a shoeshine boy knocked at the office door. Mike flipped him a quarter and told Murray to have a shoeshine.

"I don't need one," Murray told him.

Nor did he. His shoes were like mirrors. But Mike snapped back, "Murray, if I tell you you're gonna have a shoeshine, you're gonna have one." So Murray concurred.

This was 1966. Through a stroke of luck I'd written the lyrics to a hit song, 'You Don't Have To Say You Love Me'.



Writing songs wasn't what I really did, I was a manager, though that was also due to a stroke of luck. One day out of the blue the Yardbirds had phoned me and asked if I'd like to manage them. 'Well - yes please!'

The lyrics for 'You Don't Have To Say You Love Me' had been co-written with Vicki Wickham who was a producer at *Ready Steady Go!*, Britain's top pop show. She was also a friend of Dusty Springfield, who'd found the song in Italy and asked us where she could get English lyrics for it. We knew nothing about writing songs but had a go at it. Next thing we knew the song was number one. And because management was turning out to be hard work, I thought, "Maybe this is what I should be doing."

United Artists misguidedly thought the same. They approached me and Vicki and asked if we'd like to sign an exclusive songwriting agreement. Apart from a nice advance they also offered a flight to New York to meet the head of the company, Mike Stewart, which is why we were there.

Mike had an idea. "Murray - why don't you take Simon and Vicki over to the Brill building."

He turned to us, "You know about the Brill, don't you? It's where all the top songwriters work. Murray will show you round."

Mike's dapper little servant led us off to see something we knew about but had never seen.

It was a building heaving with activity - cramped small offices, people running in and out of the passageways, everyone seemingly knowing everyone else, badly lit, hugely atmospheric but equally claustrophobic. This was the American music industry in microcosm. In this building were publishers, pluggers, music printers, demo studios, but most important of all - songwriters.

Murray took us to a floor on which every door had a six-inch square window to see in through, like prison cells.

Inside each room was a pianist at an upright piano and someone else sitting on a stool beside them. Pianos were banged, melodies hummed, chorus lines sung, and phrases tossed around between piano-players and stool-sitters. There was no air-conditioning. The temperature in the street was in the eighties. In here it was more like the nineties.

“They all work 10 to 6, five days a week,” Murray told us. “They write America’s hits. We want you to join them.”

“But who are they?” we asked. “Who on earth agrees to sit in a little sweatbox and slog away at writing songs in such an atmosphere?”

Murray opened a door. “Neil,” he said. “I want you to meet a couple of guys from England. They’ve just written one of the greatest songs ever.”

Turning from the piano we saw Neil Sedaka. Three years earlier his song ‘Breaking Up Is Hard to Do’ had been number one. So why was he slaving away in here?

Vicki knew him; she’d booked him on *Ready Steady Go!* a few months previously. “Neil,” she asked, “why on earth do you spend your day working in a tiny room like this?”

He grinned. “Well - the truth is - I’m under contract. But that’s not really the reason. It’s just that... This is how we do it. And we love it. We’re all here. All songwriters together.”

Vicki shook her head in disbelief.

Murray opened the next door. “Carole. Meet two friends from England.”

The face at the piano turned towards us. It was Carole King. Carole had written one of the most memorable hits of the early sixties, ‘Will You Still Love Me Tomorrow’. It was unbelievable that the reward for having done so was to be imprisoned eight hours a day. Vicki knew Carole too, and asked her, “Why do you work in a place like this?”

“It *can* be a bit of a nightmare sometimes,” Carole admitted.

It was incredible - like a car factory - a conveyor belt of songwriters.

Murray shut the door. "Burt Bacharach worked here until last year too," he told us. "All the great songwriters do. We want you to join them."

When we got back to the office Mike Stewart was tucking into his lunch - a bucket of Kentucky fried chicken and a half-gallon milkshake. "Whad'ya think?" he asked, spilling crispy bits into his lap. "You wanna stay here for a few weeks and work with the best? We'll pay your accommodation."

We both shook our heads.

"Do you want to know what these guys earn?"

We didn't. It was irrelevant. Our lives were about London. I tried to explain that back home I had the Yardbirds to manage and Vicki had a job producing *Ready Steady Go!*

Mike got tetchy and banged his desk. "You just don't get it, do you? In this business, the song is the one and only commodity. Don't let anyone tell you otherwise. The history of music publishing is the history of the music industry. Forget records, forget TV shows, forget rock groups - they're a mere triviality. Songs are forever. When you've finished your time in this business, all you'll have left is the songs. You guys should stay here and get rich."

We both knew if we were serious about wanting to be top songwriters we should stay and work in that dreadful building. Even worse, we ought to try and make friends of these two men - a slag heap of falling flesh and his perfectly tailored pet frog.

Without even looking at Vicki I knew what she was thinking - it wasn't us who didn't "get it", it was these guys. They were completely ignorant about the cool world we inhabited on the other side of the Atlantic. They knew nothing about pop groups and pirate radio, Kings Road and

trendy nightlife, lazy dinners and easy sex. As far as we were concerned the music business was a British thing; America was just a backwater. Why would anyone want to exchange the pleasures of swinging London for a songwriters' Alcatraz?

"I'm sorry," I told Mike. "We really need to get back to London." Vicki nodded in agreement, and he gave a helpless shrug.

But back in London managing the Yardbirds, I soon found I needed to know more about music publishing. In fact, bearing in mind I was managing one of the world's top rock groups, I thought it was about time I learnt more about the music industry in general - how it worked, how it had come into existence, how it had managed to get by without me for a hundred years. So I started reading.

Twelve months later I felt better informed. But I've been surprised ever since by how few other people in the business know anything about it, so I decided the time had come to write it all down in one book.

Mainly I wanted to show the business-side of things, and although I call it a complete history, of course it's nothing of the sort, in fact it's as incomplete as you can possibly imagine. I've simply chosen a meandering path through the lives of assorted hustlers, entrepreneurs, songwriters, artists and executives who helped bring the music industry from its beginnings three hundred years ago to what it is today.

Mostly it's a story of how the desire to make money (and then make more money), created an industry. Which now looks like it's in decline.

(Though perhaps it's not!)

We'll have to wait and see.

# 1

## ***Ta-ra-ra-boom-dee-ay***

### **THE BEGINNING OF THE MUSIC BUSINESS**

This is how Britain got started in the music business.

In 1710, the British parliament passed a law protecting an author's rights in his written work - the Statute of Anne. A piece of writing, once it had been published, or made public, would remain the author's exclusive property for fourteen years. This could then be extended for another fourteen years. And because music could be written, it too was given the same legal status.

There was also a proviso that an author had the right to assign his rights in a work providing there was a signed and witnessed contract. So if a music publisher could persuade a songwriter to sign a piece of paper assigning him a song, the publisher would become the owner of the song.

Previously, the only business in music had been the simple one of paying musicians to play and charging people to come and see them. But now music could be owned, just like property. And anyone who owned a piece of music could print copies of it and sell them for whatever price he chose.

The court had created the music industry.

This is how America got started in the music business. It was a British colony. And when it won the War of Independence it kept the copyright law Britain had given it.

What pushed the industry forward was not so much the public's love of music, or the musicians' love of playing and writing it, but the music publishers' desire to make money from it. Eventually it was America that kicked the music business into high gear and turned it into a multi-million dollar industry, but it was Britain that started things off.

The first big step was in December 1810 when Samuel Chappell, who had a piano store in Bond Street, signed an agreement with Johann Baptist Cramer, England's best-known concert pianist and composer. Chappell and Cramer would set up a joint publishing company that would print and sell all of Cramer's music, including his best-seller, the definitive work on piano technique, '84 Studies for the Pianoforte'.

Cramer then wrote to all his musician friends telling them about the new company and asking them to publish their work with it. One of them was Beethoven, who, because he considered Cramer to be the world's best pianist, let the company publish his new piano concerto, which Cramer named the 'Emperor'.

Cramer's contacts brought in top classical composers from all over Europe and Chappell was soon considered to be amongst the top music publishing companies in Britain. But after seven years Cramer decided he was doing more for Chappell than Chappell was doing for him, so he left and set up on his own. In 1834 Samuel Chappell died and in due course the business passed to his son Thomas.

Tom was a moderniser. He wasn't as stuffy as his father. He wanted to publish popular music as well classical. Classical music sold only on the reputation of the composer. For a new work to sell better than the last took a very long time - concerts had to be arranged and played and the time

needed to turn a classical work into a hit was often several years. Popular music was totally different. Popular songs could be engineered into hits in a matter of months. But it was a tough business.

The other top publishers were Novello and Boosey. Novello published only classical music, but Boosey had moved into popular ballads for the middle classes - genteel love songs and broken-hearted laments. Tom Chappell decided to do the same.

Promoting new ballads wasn't at all genteel. Publishers fought to get the best songs from the best writers, and then they had to be made popular. Nobody wanted to hear songs they didn't know so new songs had to be force-fed to the public. The best way was to persuade top ballad singers to feature them in their concerts. To persuade them they were bribed - from the very beginning, that was the nature of the music business. No song was played till someone was paid.

It could be expensive but sales of songs could be huge. The money made from the sheet music of 'The Last Rose of Summer' or 'Darby and Joan' justified almost any expenditure on promotion. The most famous singer at the time was contralto Dame Clara Butt. After Queen Victoria told her, "I have never liked the English language before but in your mouth it is beautiful," Boosey gave her a royalty on the sheet music sales of every song she helped promote.

(Dame Clara, not the Queen.)

Tom Chappell wanted to find an alternative to the cut-throat nature of the ballad business, and eventually he found one - musical theatre. His next big signing was Britain's most successful songwriting team, Gilbert and Sullivan.

Gilbert and Sullivan wrote light-hearted operettas that made them the darlings of the middle-class. Sullivan wrote the music and Gilbert the words, and their shows were in

the classic style of British comedy, absurdity with a straight face. The music was jolly and the characters were familiar types from the Victorian era - shopkeepers, thieves, policemen, judges. The trick was to tell an outrageous story in a deadpan way.

This was the second half of the nineteenth century - a taxi to the theatre was a carriage pulled by a horse. Streets were lit by gaslight, as were most of the theatres. Onstage light came from footlights shining on the performers unattractively from underneath. A poor show couldn't be saved by making it look spectacular, the lighting to do that didn't exist; a comedy had to be truly funny, a musical show had to have stunning songs. And Gilbert and Sullivan's did.

Every show was packed with catchy tunes, easy to remember and not too hard to play on the piano. More than 60 per cent of middle-class families in Britain had a piano and nearly all of them bought sheet music of Gilbert and Sullivan's songs.

By the 1890s their songs had made Chappell the number one music publisher in Britain.

In America, by the 1880s, a hundred years after the end of the War of Independence, there had been an influx of immigrants from Europe. Over 250,000 of these were Jews, the majority of them having fled persecution. Although most of these immigrants were well educated, there was little chance of them finding good positions in businesses that already had management in place, but the entertainment industry had vacancy signs all over it. It was new, and there was no one at the top to object to newcomers moving in. It revolved around actors, singers, dancers, writers, and choreographers - all of them quirky, forceful and idiosyncratic. There was no room in entertainment for people who made judgments based on race or class or sexuality; the only thing that mattered was profitability.



Jews came from a non-proselytising culture. They didn't try to convert people to their way of thinking, nor did they object to other people being themselves - the entertainment business provided them with an ideal opening. And the quickest way in was through songwriting or music publishing.

As in Britain, publishers bought songs as cheaply as they could, then tried to popularise them and sell sheet music, and it was this popularising of the song that was key to the business. If the song became a hit it might sell thirty or forty thousand copies at 50 cents each, and with three or four hits a year a publisher could make a comfortable living. No one considered music publishing to be a profession from which one could get truly rich, but in 1894 something happened that raised the possible rewards to another level.

Aged eighteen, Charles K. Harris lived in Milwaukee and wrote songs that he sold to travelling minstrel shows for a few dollars each. He managed to publish one of his songs with a New York publisher, Witmark & Son, who agreed to pay him one cent for each copy sold. From friends in New York, Harris heard the song was doing well, but when his first royalty cheque arrived it was for just 85 cents.

He was furious. He decided he would never give another publisher one of his songs and he set up his own publishing company in a rented room. On the wall, he hung the 85 cents cheque he'd received.

Isidore Witmark, the publisher who had sent it to him, retaliated by hanging the sheet music of the song on his own office wall, telling friends he was "framing the song as a prize failure".

But the last laugh was with Harris. The next song he wrote was 'After the Ball', the best-selling song ever.

It was a deliberate tearjerker, about a man who dumped his girlfriend when he saw her kiss another man. He leaves in a huff and refuses to speak to her again, then hears she's

killed herself with grief. And it turns out the man he saw her kiss was her brother. Again it was the plugging that made the song a hit, and preceding the plugging was the bribing.

To start with Harris was a bit stingy. A young tenor, Evan Williams, was due to sing a concert at the Los Angeles Theatre and Harris asked him to sing 'After the Ball' four times. He wrote a letter to the theatre's treasurer. "I am enclosing my cheque for \$10. If Mr Williams sings it all four times you are to give him the \$10. If he sings it only three times you are to deduct \$2.50. In fact, deduct \$2.50 for each omission and return the money to me."

When this failed to get the song going, Harris splashed out lavishly. He paid five hundred dollars to James Aldrich Libbey, a well-known baritone for the right to put his photograph on the cover of the sheet music and to sing it at a concert that bandleader John Philip Sousa would be attending. Sousa liked the song so much he made an arrangement of it and for the next six months played it once an hour at the 1893 Chicago World Fair where he and his band were in residence. Over twenty-seven million people attended the fair, equivalent to half the population of the USA, and by the end of the year the sheet-music had sold over two million copies, an unheard of amount.

As the song's publisher, as well as its writer, Charles K. Harris made all the money for himself. He then became a music business bore and lectured the industry on how things should be done. "A new song must be played, hummed, and drummed into the ears of the public, not in one city, but in every city, town, and village, before it ever becomes popular."

Harris's success with 'After the Ball' prompted other amateur songwriters to follow him into publishing. And as soon as they became publishers they started sending out their own 85 cent cheques.

Many of them had a background in sales - buttons, neckties, socks, corsets. They looked at songs as just another product to be sold. Popular songs weren't art, just a commodity.

Edward B. Marks had been a button salesman. In his spare time he wrote rhymes. Joseph Stern, a necktie salesman, played piano and wrote tunes. Stern and Marks combined their talents to write songs and start a publishing business from a basement on East 14th Street with "a 30-cent sign and a \$1 letter box". They too decided on the tearjerker route. Their first hit was 'The Little Lost Child', about a policeman who came across a waif in the street only to find, when he got back to the police station, it was his own long lost daughter. With some cash in the bank, Stern and Marks hired other writers to write songs for them. One was Leo Feist, a corset salesman who had been writing songs in his spare time. Stern and Marks gave Feist a lowly job in the firm but when one of his songs became a hit Feist demanded to be made a partner. Instead, he was shown the door.

So Feist started his own company and became the first publisher to come up with a slogan: 'You Can't Go Wrong With A Feist Song'. He also stole all the staff from Stern and Marks - pluggers, writers, arrangers, and even the extremely inventive accountant, Mr Anderson, whose creativity with royalty statements worked wonders for the profits. Whenever a songwriter received one, he would say, "Another one of Anderson's fairy tales."

Aaron Gumbinsky was the son of a sock salesman. Aged fourteen, he'd run away to join a circus and renamed himself Harry von Tilzer. He wrote songs for his own song-and-dance act and eventually managed to sell one to publishers Shapiro Bernstein for fifteen dollars, 'My Old New Hampshire Home'.

When it sold a million copies Shapiro Bernstein offered von Tilzer a partnership. It would cost them less than the

royalties they owed him and it meant they could publish his future songs. Von Tilzer was a fancy dresser and liked to wear a formal suit with a high stiff collar, which made visitors presume he was the man in charge. After a while he decided that's what he'd like to be. So he left Shapiro Bernstein and started his own company - Von Tilzer Music.

By the beginning of the 1890s, the old generation of New York publishers (Bond, Kennedy, Fisher, Smith, Howley, Haviland) had completely faded away, outclassed by the energy and innovation of these newcomers (Marks, Stern, Feist, Harris, Witmark, Shapiro, Bernstein, Von Tilzer) nearly all of them Jewish immigrants, or children of immigrants.

They all understood that the essential link between a newly written song and the sale of its sheet music was the plugger. "He it is," wrote music sociologist Isaac Goldberg, "who by all the arts of persuasion, intrigue, bribery, mayhem, malfeasance, cajolery, entreaty, threat, insinuation, persistence and whatever else he has, sees to it that his employer's music shall be heard."

Leo Feist hired pluggers to sing in public places - on the platform of a train station, in Times Square, a saloon bar, a theatre balcony, a pool hall - anywhere a crowd gathered.

Edward B. Marks told people the best songs came from the gutter. "There was no surer way of starting a song off to popularity than to get it sung as loudly as possible in the city's lowest dives." He went out himself each night, buying drinks for the performers and distributing chorus-sheets to the customers. "Sixty joints a week", he claimed. "The Alhambra Music Hall was expensive because you had to buy drinks for the boys in the band and there were twenty-six of them; the Haymarket was dangerous - bullets flew frequently - and you could only get in by joining a club called the Welsh Rabbits, at the cost of drinks for all."

Other pluggers would go to the music counters of department stores with hundreds of copies of the song

printed on the cheapest paper, then stand and sing it while selling them for ten cents each. Every department store had a grand piano allotted by the hour to publishers for their pluggers to play and sing new songs.

At Witmark & Son, the preferred method of plugging was 'booming'. It meant buying a dozen or so tickets for a vaudeville show and placing pluggers in the audience. When the performer sang, they joined in, and applauded wildly afterwards. Sometimes a singer would pretend to forget the words and a boomer would stand up in his seat and prompt him by singing along.

At Shapiro Bernstein, Louis Bernstein took his plugging crew to the bicycle races at Madison Square Gardens and the audience got it full in the face. "They had 20,000 people there. We'd have a pianist and singer with a large horn. We'd sing a song to them thirty or forty times a night - it was forced down their throat. They'd cheer, and they'd yell, and they'd boo, but we kept pounding away at them. When the people walked out of there they'd be singing the song. They couldn't help it."

The most elegant way of promoting songs was with a series of photo slides showing the story in pictures. Publishers sent them to all the top vaudeville singers to project as they sung the song. These became the pop videos of their day. Some were put together cheaply with library pictures, others were hugely extravagant, with photographers travelling to Florida or California. Most expensive of all was a slide show made for the song 'Red Wing', about an Indian girl who loses her lover in battle. The publisher of the song, F. A. Mills, wanted to use real Red Indians for the photographs and by chance there were a couple of dozen in town appearing in a burlesque show on Broadway. Sparing no expense, he took the lot at \$5 a day each. But there was a misunderstanding. Mills hadn't been aware that Red Indians believed each time a person was

photographed they lost a day of their life. Fifty pictures meant fifty days' pay for each Red Indian.

When songs became popular, the masses bought them to sing round the piano at home for their Saturday night entertainment. In turn of the century New York nearly every home had a piano, rich and poor. Poor parents bought them to give their children a backstop way of earning a living if they failed to complete their education.

When Harry Ruby was a child he lived with his family on the lower East Side. In the 1920s he became a top songwriter. "All the families around us were poor. But they had pianos... you could buy one for a hundred dollars and pay it off on time payments. They'd hoist it up to the apartment on a rope."

Because music publishers depended on sheet music sales, it was important that even the most amateurish pianist could play their songs easily. They were forever looking for a foolproof formula. Songs were made simple, chords uncomplicated, rhythms obvious. Melodies had a range of no more than one octave, often less. Publishers told their songwriters to compose to a common format - 32 bars divided into four sections - an 8-bar theme, a repeat of it, a different 8-bar theme, a final repeat of the first one - AABA.

This became the standard for all pop songs. The familiarity became addictive. The listener waited with pleasure for the places in the song where he knew the changes would come, and with equal pleasure for the return to the original tune. Melodies had predictable intervals and familiar harmonies. There was no point writing something cunningly clever if it couldn't easily be played and sung round the family piano. The new breed of music publisher pushed aside tricky ideas and stuck to one simple formula - the money-making formula.

Occasionally hits came from thinking quietly alone, but not often. Songwriting was not seen as an art. Each company employed full-time songwriters, up to a dozen of them, working from nine to five in cramped rooms, mixing old bits with new, searching for musical phrases and clever words, banging on tinny pianos.

Harry von Tilzer was interviewed by a newspaper reporter writing about the area at 28th Street and 5th Avenue where music publishers had their offices. To make its sound cut above the noise of the traffic coming in through the windows von Tilzer had doctored his rather expensive Kindler & Collins piano with strips of paper on the strings to give it a more percussive sound. When he sat down to play, the journalist told him, "Your Kindler & Collins sounds exactly like a tin pan. I'll call the article, 'Tin Pan Alley'."

Britain had a Tin Pan Alley too.

Besides popular music for the theatre and ballads for the middle-classes, the third arm of the popular music business was music hall, which operated much like America's vaudeville. The competition was daunting; there were dozens of small publishers, many of them housed in a short back alley off Charing Cross Road called Denmark Street.

Most of them paid their songwriters no royalty and bought songs for as little as £5 flat payment. 'Any Old Iron' and 'My Old Man Said Follow the Van' wouldn't sell to the middle-classes but sheet music of these songs could be sold to every pub pianist in the country.

The leading publisher in the field was Francis, Day & Hunter. Brothers William and Harry Francis had sung in a minstrel group with Harry Hunter. To get their songs published they'd teamed up with David Day who had experience in publishing. Francis, Day & Hunter was now the most successful publisher of music hall songs, with a huge catalogue and an office filled every day with music-

hall artists looking for new material. One of the company's most successful writers was the music hall star Joseph Tabrar. He arrived one day when there was an unknown singer in the office looking for a song with which to launch herself. While she was being played a few, Tabrar sat in the corner and wrote 'Daddy Wouldn't Buy Me a Bow Wow', then offered it to her. She turned it down. It couldn't possibly be any good, she said, if he'd written it so quickly. So he gave it to Vesta Victoria who made it the biggest hit of the season, and the unknown singer stayed unknown.

Like the ballad business, the secret of success in music hall was to pay top artists to publicise your songs. Sometimes the singers were also given exclusive rights to the song so no other singer could perform it. Other times the singer received a penny a copy on the sale of sheet music even when the writer was getting nothing.

It wasn't just music publishers who short-changed songwriters, writers did it to each other. Singer Charles Coburn was an occasional songwriter but got his name on far more songs than he actually wrote. 'The Man Who Broke the Bank at Monte Carlo' was written by Fred Gilbert but Coburn managed to buy it from him for £10. He took it to Francis, Day & Hunter and asked for thirty. They gave him £5 plus a royalty and he ended up making six hundred.

There was plenty of interaction between America and Britain. Hit songs moved easily across the Atlantic in both directions. But usually as stolen property.

The USA didn't recognise British copyright. As a result, British music hall songs were often copied verbatim by American publishers, credited to a new author and printed as sheet music with nothing paid to the British publisher.

A British publishing company's only hope of getting money for its music in the USA was to assign its songs to an American publishing company to register on its behalf.



Francis, Day & Hunter did this with T. B. Harms, one of New York's old-time publishers. But these arrangements sometimes turned out to be less gentlemanly than expected.

In 1891, Harry Dacre, one of Francis, Day & Hunter's British songwriters, went for a holiday in the USA and took his bicycle. When he arrived he had to pay duty on it. The friend who met him at the pier jokingly remarked, if he'd come over with a bicycle built for two he would have had to pay double. The phrase stuck in Dacre's mind and he used it to write his first song on American soil, 'Daisy, Daisy, Give Me Your Answer Do'.

Because his work was published by Francis, Day & Hunter, the American rights for the song would eventually pass to T. B. Harms in accordance with their agreement. But with the songwriter right there in New York, Tom Harms, the owner of the company, couldn't resist cajoling him into signing his song directly to T. B. Harms. So Francis, Day & Hunter ended up losing it.

This lack of respect for each other's copyright laws led to endless disputes between British and American publishers and courts on both sides of the Atlantic tended towards a national bias.

'Ta-ra-ra-boom-de-ay' was a song copyrighted by Henry J. Sayers in Massachusetts. He gave a copy to British singer Lottie Collins while she was visiting. When she got back home she changed it around a bit and gave it to a London publisher as her own. Then she worked up a dance routine. In a wide-brimmed Gainsborough hat she delivered the verse like a virgin and the chorus like a whore - neckline plunging, legs kicking, white petticoat flying. And on the word 'boom', she gave her petticoat an extra hoist to reveal diamante garters.

In due course, the London publisher received a writ from the American publisher claiming the song was Henry J. Sayer's. The British publisher's defence was that the song

was more than twenty-eight years old and was therefore out of copyright. They claimed it had been around since before the American Civil War and was an old negro song with exceedingly vulgar lyrics. The judge asked to have them read out in court.

Counsel for the defence stood and delivered. His deadpan recital of the verse's bawdy words caused sniggers around the courtroom. But it was when he arrived at the chorus that things got out of hand. As the first 'Ta-ra-ra-boom-de-ay' left his lips the entire public gallery burst into song and continued for four complete choruses before the judge managed to regain control.

The song, he decided, was in the public domain. It was anyone's to do with as they pleased.

# 2

## ***Around and Around***

### **THE BEGINNING OF RECORDS**

In 1877 Thomas Edison invented the phonograph, well... sort of!

Edison produced a machine with a horn, a stylus, and a cylinder covered with tinfoil that recorded sound. Other people had already got close.

Frenchman Édouard-Léon Scott de Martinville had produced a machine with a horn, a stylus, and a cylinder covered in lamp-black paper. When someone sang into the horn the stylus traced the sound waves onto the paper; clever stuff, but of little use - you could see them, but you couldn't hear them.

Another Frenchman, Charles Cros, left a sealed document at the Académie des Sciences in Paris describing a process for recording and reproducing sound virtually as Edison finally did it. But writing about it and doing it weren't the same thing. His paper remained sealed until after Edison had built his machine. So Edison got the patent.

Edison was born in Ohio in 1847. At age fifteen he began to study telegraphy, four years later he got a job with Western Union where he invented a device to electrocute the cockroaches in the office. He then devised a telegraphic

printer that he sold to the Atlantic and Pacific Telegraph Company, Western Union's biggest rival, for \$30,000.

In 1867 that was an enormous amount, like a million dollars today, and with the money Edison set up a factory and started inventing more things. In due course he came up with what he called a phonogram. When someone sang into the horn, instead of the stylus tracing sound waves onto paper it indented them into tin foil. For playback, when the cylinder was revolved the stylus followed the indentations and sent the same sound back up the horn that had previously come down it.

Edison took his new machine to the office of the *Scientific American*, and in its next issue it made a report. "Mr. Thomas A. Edison recently came into this office, placed a little machine on our desk, turned a crank and the machine inquired as to our health, asked how we liked the phonograph, informed us that it was very well, and bid us a cordial good night. These remarks were not only perfectly audible to ourselves, but to a dozen or more persons gathered around."

The recordings were of poor quality and couldn't be copied, but Edison, who was a master of publicity, glossed over the weaknesses and lavishly described the possibilities. "You can have a phonograph in your parlour with an album of selected phonographic matter lying beside it. You can take a sheet from the album, place it on the phonograph, start the clockwork and have a symphony performed; then, by changing the sheet, you can listen to a chapter or two of a favourite novel; this may be followed by a song, a duet, or a quartet..."

In fact, you could do no such thing, but Edison was working on it.

When some investors turned up and offered to pay him \$10,000 for the rights to market the phonograph, with a 20 per cent royalty on sales, he agreed. Several machines were made and rented out to people who earned money by

demonstrating their recording abilities to crowds, at department stores, or fairs, or wherever they might gather - getting them to speak into the machine, or sing, or cough, or most popular of all, to laugh; then letting them hear it back.

In 1878, a reporter from the *Philadelphia Press* attended a demonstration. "Laughter and whistling and singing and sighing and groans - in fact, every utterance of which the human voice is capable - was stored in that wondrous wheel and emitted when it was turned."

At the height of this craze, some of these demonstration machines were earning \$1,800 a week in rentals, yet only one man, Dr William Channing writing in the *London Illustrated News*, accurately forecast what these machines would really be used for. "Certainly, within a dozen years, some of the greatest singers will be induced to sing into the ear of the phonograph."

For the moment though, people became bored with these novelty machines and Edison himself got on with inventing other more important things - movie cameras, light bulbs, and the thing he prided above all others - the electric pen wiper.

Meanwhile an American scientist, Professor Charles Tainter, and his partner in invention, a Scot named Chichester Bell, were trying to come up with a phonograph which had a better recording surface than Edison's. Professor Tainter had a passion for tea and employed an assistant, Fred Gaisberg, who was coached in the art of tea-making and tasked with providing a dozen perfect cups a day.

In due course, Tainter and Bell came up with a phonograph almost identical to Edison's except that it used a cardboard cylinder coated with wax into which a groove could be cut. The two inventors called it a graphograph,

and despite its close similarity to Edison's phonograph they were granted a patent.

It immediately attracted attention from investors who wanted to market it as a dictation machine. Edison objected, saying it was a virtual copy of his machine. Tainter and Bell, feeling protected by having received a patent, admitted it was, and offered Edison a share of their company.

Miffed, Edison refused. But rather than suing them for infringement of his patent, he infringed theirs, changing the cylinder on his own machine for one coated with wax. So Tainter and Bell sued *him* instead.

Just as patent lawyers on both sides were gearing up for their day in court, a glass tycoon called Jesse H. Lippincott stepped in. With Tainter and Bell he formed a company to produce and sell their machine, the American Graphophone Company. He then bought the rights to market Edison's machine too. Now the two warring factions were part of the same organisation, each producing a slightly different product.

Instead of selling the machines, Lippincott decided to hire them out. In due course the two manufacturers - Edison on one side, Tainter and Bell on the other - came together and formed a single company called Edison Bell, but things went too slowly. And when Lippincott's strange marketing scheme finally collapsed, Edison bought the whole thing back and started again.

While this was going on a company in Washington DC had been set up called the Columbia Graphophone Company. It was the idea of a group of Congressional stenographers who were planning to persuade their colleagues in Congress to abandon shorthand in favour of dictation. They had obtained rights to manufacture the Bell-Tainter version of the recording machine before the company had merged with Edison, and although they saw the machine as a