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Trapped in the Commons

After three months of trying, I gave up on getting in touch with Chauncey Mahan.

I'd called his cell phone, I'd contacted his lawyer, I'd messaged him on Twitter and on Facebook. I'd reached out to his sister and his cousins and members of his church. I'd reached out to work associates: Jimmy Douglass, who'd worked on *The Dynasty*, the first Jay-Z recording Mahan had stolen; Duro, the producer and engineer who'd worked with him on *Volume 3*; Justin Smith, the guy who owned the studio that Mahan had stolen the tapes from. Nobody wanted to talk.

I wanted to talk to them because Mahan had been accused of stealing master tapes that belonged to Jay-Z. I wanted to know what could possess someone to steal from one of the richest, most powerful entertainers in the world. I was especially curious about what would move someone to steal something as valuable as these tapes: lawyers working for Jay-Z's label, Roc-a-Fella Records, had told reporters that the stolen tapes were worth at least \$15 million.

But Mahan's people weren't the only folks I'd been calling. I was calling lawyers too, partly to figure out what might happen in any trial between Mahan and Jay-Z, and partly to figure out where that \$15 million figure came from. In capitalism, an item is only worth what another person will pay for it, but who would buy master tapes? And why would they buy them? How could a bunch of tapes be worth \$15 million?

What those lawyers told me made things even more confusing. The stolen tapes, several lawyers told me, might not be worth \$15 million. In fact, they might not be worth anything at all.

"It's somebody's wild guess," said Gordon V. Smith, chairman emeritus of the law firm AUS, said when I asked how Roc-a-Fella had arrived at that figure. "Someone has decided, 'I'd like to get \$15 million,' and he's getting that out there.

"In a case like this," Smith continued, "you say that something's worth a hundred bucks, and they say that it's worth five bucks. And the court is going to say, 'You've got to bring some more, harder evidence.'

"At some point," Smith added, "one of the two is going have to hire somebody like me to come provide some expert testimony."

The more I dug into it, the more I realized that Chauncey Mahan's case was not some cops and robbers story. It was a story about what has happened to what was once one of the most valuable asset classes in the world. It is a story about what happens when music and books and photographs and TV shows and movies all float in the ether, available to anybody with an Internet connection. It is the story of what

happens when the rewards of ownership are uncertain, but the costs remain real and rising.

I couldn't find Chauncey Mahan, but I wanted to figure out what was going to happen to those tapes, and what was going to happen to everybody that might want to listen to them.

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In the old days, you could tell when something was stolen.

People knew that Edvard Munch's *The Scream* was stolen one day because it was no longer hanging in the Munch Museum; three men had slipped it off the wall and thrown it into a station wagon. Officials at the Central Bank of Baghdad knew Qusay Hussein took \$1 billion out of their vaults because they had watched Hussein's bodyguards spend two hours doing it, loading piles of cash into tractor-trailers as American missiles rained down on the capital.

Yet in Mahan's case, no such clarity was available. In fact, it was not immediately clear whether anything had been stolen at all.

On April 18, 2014, two officers from the Los Angeles Police Department drove out to a storage facility near a dismal stretch of the Northridge Metrolink, looking to recover stolen master recordings they'd been told were worth more than \$15 million.

They were also looking for a thief. Earlier in the day, someone at Roc Nation Entertainment had called the LAPD to inform them that Chauncey Mahan, a Grammy-winning music producer and engineer who'd worked on the recordings, was demanding a \$100,000 ransom for the original master tapes used to create *The Dynasty: Roc La Familia* and *Volume Three...The Life and Times of S. Carter*, a pair of albums by the rapper and entertainment mogul Jay-Z. Mahan had walked off with the albums more than a decade ago, Roc Nation said. The company was calling for charges of grand larceny and extortion.

The situation the cops found when they arrived was not so simple. In fact, it was hard to tell what was going on. To begin with, the tapes weren't tapes at all. They were files sitting on a set of external hard drives, which Mahan claimed he owned.

Mahan claimed a lot of things as he spoke to the cops that afternoon: that he hadn't stolen the files on those drives at all, that Roc Nation had tasked him with safeguarding the tapes many years ago, that he actually owned copyrights on a number of the files, that Jay-Z owed Mahan money.

Mahan was taken downtown for questioning, but released shortly thereafter. No charges filed against him. The hard drives were given to a judge for safekeeping, until their proper ownership could be verified. That process, amazingly, is ongoing, and Mahan has filed an 89-page civil suit against Jay-Z alleging that Mahan ought to be considered a joint author of those songs, and that he is due a corresponding amount of royalties.

Both petitioner and respondents' briefs and motions are busy oozing their way through the court system, and the hard drives sit in an overcrowded evidence room somewhere in the bowels of Los Angeles.

I had no idea what to make of any of this the first time I read about it. Setting aside the insanity of trying to sell something like this back to someone as powerful as Jay-Z, what was going to happen to those files Mahan claimed were his? If Mahan won his case, would the tapes just go right back into that same squat box in Northridge? And what about if Roc a Fella won? Where would the tapes go? Into a shinier, better-guarded box in a different part of Los Angeles?

Shinier and better-guarded, yes. In Los Angeles, no. Over the past decade, as music and most other media has finished evaporating up into the cloud, a mass lock-up has been underway here on the ground. Record labels and film studios, in their attempts to cut costs, have been outsourcing the job of preserving the recordings that comprise their reason for being. These artifacts are all being shipped away to tightly guarded vaults where one company is storing and digitizing them, part of a broad project that's supposed to ensure the long-term viability of the music, movies, TV and other media that form the foundation of our culture.

In some cases, the labels have sloughed their oldest recordings off onto public institutions like the Library of Congress. But if you follow the thread of almost any recording's ownership far enough, and you will eventually come either to a ten-storey building in the Westwood neighborhood of Los Angeles, or to a hulking underground fortress in western Pennsylvania, about an hour north of Pittsburgh. Both locations, owned by a company called Iron Mountain, hold digital and physical copies of almost every single master recording owned by the world's largest record labels.

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It would not be a stretch to call Boyers, Pennsylvania one of the weirdest towns in America. Boyers is an unincorporated township that has no schools, no bars, and no restaurants. It once had railroad tracks, but no longer. Mining, a former linchpin of the area, has been gone for about 20 years.

What Boyers does have, however, is some of the world's most treasured, most irreplaceable cultural artifacts, all buried in a former limestone mine that now

doubles as one of the largest, most secure storage sites in the world. It holds art from the Frick Collection, and film reels owned by Disney. It holds every print and negative in the Corbis Photo Archive, and hundreds of thousands of master recordings, from Elvis Presley to the Beatles to Marvin Gaye. These share space underground with a number of other things, including the official archives of the United States Office of Management and Budget, as well the paper archives of the Internal Revenue Service. There's quite a bit more down there, but more than 90 percent of the companies and clients storing assets in Boyers have mandated that their identities be kept private.

The facility has its own food supply, its own fire department, its own aquifer, its own sewer system, its own armed security force. Conspiracy theorists will tell you it also has an underground high-speed train system that can take passengers and cargo to a number of other highly secure locations, including NORAD.

There is only one way in, a narrow two-lane road with no shoulder that is guarded heavily. Visiting vehicles are inspected thoroughly for firearms, explosives and recording equipment; passengers are sometimes required to surrender their cell phones. The trust normally bred by small-town familiarity does not exist here. Pizza delivery boys from nearby McBride's Pizza, the only place within driving distance that brings food to the facility, are required to have U.S. government security clearances. Those that don't must leave their orders at the security gate, where a tip is not guaranteed.

I had been told in no uncertain terms that I would not be allowed to visit. After several Iron Mountain employees, some of whom used to work for the FBI, had scrutinized my LinkedIn profile, Iron Mountain's head of communications told me I would not be allowed inside, and that his company had no interest in being a part of my story.

I drove out there anyway, mostly because I wanted to talk to people who worked there about what it was like, but also to see if the place had any kind of aura, or if that mountain's contents exerted some kind of cosmic gravitational pull. I wanted to find out what it felt like to live in the shadow of such a place. Was it like living next to the Louvre, or was it like living next to Fort Knox? Like living next to the Uffizi, or to the Pentagon?

It certainly was not a good place to make conversation.

"I can't tell you anything!" one man blurted when I asked him what it was like to work there.

Everyone reacted with a mix of confusion and terror when I approached them outside the facility. One wouldn't even tell me how he had heard about the job he held there. Walking alongside him, up a steep, paved walkway, I offered to change

the subject. What if we just talked about the experience of living in a part of America I was unfamiliar with? Just a general, friendly chat, while we walked together to his car?

"I'm parked pretty far away," he stammered.

"That's okay," I said. "I've got long legs."

"I can't tell you anything," he said, again.

I decided to let him off the hook.

Standing there in near darkness, looking at people looking at me, I thought back to a conversation I'd had a few weeks earlier with John Trahon, Iron Mountain's head of corporate investigations. Access to Trahon had been offered up as a consolation prize, after I'd been told that a visit inside the Boyers facility was out of the question.

"We want to have that mystique," Trahon told me in a thick Boston accent. "We have security systems we don't even tell our employees about.

"We don't even want our employees to know what they're looking at."

From the moment I'd started talking to Trahon, I explained I was not interested in his company's security measures. I simply wanted to see the tapes. I wanted to get a feel for where these once-priceless artifacts now lay at rest. I proposed, only half-joking, that I'd be amenable to being the subject of a semi-extraordinary rendition. What if they threw me unconscious into a burlap sack, drove me into the UMG vaults, then roused me with smelling salts?

"That's cute," Trahon said.

If Roc-a-Fella gets Mahan's tapes back, they will wind up somewhere down there in Boyers. Randy Aronson, the head of archives and storage at Roc-a-Fella's parent company, Universal Music Group, has spent the past year and a half readying all of UMG's assets for trips down to Pennsylvania. There, everything Universal has ever recorded will be stored, 220 feet underground, spread out across more than six million square feet of climate-controlled tunnels and warehouses in an abandoned limestone mine. As needed, various recordings will be digitized and stuck onto servers spread out across Boyers and some other facilities.

As I sat on the phone with Trahon, thinking about what it would be like to wander through untold rows of recorded history, I thought about how strange all the secrecy seemed to me. Not only was this unique array of national treasures sitting in the middle of nowhere, but the owners of those treasures were actively trying to prevent people from hearing that such a place existed at all.

“Most customers would rather people not know it’s there,” Trahon told me. “To talk about it, or put it in print, puts it in people’s mind that it’s there.”

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Yet looming behind those gates in western Pennsylvania, a logistical problem looms. When your job is to plan for forever, you have to ask yourself: what do we need to keep?

We cannot keep it all. Thanks to years and years of recording, collecting and storing, the record companies have too much media. The people that own our recordings cannot afford them.

“A lot of cultural history that’s available in your lifetime will be gone forever,” said Jon Samuels, an archivist and preservation engineer who works with the Association of Recorded Sound Collections. “I don’t know if it’s a dirty little secret, but it’s a definite fact.”

“You couldn’t copy or preserve everything in the Sony vault,” Samuels said, referring to just one of the four major record labels that keeps assets with Iron Mountain. “It would take a hundred years. Right now, they’re spot-copying.

“Preservation doesn’t save you a dime,” Samuels continued, “until you need something.”

As this mass lock-up and digitization effort moves along, it is creating its own mountain of expenses. Though there are costs associated with keeping tapes in climate-controlled tunnels dug into mountainsides, they are relatively static. The costs associated with digital files, however, are not. Software changes. File formats change. Hardware changes. And every time one does, an archiving endeavor awesome in its scale is born.

“We’ve been taught over the past 10, 15 years that digital information’s cheap,” said Bertram Lyons, who manages digital assets for the Folklife Center at the Library of Congress and who works for a digital asset management consultancy called AVPreserve. “But actually what we’re finding is the costs are not going to continue to drop.

The costs are significant. The energy costs are significant.”

In the aggregate, Lyons estimates that this is a hundred-million-dollar-a-year problem. That covers the energy bills, the servers, the engineers, the managers, the storage fees, the managers, the lawyers, the guards, the software licenses, the hardware upgrades. Maybe. For now.

It is also a cost structure and problem nobody can get away from. Once a tape is digitized and moved into the cloud, the electricity has to keep flowing. Without current, it's not that the tapes become unavailable. The tapes cease to be. People in Samuels' trade call it the "brick wall problem," and it bedevils everyone.

"No one's come up with the perfect solution," Samuels said.

As those costs keep inching up, the prospects for return on that cost grow murkier. Back when people bought physical copies of recorded music, as opposed to stealing digital copies or streaming them, master tapes were potentially quite valuable. Anybody who owned rights to the royalties that were generated by a song's sale wanted the master tapes to remain available, and in good condition, for as long as possible. If that rights holder wanted to sell more copies of a recording, they'd need the original handy to produce more units, and demand for more copies could appear at any time: an ad could spark renewed interest in a long-forgotten single; a documentary about a bygone moment could stir a longing for its music; kids, hungry for something new, might reanimate the career of an artist who hadn't toured or recorded in decades.

For most of the twentieth century, lawyers and music executives used what's called a market-based approach to valuating the music they owned. In addition to determining how much revenue they might acquire from sales, streams, uses in television commercials or film soundtracks, they had to try and assess a number of other things: how long they'd have to wait for the money to land in their pockets, how long those streams of income might last, and any risks that might slow, stop or otherwise impair the flow of money. It was not a simple process.

"The arithmetic is very easy," AUS's Gordon Smith told me, "but the inputs are very difficult."

But today, the approaches that labels and rights holders once used to do this arithmetic have all been thrown out the window. We live in an era of access rather than ownership now. Anybody who wants to hear an old song they hadn't thought about in years can find it on YouTube or Spotify. People that want to immerse themselves in the sound of a bygone decade can call up the appropriate station on Pandora or Last.fm. Or, if they're part of that narrow slice of the population that prefers to have a physical artifact, they can purchase used copies of almost any record ever made on eBay or Discogs, and in most cases pay less than the cost of a new piece of vinyl.

Amidst all this change, the tapes remain underground, their location and limitations fixed in one place, while the chances to pay for their upkeep float further and further away.

“The rights to collect,” Smith said, “are diminished.”

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If one zooms out a bit further, this story of diminishing returns on our country’s most beloved asset class stops being about tapes. It starts being about Mickey Mouse.

In the United States, copyrighted works remain protected for as long as their creators or owners live, plus 75 years. This term was extended most recently in 1998, when Disney executives, alarmed that their most iconic brand spokesman was on the verge of entering the public domain, essentially begged Congress to extend what had been a term of lifetime plus 50 years. The Copyright Term Extension Act of 1998, which some call the Mickey Mouse Protection Act, passed in March of that year.

This term length is at the heart of why labels like Sony and Universal hold onto tapes far longer than is necessary, both for labels to extract any profit from them or for the public to breathe new life into them, either by using them in new contexts or by remixing or recontextualizing them.

Perhaps the greatest testament to the fact that these terms have grown too long is the fact that rights holders now sell and trade their rights to collect. Over the years, a song like “Hey Jude,” or rather, the right to collect royalties generated by its sale, license or public performance, has belonged, in whole or in part, to several different people, including former Beatles manager Brian Epstein, a South African businessman named Robert Holmes à Court, Michael Jackson, an Abu Dhabi-based investment firm called Mudabala and, most recently, Sony/ATV, the largest music publisher in the world (For the record, it has never belonged to Paul McCartney, John Lennon, George Harrison or Ringo Starr). Back in 1997, a lawyer named David Pullman went one step further, by securitizing the royalties David Bowie was earning on a portion of his catalog and selling them as bonds to Prudential for more than \$55 million.

This bizarre state of affairs exists alongside the reality that “Hey Jude,” in an abstract way, belongs to everybody. It has been bought, sold, covered, licensed and re-appropriated so many times now that almost every man, woman and child knows the song, can join in at a summer camp sing-a-long and has plans to share it with their own kids some day. The words belong to them, to us.

But it is possible that one day, songs like “Hey Jude” may be kept and preserved by everybody.

Today, at any given moment, about 15 percent of the world's Internet traffic consists of pirated files: stolen films, illegal streams of television shows, leaked albums, comic books, copyrighted books for which neither author nor agent, nor publisher nor content distributor will see so much as a nickel. Content industry organizations like the International Federation of Phonographic Industries estimate that file-sharing costs the film, music, television and publishing industries hundreds of millions of dollars a year. Piracy, the IFPI says, costs people their jobs. It deprives studios of the capital necessary to finance artistically risky, adventurous work.

But here is the irony: it is possible that this same system might actually provide the infrastructure necessary to preserve this commons of songs, music and art that we all care so much about.

Rather than depending on one company or one rights holder to preserve masses of files and physical assets forever, a file-sharing network like the Pirate Bay or BitTorrent would allow people around the world to hold our cultural heritage in common, with different pockets of people preserving different segments of music and film history, and allowing groups to copy and share the files amongst one another.

Instead of one company bearing the cost of archiving and preserving the world's musical heritage, BitTorrent's network of users would share it collectively.

"That's how we think about it," said Christian Averill, BitTorrent's director of communications.

BitTorrent is the name of a network and also a file-sharing protocol. Unlike earlier file-sharing systems like Napster, which allowed Internet users to transmit files to one another on a one-to-one basis, people that use BitTorrent programs can draw the files they want from an entire network of users. This system takes the strain of transferring files between users and shares it equally between everyone that has those files on their hard drives. It is possible to imagine that one day, the cost and burden of preserving the world's music and other media may be shared by a world's worth of cultural consumers, simply by virtue of those people continuing to pay their electricity and Internet connection bills.

Averill and I discussed the idea that his network and its users might become the next guardians of our cultural heritage over Skype.

"That's how our users see themselves," Averill told me.

I sat and contemplated this. On the one hand, it seemed messy to trust that a network of people would decide, en masse, to continue to support a commons of music for other people to enjoy forever.

On the other, it seemed dubious that a record company, facing declining profits and rising costs, would continue to eat the costs of maintaining an archive simply for the public good.

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I tried calling Mahan one last time when I visited Boyers. It was almost totally dark, with a not-quite-full moon shining off to the right of the tunnel entrance. I dialed, my call rang, and then went to voicemail.

I left him a message like the ones I'd left before. I was interested in talking with him about some recordings he'd made a long time ago.

I didn't care about his lawsuit, or about the incident with the police. I just wanted to know why he'd taken those tapes. Why he'd kept them in Northridge. What they meant to him then, and what they mean to him now. I wanted to understand how a Grammy-winning engineer could talk himself into stealing tapes from an artist he'd worked with. I wanted to hear what he thought of the idea that a bunch of lawyers thought that these tapes were probably worthless. I wanted to hear what he thought about Iron Mountain, what he thought about BitTorrent, where he thought this was going. I wanted to know how he conceived of the work he'd made and who it belonged to.

I wondered where they would wind up, trying to imagine what they might be worth one day. Would Mahan's files wind up being worth anything? Would he ever wind up needing that money? Would Jay-Z?

Back behind me, across state road 108, the Iron Mountain facility loomed in the night sky. I wondered how it would destroy the tapes after its clients had decided they were no longer necessary, and whether that was going on now.

As I started up my car to drive away, I decided I wanted to listen to one of the albums Mahan had been accused of stealing. I'd meant to download the albums onto my phone before starting my drive, but it had slipped my mind. I opened up Spotify, and after a few moments of straining to connect to the Internet, it stalled. Out here, in the middle of nowhere, I couldn't find a data signal strong enough to access the Spotify's catalog, let alone stream anything from it.

I put the car in drive, and pulled onto 108, and drove away in silence.