All Rights Reserved: Behind the Strategic Copyright of “We Shall Overcome”

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Abstract
In 2015, musician and non-profit director Isaías Gamboa and filmmaker Lee Butler sued The Richmond Organization (TRO) and its offshoot Ludlow Music over their copyright to the anthem of the civil rights movement, “We Shall Overcome.” The copyright had initially been registered in 1960 and named four white folk singers: Guy Carawan, Frank Hamilton, Zilphia Horton, and Pete Seeger. Suspicious of the white names on the copyright, Gamboa wanted to liberate the song from what appeared to be corporate control. The suit was ultimately successful and the song was placed in the public domain. However, while Gamboa and Butler celebrated their win in a Manhattan court, activists across the South took it as a loss. Although overseen by TRO and Ludlow, the copyright’s royalties had long gone to the Highlander Research and Education Center (formerly The Highlander Folk School), a pre-eminent and decades-old grassroots organizing hub best known for its work with such icons as Rosa Parks, Septima Clark, and Dr. Martin Luther King. The money was housed there in the We Shall Overcome Fund, which had been created by cultural workers of the civil rights movement in collaboration with those named on the copyright to facilitate the redistribution of royalties to Black artist-activists across the South. Far from facilitating theft, the copyright had strategically scaffolded Black-led community organizing for nearly 60 years. This article traces the history and work of this remarkable effort to turn the civil rights movement’s anthem into its most lasting cultural tool.

This music was like an instrument, like holding a tool in your hand.
—Dr. Bernice Johnson Reagon

In 2015, musician and non-profit director Isaías Gamboa sued The Richmond Organization (TRO) and its offshoot Ludlow Music over their copyright to the anthem of the civil rights movement, “We Shall Overcome.” The copyright had initially been registered in 1960 and named four white folk singers: Guy Carawan, Frank Hamilton, Zilphia Horton, and Pete Seeger. Leveraging the law’s provision for the protection of “derivative works,” the copyright registration declared their version—the one that had burst forth from the movement’s frontlines and spread across the globe—an original derivative work.

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adaptation of the traditional Black hymn, “I’ll Overcome,” and TRO had managed permissions and royalties ever since. Suspicious of the white names listed as authors, Gamboa had done his own research, written a book, and begun a documentary accusing Seeger and his “folk mafia” of using “half-truths, misinformation, and propaganda” to steal the song in what he described as “The Crime of the Century.” He requested permission to use the song in his film but was promptly denied. In response, he filed a class action lawsuit challenging the anthem’s ownership and demanding all licensing fees received over the 56 years of its copyright be returned. Gamboa was joined in his suit by well-known director and producer Lee Daniels, who claimed he, too, had been denied full usage of the song for his award-winning film “The Butler.” Gamboa and Daniels’s complaint portrayed TRO and Ludlow as ruthless corporate thieves who had “wrongfully and unlawfully” claimed ownership of “We Shall Overcome” while either “silencing” or “extract[ing] licensing fees” from those requesting its use.

“The song about freedom,” Gamboa told the press, “is being held for ransom.”

Gamboa and Daniels’s suit brought the largely unknown fact of the song’s copyright to broader public attention and played on the apparent contradiction inherent in owning a freedom song. Within twenty-four hours, the suit had been reported in dozens of news outlets ranging from small local papers to national and international press and was framed, almost without exception, as a noble effort to “liberate” the song from corrupting corporate control. The press frequently linked this battle to those of the Black freedom movement from which the song emerged; the legal team was described as endeavoring to “unshackle [the song] from copyright protections,” while headlines declared “‘We Shall Overcome’ Should Belong to Us” and “‘We Shall Overcome’ Copyright May Be Overcome Someday.” Three years after Gamboa’s initial suit, a federal judge declared the copyright invalid—initially for just one verse but ultimately for the entire composition—and placed the song in the public domain.

While Gamboa and Butler celebrated their win in a Manhattan court, activists across the South took it as a loss. Although overseen by TRO and Ludlow, the copyright’s royalties had long gone to the Highlander Research and Education Center (formerly The Highlander Folk School), a pre-eminent and decades-old grassroots organizing hub best known for its work with such icons as Rosa Parks, Septima Clark, and Dr. Martin Luther King. The money was housed there in the We Shall Overcome Fund (WSOF), which had been created by cultural workers of the civil rights movement in collaboration with those named on the copyright to facilitate the redistribution of royalties to Black artist-activists across the South. Thus, far from facilitating theft, the copyright had strategically scaffolded Black-led community organizing for nearly 60 years. As described by Highlander’s current co-director Ash-Lee Henderson—a lifelong activist who describes herself as an “Afrilachian” (Black Appalachian)—“That money is going to literally all thirteen of the Southern states. It’s going to Black communities and cities and counties, from hoods to hollers.” This history, however, was no match for the narrow scope of copyright law. Even as Gamboa’s accusations were disproven and described as contradicting “over six decades of scholarship, analysis and reporting,” the copyright

4Isaias Gamboa, We Shall Overcome: Sacred Song on the Devil’s Tongue, 2nd edition, eds. JoAnne Henry and Audrey Owen (Beverly Hills: Gamboa Music Group Publications, 2012), 28.
5We Shall Overcome Found, 221 F. Supp. 3d at 3.
6We Shall Overcome Found, 221 F. Supp. 3d at 3.
7Joel M. Beall, “‘We Shall Overcome’ Belongs to Cincinnati,” Cincinnati.com, February 1, 2015, https://www.cincinnati.com/story/news/2015/02/01/shall-overcome-belongs-cincinnati/22593805/.
8Ken Paulson, “‘We Shall Overcome’ Should Belong to Us,” USA Today, May 11, 2016.
9Jacob Gershman, “‘We Shall Overcome’ Should Be Free, Lawsuit Contends,” The Wall Street Journal, April 13, 2016, https://www.wsj.com/articles/BL-LB-53546.
10Gershman, “‘We Shall Overcome’ Should Be Free.”
11Ben Sisario, “‘We Shall Overcome’ Copyright May Be Overcome Someday,” New York Times, April 12, 2016, https://www.nytimes.com/2016/04/13/business/media/we-shall-overcome-copyright-may-be-overcome-one-day.html.
12Rick Karr, “Federal Judge Rules First Verse of ‘We Shall Overcome’ Public Domain,” NPR, September 11, 2017, https://www.npr.org/transcripts/550209220.
13As quoted in Kyle Jahner, “Seeger Made ‘We Shall Overcome’ An Anthem, Owners Say,” Law360.com, August 4, 2017, https://www.law360.com/articles/951432/seeger-made-we-shall-overcome-an-anthem-owners-say.
was lost due to technicalities about whether the musical adaptation registered met the law’s criteria for originality. As the 2018 opinion states, “[T]he gap in proof of originality could not be filled by the defendants’ good intentions.”

Even though the song is now stripped of its legal protection, the WSOF remains a remarkable legacy of the civil rights movement—one that expands understandings of the era’s cultural organizing strategies. In the pages that follow, I detail how the unlikely weapon of intellectual property law was leveraged to turn the movement’s anthem into its most lasting cultural tool. First, I briefly sketch the history and inherent biases of U.S. copyright law to set the stage for the challenges and opportunities offered by the “We Shall Overcome” copyright and Fund. I then contextualize the emergence of the copyright itself within the organizing history and concerns of the labor movement’s “singing left” and the artists and scholars of the mid-century folk revival. Four white folk figures are central to this story: folk giant Pete Seeger, the labor-era founder of Highlander’s cultural efforts Zilphia Horton, Horton’s civil rights-era successor Guy Carawan, and pre-eminent folklorist Alan Lomax. Moving from the creation of the management of its Fund, I then show that, although the copyright itself emerged from concerns within the predominantly white folk world, its oversight was quickly taken up by Black cultural organizers who shaped its work for decades to come. Dr. Bernice Johnson Reagon—a singer, cultural historian, and key figure in the movement’s strategic use of song—is particularly notable here for her more than 60 years of leadership. Ultimately, it was not the copyright itself but the decades of dedicated work from Reagon and her collaborators that facilitated the inclusion, protection, and reward the copyright endeavored to assure.

The Cultural Politics of U.S. Copyright Law
The creation of the “We Shall Overcome” copyright emerged from decades of debate among folk music scholars, collectors, and musicians about the cultural and racial politics of intellectual property law. Originally crafted in 1790 to protect books and maps, U.S. copyright law only recognizes the original creations of individual authors or groups of authors and, until the Copyright Act of 1976, required a written deposit of any work being protected. Musical compositions gained protection in the Copyright Act of 1831, but while the law’s focus on authorship and documentation make it well-suited for protecting works that can be fixed on paper, it is fundamentally flawed when it comes to the dynamic processes of interaction and exchange at the heart of traditional or folk music. Such forms do not rely on the originality of individual authors, fixed compositions, or written documentation, but on familiarity and borrowing, communal authorship and ownership, evolution over time, and embodied modes of remembering and dissemination. Bernice Johnson Reagon has long framed traditional Black music as a process of interaction and exchange rather than the product of notes and words on a page. Writing about the freedom songs of the civil rights movement and the principles of Black congregational singing they activate, for example, she emphasizes the prioritization of group improvisation over the compositional particulars for any given song. Rather than focus on simply “executing melody, rhythm, and harmony,” she writes, “Black people use songs to get to singing.” Further illuminating inherent conflicts in the law’s requirement of a written score and underlying presumption that songs can be captured on paper, Reagon insists Black songs “don’t exist before they are sung.” U.S. copyright law, however, transforms such dynamic communal processes into static products to be owned.

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14We Shall Overcome Found & Butler Films v. Richmond Org., Inc., 330 F. Supp. 3d 960 (U.S. District Court for the Southern District of New York, July 31, 2018).
15Butler Films, 330F. Supp. 3d at 2.
16For more on the distinction between countering bias and facilitating inclusion through the law see Kenneth W. Mack, “Legal History Dialogue: Bringing the Law Back into the History of the Civil Rights Movement,” Law and History Review 27 (2009): 665.
17Bernice Johnson Reagon, “‘Oh Freedom’: The Music of the Movement,” in A Circle of Trust: Remembering SNCC, ed. Cheryl Lynn Greenberg (New Brunswick: Rutgers University Press, 1997), 110–26.
18Reagon, “‘Oh Freedom,’” 112.
19Reagon, “‘Oh Freedom,’” 112.
and sold.\textsuperscript{20} In 1962, pre-eminent folk scholar (and Pete’s father) Charles Seeger summarized the resulting conflict for those looking to square traditional music’s allegiance to the community with the law’s commitment to the market, writing, “[W]e are left with legal practices that are unethical and with ethical beliefs for which there is no legal support.”\textsuperscript{21}

Despite these tensions and because of the particular powers the law constructs, by the time of the “We Shall Overcome” copyright in 1960, predominantly white folklorists and folksingers had been claiming ownership of and collecting royalties on folk material—from Black southerners, white Appalachians, and Native Americans—for decades. In fact, the copyright history of traditional music in the United States is one comprised almost entirely of musicians, collectors, and scholars with privileged access to recording equipment, travel, funding, the music industry, and the law claiming recognition and reward for music created by the nation’s poor. Given the particular popularity of Black music in U.S. history, Black artists and communities have been disproportionately affected by this bias within the law. As legal scholar, K. J. Greene pointedly writes, intellectual property law “has been central to racial subordination from both an economic and cultural standpoint” and has a “long history of piracy of the works of African-American artists.”\textsuperscript{22} With its intentions of protecting the song from co-optation rather than maximizing its market value while ensuring its ongoing service—both musical and monetary—to the Black South, the “We Shall Overcome” copyright and Fund endeavor to intervene in this history.

**Leveraging Copyright for Labor**

Consideration of musical copyright as an organizing tactic emerged during the labor movement, largely through Zilphia Horton’s work at Highlander and Pete Seeger’s work with his organization, People’s Songs. Highlander was founded in Monteagle, Tennessee in 1932 as an integrated residential adult education and leadership training center focused on supporting organized labor and preserving mountain culture. As historian John Glen writes, “Highlander hoped to empower the poor of Appalachia and the South to take control of their own lives and solve their own problems.”\textsuperscript{23} Zilphia Horton (née Johnson) first visited Highlander in 1935 to gain new tools for her work with Arkansas miners but decided to stay after falling in love, not only with the school, but also with its founder and her future husband, Myles. Merging her experiences as a labor organizer and folk musician, she folded an extensive set of cultural programs into Highlander’s work within the labor movement, including the publication of personal narratives, production of original theater, and collection of traditional music. While the plays and personal narratives documented union members’ experiences, the song collections endeavored to celebrate their traditions. She hosted evenings of community singing where hymns, mountain ballads, and strike songs were shared and organized workshops in leading and revising songs to suit specific movement contexts. Rejecting the idea that music was only for leisure or the birthright of the privileged elite, she insisted it was “the heart of things—of beliefs, situations, of struggle, of ideas, of life itself.”\textsuperscript{24} Through her efforts, Highlander quickly became known not only as the pre-eminent training hub for labor organizers, but also as “the singing labor school.”\textsuperscript{25} Evidencing this powerful merging of cultural work and community organizing, in 1939 union leaders hailed Highlander for having turned the nation’s striking workers into a powerful “singing army.”\textsuperscript{26}

\textsuperscript{20}For more on musical copyrights turning process into property see David Suisman, *Selling Sounds: The Commercial Revolution in American Music* (Cambridge: Harvard University Press, 2009), 168.

\textsuperscript{21}Charles Seeger, “Who Owns Folklore?—A Rejoinder,” *Western Folklore* 21, no. 2 (April 1962): 93.

\textsuperscript{22}K. J. Greene, “’Copynorms,’ Black Cultural Production, and the Debate over African-American Reparations,” *Cardozo Arts & Entertainment Law Journal* 25, no. 3 (2008): 1179; K. J. Greene, “Intellectual Property at the Intersection of Race and Gender: Lady Sings the Blues,” *American University Journal of Gender, Social Policy & the Law* 16, no. 3 (2008): 366.

\textsuperscript{23}John M. Glen, *Highlander: No Ordinary School*, 2nd edition (Knoxville: University of Tennessee Press, 1996), 2.

\textsuperscript{24}Zilphia Horton, “Suggestions for Song Leaders,” n.d., box 5, folder 4, Zilphia Horton Folk Music Collection, Tennessee State Archive, Nashville.

\textsuperscript{25}Aimee I. Horton, “The Highlander Folk School: A History of the Development of its Major Programs Related to Social Movements in the South, 1932–1961” (PhD diss., University of Chicago, 1971), 148–44.

\textsuperscript{26}John Lewis in *Labor Songs*, comp. and ed. Zilphia Horton for the Textile Workers Union, 1939, p. 4, Myles Horton Papers, Highlander Research and Education Center Archive, Monteagle, TN.
While Horton supported the labor movement’s musical resistance in the South, Seeger soon began similar work in the North. The son of esteemed folk music scholar Charles Seeger, Pete initially followed his father’s footsteps to Harvard but quickly dropped out and moved to New York due to an increasing interest in politics and protest. He described his subsequent experiences—watching his father’s work merging music and politics, meeting radical folk singers in New York, and hearing the sounds of the nation at the Library of Congress with his childhood friend Alan Lomax—as the time when he discovered the power of “folk songs with teeth.” In 1945, he gathered his friend Lomax, musical partner Lee Hayes, and an interracial group of more than thirty giants of the post-war political music scene in his Greenwich Village basement to discuss ways to unite and amplify the singing Left. During that meeting, People’s Songs was founded with the mission “to create, promote, and distribute songs of labor and the American people.” Education directors from the Congress of Industrial Organizations (CIO), a federation of unions, were in attendance and helped the group strategize about how to best serve and support the labor movement. Working closely with unions and the folk community, People’s Songs hosted workshops on the political uses of song, produced concerts and hootenannies, and published records, songbooks, and a quarterly bulletin. The dissemination of song sheets became a central strategy and People’s Songs Bulletin their primary medium. The inaugural issue declared just below the masthead, “The people are on the march and must have songs to sing … It is clear that there must be an organization to make and send songs of labor and the American people through the land.” Irwin Silber, the founding editor of the Bulletin and a prominent voice of the folk world, later wrote of this unprecedented coming together of left-wing songsters and folk song supporters, “We believed that the world was worth saving and that we could do it with songs.”

While working to transcribe, mimeograph, and distribute protest and strike songs, both Horton and Seeger also took great pains to identify authors and support them in registering copyrights. Guided by the politics of the movement in which they were immersed, each focused on protecting creative labor despite the inherent conflicts between copyright law and traditional music. The inaugural issue of the People’s Songs Bulletin encouraged songwriters to submit music for publication while assuring them “complete copyright and royalty protection” and detailing the copyrighting process. This effort aimed to ease the early concerns of many that People’s Songs would claim copyrights to the songs they published as some of their predecessors had already done. As Educational Director of the International Ladies’ Garment Workers Union of NYC, Mark Starr, wrote to Zilphia Horton soon after the group’s founding, “We believed that the world was worth saving and that we could do it with songs.”

As you know, there has been a great deal of appropriation without acknowledgement in labor songs. Now that the People’s Songs has come to the front to organize the business, we shall have to be more careful than before because they may decide to copyright songs which they

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27 As quoted in Ronald D. Cohen, Depression Folk: Grassroots Music and Left-Wing Politics in 1930s America (Chapel Hill: University of North Carolina Press, 2016), 61.
28 People’s Songs: Bulletin of People’s Songs Inc. 1, no. 1 (February 1945): 1, “The People’s Songs Archive,” Singout.org, https://singout.org/ps-archive/.
29 Richard A. Reuss and JoAnne C. Reuss, American Folk Music and Left-Wing Politics, 1927–1957, American Folk Music and Musicians Series, no. 4 (Lanham, MD: Scarecrow Press, 2000), 188–89.
30 The People’s Songs was an ambitious endeavor and lasted only 4 years. As Seeger wrote in a letter to Highlander’s Zilphia Horton two months after its founding, “Fact is, we got started here in something that suddenly turned out to be bigger than we thought, and we’ve been busy trying to fill the job that is cut out for us” (Seeger to Horton, February 12, 1946, box 25, folder 20, Highlander Research and Education Center Records, 1917–2005, Wisconsin Historical Society, University of Wisconsin at Madison (WISC-HREC). The organization went bankrupt after spending all its resources on the Henry Wallace campaign but its quarterly bulletin was revived in 1950 as the still-extant Sing Out! magazine.
31 People’s Songs 1, no. 1 (February, 1945), 1.
32 Irwin Silber, introduction to Reprints from the People’s Songs Bulletin: 1946–1949, ed. Irwin Silber (New York: Oak Publications, 1961), 4.
33 Silber, Reprints from the People’s Songs Bulletin, 4; Pete Seeger, “How to Copyright a Song,” People’s Songs 1, no. 1 (February 1945): 2.
did not make and then charge us for using them. We find songs from the old ILGWU songbook used without acknowledgement and sometimes made over with questionable additions.34

Horton also spent an extraordinary amount of time writing to musicians, union leaders, labor magazines, and People’s Songs to acquire publication rights for songs. As she explained in a letter to the Assistant Educational Director of the National CIO, George Guernsey, about her progress on a CIO songbook, “Some time has been spent on actually writing down accompaniments and getting music ready for the copyists but the most part has been spent in correspondence … digging up authors, composers, and information.”35 Horton and Seeger were in regular communication and felt themselves partners in distributing songs of labor, protest, and peace while honoring authors and singers by supporting their copyright claims. Foreshadowing the intentions of the “We Shall Overcome” copyright, Silber later wrote of their lack of interest in personal profit, “Our goal was world peace, not a piece of the world.”36

Folk Songs on the Hit Parade and Growing Copyright Concerns

Folk songs were hardly a lucrative business in the 1940s and Horton and Seeger’s copyright concerns were more a matter of principle than profit. However, that would change dramatically with the dawning of the next decade. Throughout the first half of the century, folk songs had been honored by the singing Left for their sounding of the nation’s underclass—the resistance of Blacks in the Jim Crow South, the laments of whites of the Dust Bowl, the rallying cries of organized labor, the collective struggles during the Depression, and the resistance to rising conservatism during the war. Folk music’s authenticity was held up in contrast to capitalism’s corrupting commercialism and singing was championed, not only as a way to communicate political messages, but also as a political act in and of itself.37 By 1960, however, folk songs were not only sounding resistance, but were also topping the pop charts and selling 7UP.38 Silber wrote of this new era, “In an age where the sweetest music of all is played on the cash register, folk music has become a commodity, an object of the marketplace, to be judged, weighed and sold by the auctioneers of Madison Avenue to the highest bidder.”39

The rising commercialism surrounding folk music prompted a swirl of debates in which Pete Seeger and Alan Lomax were often central figures—Seeger for having prompted folk music’s move from the hootenannies to the hit parade and Lomax for unabashedly cashing in. The new marketability of folk music was catalyzed in 1950 by Seeger and his new group The Weavers’ recording of “Goodnight, Irene,” a traditional song that had been popularized by Black Louisiana folk and blues singer Huddie “Lead Belly” Ledbetter. Ledbetter had been “discovered” in 1933 by an 18-year-old Alan Lomax and his 65-year-old father John in a Louisiana prison during the pair’s famous song-collating tour of the South—a tour now infamous for the power differentials it exploited.40 Their tour

34Mark Starr to Zilphia Horton, October 16, 1946, box 1, folder 7, Zilphia Horton Folk Music Collection, Tennessee State Archive, Nashville.
35Zilphia Horton to George Guernsey, October 28, 1946, box 1, folder 10, Zilphia Horton Folk Music Collection, Tennessee State Archive, Nashville.
36Silber, Reprints from the People’s Songs Bulletin, 4.
37For more on the history and politics of the mid-century folk revival see Robert Cantwell, When We Were Good: The Folk Revival (Cambridge, MA: Harvard University Press, 1996); Cohen, Depression Folk; Ronald D. Cohen, Rainbow Quest: The Folk Music Revival and American Society, 1940–1970 (Amherst: University of Massachusetts Press, 2002); Serge Denisoff, Great Day Coming: Folk Music and the American Left (Urbana: University of Illinois Press, 1971); Marybeth Hamilton, In Search of the Blues: Black Voices, White Visions (London: Jonathan Cape, 2007); Reuss and Reuss, American Folk Music and Left-Wing Politics, 1927–1957; and Henry Adam Svec, American Folk Music as Tactical Media (Amsterdam: Amsterdam University Press, 2018).
38Folk singing sensation The Kingston Trio teamed up with 7UP in 1960 to promote their album Cool Cargo. They appeared in commercials singing versions of their hits with revised lyrics featuring the soft drink. See Timothy D. Taylor, The Sounds of Capitalism: Advertising, Music, and the Conquest of Culture (Chicago: University of Chicago Press, 2012), 148–49.
39Irwin Silber, “Folk Music—1963,” Sing Out! 13, no. 4 (1963): 3.
40See, for example, Benjamin Filene, “Our Singing Country: John and Alan Lomax, Leadbelly, and the Construction of an American Past,” American Quarterly 43, no. 4 (1991): 602–24. doi: 10.2307/2713083 and Romancing the Folk: Public Memory & American Roots Music (Chapel Hill: University of North Carolina Press, 2000).
highlighted the problematics at the center of the folk field, where a limiting essentialism surrounds the “folk” while the power to discover and preserve them uplifts their collectors. The Lomaxes believed the isolation of segregated penitentiaries helped preserve a pure Black song tradition and made the coaxing of songs from Black prisoners, whom the elder Lomax described as their “black convict friends,” central to their musical expeditions. Both were taken by Ledbetter’s talent, and immediately after his release in 1935, the elder Lomax brought him to New York and promptly produced his Library of Congress recordings, commercial albums, and national tours. Ledbetter quickly became a folk sensation and, just as quickly, he and Lomax were fighting—in the streets and in the courts—over financial arrangements including Lomax’s credit in and cut from copyrights.

Both Horton and Seeger knew Ledbetter well. Once settled in New York, he frequently hosted them and other radical songsters in his Lower East Side apartment and regularly performed for progressive causes, including a Highlander fundraiser in 1940 during which he sang a duet with Horton. When he died, The Weavers recorded “Goodnight, Irene” in his honor and, while Ledbetter’s version had been a favorite on folk stages, The Weavers’ version shot to the top of the pop charts and sold more than two million copies. “Irene” was so popular that Seeger later recalled, “The summer of 1950, no American could escape that song unless you plugged up your ears and went out into the wilderness.” Seeger helped negotiate an agreement between his group’s managers and Martha Ledbetter and Alan Lomax, who represented Huddie and John’s estates respectively. Rights to the song were assigned to World Wide Music and it was credited as being “written and arranged by Huddie Ledbetter and John A. Lomax.” Ledbetter’s widow Martha and John Lomax’s son Alan shared in the sizeable royalties along with The Weavers, and folk music officially became big business.

The impact of having a folk song on the pop charts was, as Silber reflected in 1960, “as startling as it was instantaneous [and] everyone began to climb on the folk song band-wagon.” Music executives and recording artists alike wanted to capitalize on the new folk craze and searched for would-be hits in anthologies published by folklorists. They began leaning on the law’s allowance for adaptations of public domain songs, but by the end of the 1950s desires to own the spotlight led many to follow the precedent set by “Irene” by registering for traditional songs as authors rather than adaptors. In response to what Silber described as “the dollar-madness of the year all of America’s folksongs were copyrighted,” debates about legal and cultural ethics began dominating the folk field. Even the annual Newport Folk Festival—hailed by Bernice Reagon as “the closest thing the folk song revival had to a ‘National Convention’”was abuzz with questions of copyright. At the inaugural festival in 1959, Alan Lomax’s copyright practices came under particular scrutiny and ultimately the Newport Foundation tried to quell the growing storm by organizing a workshop with their general counsel Elliot Hoffman on “Folk Music and the Copyright Law.” The copyright ferment also spilled onto

41 John A. Lomax, “Sinful Songs of the Southern Negro,” *The Musical Quarterly* 20, no. 2 (April 1, 1934): 181.
42 Benjamin Filene, *Romancing the Folk: Public Memory & American Roots Music* (Chapel Hill: University of North Carolina Press, 2000), 62.
43 Pete Seeger, “I Knew Leadbelly,” *Sing Magazine* 4, no. 3 (September 1957); Glen, *Highlander*, 65.
44 As quoted in Ronald D. Cohen and Stephen Petrus, *Folk City: New York and the American Folk Music Revival* (New York: Oxford University Press, 2015), 77.
45 Ellen Harold and Don Flemming, “Lead Belly and the Lomaxes,” *Cultural Equity*, accessed April 12, 2017, http://www.culturelauequity.org/currents/ce_currents_leadbelly_faq.php.
46 Irwin Silber, “Folksongs and Copyrights,” *Sing Out!* 9, no. 4 (1960): 32.
47 “That compilations or abridgements, adaptations, arrangements, dramatizations, translations, or other versions of works in the public domain, or of copyrighted works when produced with the consent of the proprietor of the copyright in such works, or works republished with new matter, shall be regarded as new works subject to copyright under the provisions of this Act.” Copyright Act of 1909, 17 U.S.C. § 6 (1940).
48 For an overview of evolving copyright practices among folk music performers, collectors, and publishers through the 1950s see William F. Patry, *Copyright Law and Practice* (Washington, D.C.: Bureau of National Affairs, 1994), 3, 1502; and Silber, “Folksongs and Copyrights, 31–36.”
49 Bernice Johnson Reagon, “Songs of the Civil Rights Movement 1955–1965: A Study in Culture History” (PhD diss., Howard University, 1975), 141.
50 Israel Young, “Newport Folk Festival,” *Caravan*, no. 18 (August–September 1959): 25–27. Quoted in Scott Barretta, ed., *The Conscience of the Folk Revival: The Writings of Israel ‘Izzy’ Young* (American Folk Music and Musicians Series, no. 18 (Lanham,
the pages of popular and academic journals, where folk musicians, collectors, and scholars engaged in years of heated debate, with some crafting proposals to redress inadequacies within the law. 51 Pete Seger, for example, was among those proposing that a percentage of royalties from public domain songs be diverted to a fund dedicated to protecting and preserving folk music. 52 By 1960, the year “We Shall Overcome” was copyrighted, there was such a swirling debate among singers, publishers, folklorists, song collectors, and fans that Silber wrote in a strident article, “[T]he folksong world is in a ferment over the problem of copyrights.” 53

Alan Lomax was a central figure in these debates due to the money he had received from “Goodnight, Irene” in the 1950s, the copyrights claimed in his folk music collections since the 1930s, and his insistence—despite concerns about exploitation—that folklorists and collectors deserved significant royalties. In previous decades, few if any folklorists understood or gave much thought to copyright law, and it had long been standard practice across sociopolitical beliefs to copyright material collected in the field once published or recorded. Indeed, Zora Neale Hurston, Carl Sandburg, Cecil Sharp, and Lawrence Gellert obtained copyrights for a number of folk songs prior to the 1950s. 54 However, when such copyrights began to hold the promise of significant returns, both Lomax’s copyright defenses and the folk field’s critiques of them grew louder. 55 Although Lomax did make notable efforts to protect those recorded in the field—singlehandedly pushing the Library of Congress to establish a policy of paying those recorded for their collections and being among the first to use written contracts with his own field informants—such efforts were eclipsed by his troubling professional practices. Lomax was so often contacted by artists about money owed them that he kept a document on file entitled, “Form Letter to Field Singers Wanting to Know Where Royalties Are,” in which he tells artists that their compensation will come, not in dollars, but through association with Lomax himself. He explains that the recordings should be considered their own reward because, he explains to the artist, “they served to put you on the map.” 56 Charles Seeger, who had known Lomax most of his life, frequently challenged him on his approach to copyrights. Describing one particularly contentious conversation, Seeger recalled,

[H]e said, "but Charlie, how can I live?" “Oh,” I said, “but Alan, that’s just what the bank robber says. How can he live if he doesn’t shoot up the bank.” He didn’t see the point. 57

In addition to being a giant of the folk field, Lomax was also a regular presence among cultural workers of the civil rights movement. With traditional Black music being used as both a tactic on the frontlines and a strategy for bolstering Black cultural pride, many activists drew not only from the cultural reserves and repertoires of Black singers themselves, but also from Lomax’s decades of work as a folklorist of the Black South. Lomax, however, was not interested in simply being cited for source material; he wanted to be personally involved. He had long felt it was his calling to bring the

51 See, for example, Cynthia Gooding, “Concerning Copyright,” Sing Out! 11, no. 1 (1962): 24–25; Pete Seeger, “The Copyright Hassle,” Sing Out! 13, no. 5 (1964): 41–42; A. L. Lloyd, “Who Owns What in Folk Song?” Sing Out! 12, no. 1 (1963): 41; Editorial, “Concerning Hootenannies, Copyrights, and Loyalty Oaths,” Sing Out! 13, no. 5 (1964); Silber, “Folksons and Copyrights”; Bill Eitman, “Tenth Anniversary Issue: Copyrights and Collectors,” Sing Out! 9, no. 4 (1960); “Correspondence,” Sing Out! 10, no. 2 (1960): 42–44; Gershon Legman, “Who Owns Folklore?” Western Folklore 21, no. 1 (January 1962): 1–12; and Charles Seeger, “Who Owns Folklore—A Rejoinder,” 93–101.

52 Pete Seeger, “The Copyright Hassle.”

53 Silber, “Folksons and Copyrights.”

54 John Szwed, Alan Lomax: The Man Who Recorded the World (New York: Penguin, 2010), 295–96.

55 Alan Lomax to Gershon Legman, September 23, 1960, AFC 2004/004, folder 040223, Alan Lomax Collection, American Folklife Center, Library of Congress. For more on Lomax and copyrights see Szwed, Alan Lomax, 292–96.

56 Alan Lomax, “Form Letter to Field Singers Wanting to Know Where Royalties Are,” n.d., AFC 2004/004, folder 040223, Alan Lomax Collection, American Folklife Center, Library of Congress.

57 Charles Seeger as quoted in David King Dunaway and Molly Beer, Singing Out: An Oral History of America’s Folk Music Revivals (New York: Oxford University Press, 2010), 23.
onto the center of the stage,” had hailed Black music as containing “the most distinctive American folk songs,” and had written extensively about the power and politics of folk culture. Thus, he eagerly immersed himself in the work of supporting, disseminating, and documenting the movement’s music. He recorded and produced albums of freedom songs; was invited to participate in and sometimes advise on Highlander’s conferences and workshops on Black culture; served on the board of the Newport Foundation, the primary funder of the movement’s cultural efforts; and had an ongoing mentoring relationship with Guy Carawan, Zilphia Horton’s successor in merging music and movement building. For many, however, Lomax’s stated commitment to the radical Left in general and Black communities in particular was belied by his troubling interpersonal politics and questionable copyright claims. His involvement from his privileged perch as a white scholar of Black culture often felt more imposed than invited. Lomax’s regular presence in civil rights circles also exposed organizers to what Carawan’s wife, Candie, describes as his constant and condescending lecturing of Black people about their culture and his “blustery personality.” Similarly, Julius Lester, a Black member of the Student Non-Violent Coordinating Committee (SNCC) and fellow Newport Foundation member with Lomax, describes him as “brilliant” but “paternalistic” and recalls, “He treated Black people like children. Everybody hated him… Alan was about exploiting people and about copyrighting their music in his name.”

**Leveraging the Law to Protect an Anthem**

It was against this backdrop of the folk world’s “ferment over copyrights” that “We Shall Overcome” gained international resonance and Highlander’s Guy Carawan approached Pete Seeger about protecting the song. A California-born folk singer and mentee of both Seeger and Lomax, Carawan had joined Highlander’s staff in 1959 to support the frontline’s use of song for civil rights just as Horton (who had died 3 years prior) had done for labor. In his first months on staff, he received remarkable mentorship from Black organizers Septima Clark and Esau Jenkins while developing a musical component for their Citizenship Schools on South Carolina’s Johns Island. He went on to collect and teach songs for the growing desegregation movement and helped facilitate the rise of “We Shall Overcome,” partly by teaching it to the movement’s emerging cadre of student leaders at three 1960 gatherings: Highlander’s annual weekend-long college workshop in early April, Ella Baker’s inaugural meeting of SNCC two weeks later, and a week-long “Sing for Freedom” conference he cohosted with Septima Clark in August. Julian Bond, then a student at Morehouse College, recalled of learning “We Shall Overcome” at SNCC’s inaugural meeting: “Guy led the audience in singing it, and at the conference’s end, several hundred young people had both learned and adopted ‘We Shall Overcome’ as their song.”

As the song’s power within the movement grew, so did concerns about its possible co-optation. Carawan felt Seeger was the best person to consult about such concerns because not only had he been instrumental in popularizing the song on folk stages around the country, but he also had decades of experience with the music industry, copyrights, and squaring the two with his progressive politics. Seeger’s publishers agreed, saying, “If you don’t copyright this song, some Hollywood types will have a version out next year like, ‘Come on Baby, we shall overcome tonight’.” Bernice Reagon later recalled Seeger wanting the copyright to reflect the song’s authorship “by American Negro people” but given

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58 Lomax as quoted in Szwed, Alan Lomax, 37.
59 Alan Lomax, The Rainbow Sign, a Southern Documentary, 1st edition (New York: Duell, Sloan and Pearce, 1959), 4.
60 Candie Carawan, in conversation with the author, June 24, 2014.
61 Julius Lester, in conversation with the author, November 23, 2015.
62 Davis, “Culture and Struggle,” 34–41.
63 Anne Lockwood, “August Music Workshop Evaluation,” September 30, 1960, box 64, folder 16, Highlander Research and Education Center Records, 1917–2005, Wisconsin Historical Society, University of Wisconsin at Madison (hereafter cited as WISC-HREC); “Sing for Freedom: In the Community and on the Campus,” 1960, box 64, folder 16, WISC-HREC, Joe Street, The Culture War in the Civil Rights Movement (Gainesville: University Press of Florida, 2007).
64 Julian Bond, foreword to Sing for Freedom: The Story of the Civil Rights Movement through its Songs, eds. Guy Carawan, Candie Carawan, Julian Bond, and Florence Reece (Montgomery, AL: NewSouth Books, 2007), x.
65 Pete Seeger, Where Have All the Flowers Gone: A Singer’s Stories, Songs, Seeds, Robberies (Bethlehem, PA: Sing Out, 1993), 34.
66 Reagon, “Songs of the Civil Rights Movement,” 85.
the legal requirement to name specific individuals, it was ultimately decided the copyright would name four people: Pete Seeger, for two verses he had added and for changing “will overcome” to “shall overcome;” 67 Carawan’s California singing partner Frank Hamilton, for the verse he added while performing on folk stages, for teaching it to Carawan, and for his chord structure which Carawan adopted; Carawan, for the guitar rhythm he had added and for teaching it to the students of the sit-ins and SNCC; and posthumously to Zilphia Horton, who had learned it from Black women of the southern labor movement and later adapted and taught it to civil rights organizers who streamed into Highlander in the 1950s. 68 Speaking of the relief he and others felt when the “We Shall Overcome” copyright was registered, Julius Lester said, “Alan [Lomax] would have done it. Alan would have copyrighted the song in a heartbeat.” 69

Pete Seeger’s wife Toshi Seeger set up the copyright with her publisher, TRO, whose founding partner Al Brackman agreed to handle all requests for the song. It was a powerful partnership; TRO was the largest publishing company in the industry and Brackman was one of its leaders. A native of Brooklyn, he had been in the music business since 1933 and worked extensively with popular white folk singers like Seeger and prominent Black artists such as Cab Calloway and Duke Ellington. 70 In addition to his broad experience and the respect he enjoyed within the industry, Brackman also had extensive knowledge of the particular challenges of publishing and protecting traditional music. He personally oversaw what Variety described as TRO’s “voluminous catalogue of folk material [including] the Ledbetter estate,” a responsibility that brought him into “several legal hassles over tunes’ rewriting and similar copyright squabbles.” 71 After decades of work across the musical color line—and engaging in legal battles about rights to traditional music—Brackman felt it an honor to be among those charged with protecting the anthem of the desegregation movement. He committed to protecting the song’s legacy rather than maximizing its profits by denying all requests for its use in commercials or other profit-making endeavors that would compromise its integrity. He also arranged to have TRO cover any legal fees in the event of a lawsuit brought to challenge the copyright’s validity. 72 The song’s earnings were minimal as commercial uses were restricted and permission for its use was rarely granted. Royalties distributed over two quarters in 1964, for example, were for uses by American and Canadian television stations and totaled a modest $414.92. 73 Given her expertise in Black traditional song, Reagon was Brackman’s primary consultant whenever he felt unsure about a request 74—a practice later continued by Brackman’s successor, his partner’s son Larry Richmond, and subsequent stewards of the song. 75 It was later decided, in collaboration with Reagon and Vincent Harding, an advisor to Dr. King, that all royalties would be put into a “Freedom Fund” earmarked for the Black freedom movement. 76 Although ideas for redistributing earnings from copyrights to traditional music had been debated in popular and scholarly folk journals by Seeger and others for years, 77 this was the first instance of such an idea actually coming to fruition. The text of the copyright ultimately read:

67 Seeger later attributed this change to Septima Clark. Noah Adams, “The Inspiring Force of ’We Shall Overcome,’” All Things Considered, NPR, August 28, 2013, http://www.npr.org/2013/08/28/216482943/the-inspiring-force-of-we-shall-overcome.
68 Reagon, “Songs of the Civil Rights Movement,” 85.
69 Bernice Reagon to Mike Clark, September 26, 1972, part 6, box 12, folder 20, WISC-HREC.
70 Desmond Stone, Alec Wilder in Spite of Himself: A Life of the Composer (New York: Oxford University Press, 1996), 158.
71 “Leadbelly’s ‘Cottonfields’ Hits Charts and Cues Unique Copyright Angles,” Variety (Archive: 1905–2000) 226, no. 9 (1962): 51.
72 “We Shall Overcome” Advisory Committee Meeting,” September 2, 2005, 3, Highlander Research and Education Center Archive, Monteagle, TN (hereafter cited as Highlander Archive, TN).
73 Royalties Statement for Guy H. Carawan, BMI, March 31, 1964 and December 31, 1964, box 8, folder 9, WISC-HREC.
74 “We Shall Overcome” Advisory and Ad Hoc Committee Meeting,” August 30, 2003, 1–2, Highlander Archive, TN.
75 “Notes from Conversation with Larry Richmond,” January 21, 2005, Highlander Archive, TN; “We Shall Overcome Fund Combined Meeting, Advisory Committee and Board Committee,” September 2, 2005, 8, Highlander Archive, TN.
76 Wendi O’Neal, personal communication with author, April 19th, 2016.
77 Silber, “Folk songs and Copyrights,” 36; Alan Lomax to Legman, September 23, 1960, AFC 2004/004, folder 040223, p. 2, Alan Lomax Collection, American Folklife Center, Library of Congress; Charles Seeger, “Who Owns Folklore—A Rejoinder,” 97; Gooding, “Concerning Copyright,” 25; Pete Seeger, “The Copyright Hassle,” 43–45.
Musical and lyrical adaptation by Zilphia Horton, Frank Hamilton, Guy Carawan, & Pete Seeger. Inspired by African American Gospel Singing, members of the Food & Tobacco Workers Union, Charleston, SC & the Southern civil rights movement. Royalties derived from this song are being contributed to The Freedom Movement under the trusteeship of the Writers.78

The absence of Black names on the copyright and characterization of the song’s Black origins as simply being inspiration for white adaptors is glaring. Carawan, Seeger, Hamilton, and Horton had certainly been involved in the song’s evolution but it was overwhelmingly Black singers and organizers who had shaped it as a movement anthem and put it to work on the frontlines.79 In her 1975 dissertation, Bernice Johnson Reagon describes Carawan, Seeger, Hamilton, and Horton as “important catalysts,” but critiques the “severe shortsightedness” of their copyright.80 She chronicles the initial transformation of the song in 1945 from church hymn to movement anthem by Lucille Simmons and other Black women of South Carolina’s Food Tobacco and Agricultural Workers’ Union of America (FTA-CIO) Local 15 and hails the countless other Black singers who subsequently facilitated its evolution and use. Reagon writes,

[It] was Blacks who had interpreted this song in a socio-political context in Charleston and Winston-Salem before it came to Zilphia Horton at Highlander. It was Blacks again in the sixties who utilized the song functionally and musically in such a way and with such power that its value as a commercial product would warrant copyright considerations.81

She later described Carawan, Hamilton, Horton, and Seeger as the song’s “erroneous copyrighters.”82 The names of Simmons and others of the 1945 strike were not known to Carawan, Seeger, Hamilton, and Horton at the time83 but they certainly had knowledge of and access to countless other Black activist song leaders who could have been named as the song’s adaptors. Musician-scholar-organizer Shana L. Redmond—who has written the most comprehensive history of the song’s labor-era birth and emphasizes its emergence from the cultural organizing of Black women—pointedly characterizes the all-white names on the copyright to “We Shall Overcome” as “one of the quotidian brutalities that, en masse, help to disarticulate Black women from the telling and documenting of history.”84 However, while the text of the copyright registration threatened to eclipse the song’s Black creators, the WSOF would soon position a predominantly Black group of cultural workers as the song’s stewards for decades to come.

The work of managing the copyright—maintaining regular correspondence with the song’s publishers, determining how to distribute royalties, and tracking income, distributions, and taxes—proved overwhelming, and Carawan, Seeger, Hamilton, and Horton soon agreed broader supports were needed to best serve the song and its Fund. Given its decades of cultural organizing in general and its role in shepherding “We Shall Overcome” in particular, Highlander seemed to be the obvious and easy choice.85 In 1966, royalties were formally transferred to Highlander, and the WSOF—described as a “living memorial” to the song—was established as a resource for activists working at

78. “Popular Songwriters Contract,” Ludlow Music, Inc., 1963, box 69, folder 6, Supplementary Paragraph 10, WISC-HREC.
79. For the history of “We Shall Overcome” see Victor V. Bobetsky, ed., We Shall Overcome: Essays on a Great American Song (Lanham, Maryland: Rowman & Littlefield, 2015); Brandi Amanda Neal, “We Shall Overcome: From Black Church Music to Freedom Song” (Doctoral diss., University of Pittsburgh, 2006); Reagon, “Songs of the Civil Rights Movement”; Shana L. Redmond, Anthem: Social Movements and the Sound of Solidarity in the African Diaspora (New York: NYU Press, 2014).
80. Reagon, “Songs of the Civil Rights Movement,” 85.
81. Reagon, “Songs of the Civil Rights Movement,” 87.
82. Bernice Reagon to Mike Clark, September 26, 1972, part 6, box 12, folder 20, WISC-HREC.
83. Seeger, Where Have All the Flowers Gone, 34; Reagon, “Songs of the Civil Rights Movement,” 85.
84. Redmond, Anthem, 176. For more on critical Black feminist approaches to the archive see Marisa J. Fuentes, Dispossessed Lives: Enslaved Women, Violence, and the Archive (Philadelphia: University of Pennsylvania Press, 2016) and Saidiya Hartman, “Venus in Two Acts,” Small Axe: A Journal of Criticism 12, no. 2 (2008): 1–14 and Wayward Lives, Beautiful Experiments: Intimate Histories of Riotous Black Girls, Troublesome Women, and Queer Radicals (New York: W. W. Norton and Company, 2019).
85. Al Brackman to Guy [Carawan], Myles [Horton], and Frank [Hamilton], May 27, 1965, box 12, folder 20, WISC-HREC.
the intersection of “culture and struggle.” The Fund was launched with $5,468.66 on hand and Carawan, Reagon, and Harding were joined by Black organizers Faye Bellamy of SNCC and Dorothy Cotton of King’s Southern Christian Leadership Conference as founding members of the WSOF committee.

Forging a Legacy

With Black Power bursting onto the national stage, 1966 was an apt time to ensure financial rewards from Black culture went into Black communities, but a complex time to steward the anthem of the integration movement. Malcolm X had proclaimed, “We want freedom now, but we’re not going to get it singing ‘We Shall Overcome,’” and the multiracial hand-holding of freedom songs soon gave way to the fist-pumping of James Brown’s “Say It Loud: I’m Black and I’m Proud.”

SNCC had ousted its white members and, signaling implications for the new movement’s new sound, in 1965 Stokely Carmichael stormed the office of Harold Leventhal, agent and promoter for Pete Seeger and other folk figures, to confront him about the white co-optation of Black resistance music. Lester wrote, “Now it is over. The days of singing freedom songs and the days of combatting bullets and billy clubs with Love. We Shall Overcome (and we have overcome our blindness) sounds old, out-dated [sic].”

Highlander’s organizing focus was shifting as well. By the time of the WSOF’s founding, the organization’s commitment to make way for Black leadership coupled with SNCC’s urging that white allies organize among their own led Horton and his white colleagues to turn their attention away from southern civil rights and toward poverty in their home region of Appalachia. In 1964, for example, Highlander hosted a handful of SNCC’s white members for a three-day workshop about the challenges facing Appalachia’s mountain poor and strategies for supporting and amplifying their cause. Highlander’s shift toward Appalachia was resonant with broader shifts in the national landscape. President Lyndon Johnson had declared his War on Poverty in 1964, and by 1967 Martin Luther King had shifted his focus from racial violence to the injustices suffered by the poor, declaring, “I think it is necessary for us to realize that we have moved from the era of civil rights to the era of human rights.” By the end of the decade, many were focused on the national and multiracial Poor People’s Campaign that King had called for just before his assassination.

Although it had initially been clear that WSOF grants would go exclusively to Black-led projects in southern communities, between the rallying cries for Black Power and Highlander’s new focus on Appalachia, Fund administrators found themselves confronting questions about how to honor the civil rights movement’s anthem once the civil rights era had past. In the Fund’s initial years, it supported efforts affiliated with Highlander and largely led by Reagon to cultivate cultural pride in the Black South. However by 1968, it was supporting an array of projects, including white Highlander staff member Anne Lockwood Romasco’s leadership of a contingent of organizers and cultural workers offering workshops at the Poor People’s Campaign’s tent city on the National Mall in Washington, DC.

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86Excerpt from Highlander Board Meeting, May 14, 1966, part 6, box 12, folder 20, p. 6, WISC-HREC; Myles Horton, Frank Hamilton, Guy Carawan, and Frank Hamilton to Highlander Research and Education Center, June 14, 1965, box 69, folder 6, WISC-HREC; C. Conrad Browne to Guy Carawan, Frank Hamilton, Pete Seeger, and Myles Horton, May 26, 1966, part 6, box 12, folder 20, WISC-HREC.
87Memo from Highlander’s Executive Committee Meeting, February 10, 1977, part 6, box 32, folder 50, WISC-HREC.
88We Shall Overcome Fund Memo, 1966, box 69, folder 6, WISC-HREC.
89Malcolm X, Malcolm X Speaks: Selected Speeches and Statements (New York: Grove Press, 1965), 38; Stokely Carmichael, “What We Want,” The New York Review of Books, September 22, 1966, 5–6. James Brown, “Say It Loud—I’m Black and I’m Proud,” recorded 1968, on Say It Loud—I’m Black and I’m Proud, King Records KSD-1047, 1969, LP.
90Peter David Goldsmith, Making People’s Music: Moe Asch and Folkways Records (Washington, D.C.: Smithsonian Institution Press, 1998), 384; Cohen and Petrus, Folk City, 234.
91Julius Lester, “The Angry Children of Malcolm X,” Sing Out! 16, no. 5 (1966): 21.
92Martin Luther King, Jr., Where Do We Go from Here: Chaos or Community? (Boston: Beacon Press, 1967), 138.
93Albert Lomax, Bernice Reagon, Charles Sherrod, and Eleanor Walden, “Report on the Conference for Southern Community Cultural Revival,” 1965, box 65, folder 2, WISC-HREC; “Freedom Fund Report to the Board,” April 1970, box 12, folder 22, WISC-HREC; Glen, Highlander, 215.
Amidst the changing times, it was not immediately clear where money from the WSOF should—or should not—go.

The almost entirely Black WSOF committee wrestled with this question and ultimately decided to define its funding parameters rigidly along racial lines. In doing so they made it their mission not just to manage the song’s money but also to control its legacy by actively shaping the work the Fund would do in its name. The song would not be used, as it might have been had the committee formed at the height of the integration movement, to support projects working across the color line, nor would it be used to serve communities deemed most in need by the nation’s changing politics. Drawing on the Black Power politics of the time, the WSOF Committee insisted the Fund serve only Black artists and communities, despite its association with the biracial integration movement. Additional guidelines ensured the Fund’s sole support for projects emerging from within Black communities rather than for projects descending from without, and included administrative policies and practices to best ensure the Fund’s longevity.94 Thus, although “We Shall Overcome” was born from the integration movement, its legacy would be defined by the cultural politics and concerns of Black Power.

Despite the clarity of these guidelines, the changing politics of the 1970s threatened the Fund’s newly articulated commitments. In 1972, Highlander’s new director Frank Adams submitted a proposal, stating, “A social movement seems to be stirring in the Appalachian Mountains ... Of course, this is what we have been working for [and] we’d like to see music more consciously used as a means of awakening this spirit.”95 The proposal was made during a time of significant transition for Highlander. The organization was still developing its new Appalachian focus, had just relocated to a bigger plot of land in New Market, Tennessee, and was in the midst of a string of leadership changes. Emerging amidst excitement about the swelling Appalachian movement and disorientation from the upheaval at Highlander, Adams’ proposal broke with agreements made just a few years prior about how much the committee was willing to grant and who was entitled to the song’s royalties. He requested use of the entirety of the Fund’s holdings (totaling $12,334.85) to support Guy Carawan (who was unaware of the proposal) and Black mountain musician Earl Gilmore for a year of cultural work in Appalachia.96

Bernice Reagon had already been a strong presence on the WSOF Committee, but the Appalachia proposal prompted her to become more strident in her defense and control of the Fund. Each member of the Committee was committed to movement building and cultural organizing, but Reagon had made the preservation, protection, and celebration of Black culture her life’s work. In addition to having been a prominent civil rights song leader in Albany, Georgia and a founding member of SNCC’s Freedom Singers, by 1972 she was writing her doctoral dissertation about the songs of the civil rights movement at Howard University; working as a historian and program curator in the areas of Black culture at the Smithsonian; and preparing to launch her all-Black and female singing group, Sweet Honey in the Rock, to continue merging politics and song. Although some felt the Appalachia proposal was resonant with the biracial history of “We Shall Overcome,” Reagon felt it was an affront. She insisted that funding guidelines be upheld, asserting that only “the people who ‘made’ the song should have access to any profits.”97 The proposal was quickly withdrawn; $500, the maximum award allowed under the committee’s guidelines, was granted to Earl Gilmore to support his music; and $51.25 was granted to Carawan for “travel expenses.”98 Reagon and the committee subsequently suggested the establishment of a separate fund for white artists using royalties from the Carawans’ upcoming book about Appalachia, deepened WSOF outreach efforts to raise awareness of the Fund

94Memo from the We Shall Overcome Advisory Board of Directors, n.d., box 69, folder 6, WISC-HREC.
95Frank Adams to Myles Horton, Pete Seeger, Frank Hamilton, and Guy Carawan, May 25, 1972, part 6, box 12, folder 20, WISC-HREC.
96Guy [Carawan] to Bernice [Reagon], October 5, 1972, part 6, box 12, folder 20, WISC-HREC.
97Bernice Reagon to Mike Clark, September 26, 1972, part 6, box 12, folder 20, WISC-HREC.
98Mike Clark to Freedom Fund Committee, October 13, 1972, part 6, box 12, folder 20, WISC-HREC; We Shall Overcome Disbursements Schedule, 1967–1977, part 6, box 32, folder 50, WISC-HREC; “Freedom Fund Report,” January 17, 1973, part 6, box 12, folder 20, WISC-HREC.
among Black artist-organizers, and sponsored opportunities for intergenerational learning and strategizing between elder and emerging cultural organizers.99

Due to the foundation laid by the inaugural committee members in the Fund’s first decade, the WSOF has now been serving the Black South for more than 50 years while consistently expanding its resources and reach. Royalties have come from commercial uses in film, television, and radio domestically and in such countries as Israel, Greece, Germany, the Czech Republic, South Africa, Italy, Croatia, and Lithuania100 and have consistently increased over time, averaging approximately $1,000 per year in the 1960s, about $7,000 in the 1970s, and growing to an annual average of about $22,000 in the 2000s.101 To protect the Fund from depletion and ensure its continued growth, a portion of its holdings was invested in the late 1970s102 and, due both to investment earnings and increasing royalties, by 2004 annual distributions ranged from $13,000 to $25,000.103 The three to five annual grants of no more than $500 in the Fund’s initial decades have been expanded to more than a dozen annually of up to $2,000 each.104 The kinds of projects being funded have also expanded, extending beyond music to include an array of cultural work—from museum curation to street theater to quilting—done in tandem with broader organizing efforts.105 Initiatives supporting the preservation of musical traditions of South Carolina’s Johns Island, the very region from which “We Shall Overcome” emerged, have also received consistent support. The Fund’s annual distribution continued to reach as high as $25,000 and has scaffolded community work from the dawn of Black Power to contemporary movements for Black freedom.

The Fight Continues

The story behind the “We Shall Overcome” copyright is not a contentious one of authors and owners but a remarkable one of cultural organizers working behind-the-scenes for more than 60 years. Carawan, Cotton, Bellamy, and Reagon remained on the committee well into the 2000s, with Carawan and Bellamy serving until their deaths and Cotton and Reagon until their retirements. In keeping with the lineage of singers who birthed the song and the legacy inaugurated by Reagon and Cotton, the cultural workers who have served on the WSOF Committee have always been from the South and, with the exception of Guy Carawan and his wife Candie, have always been Black and in most cases female. The Fund’s new generation of guardians includes Tufara Muhammad, who served as the Fund’s outreach worker and Highlander’s cultural organizer from 2004 to 2015, and Omari Fox, Ebony Golden, Wendi O’Neal, and Carlton Turner, who subsequently led the Advisory Committee. Turner, a theater artist and activist from Mississippi, describes the Fund as an important and unprecedented effort to maintain Black control over Black culture:

[The money from the copyright] sustains our work and comes from our culture. We’re benefitting from the practice of a song deeply embedded in our roots. We all wish we could do more with our

99Bernice Reagon to Mike Clark, September 26, 1972, part 6, box 12, folder 20, WISC-HREC; “Minutes, Highlander Research and Education Center, Meeting of the Executive Committee,” March 1977, part 6, box 32, folder 50, p. 3, WISC-HREC; Cultural Workshop Invitation, May 20, 1977, part 9, box 7, folder 48, WISC-HREC; Mike Clark to Toshi Seeger, November 13, 1973, box 12, folder 20, WISC-HREC. The fund for white artists was discussed over the course of a year but never materialized.

100“38th Accounting,” Broadcast Music, Inc., 1977, box 12, folder 20, WISC-HREC; “Royalty Statement,” BMI, April 8, 2005, Highlander Archive, TN.

101“Freedom Fund Report to Highlander Board,” April 1970, box 12, folder 22, WISC-HREC; Bernice Johnson Reagon, “Applicants Breakdown,” August 24, 2005, Highlander Archive, TN.

102“‘We Shall Overcome’ Advisory and Ad Hoc Committees Meeting,” August 30, 2003, 3, Highlander Archive, TN.

103We Shall Overcome Meeting,” April 9, 1995, box 9, folder 4, WISC-HREC; “‘We Shall Overcome’ Fund Grants Report, Fiscal Year 2003–2004,” September 2, 2004, Highlander Archive, TN; “WSOC Income/Expense Report FYE 2002, 2003, 2004,” Highlander Archive, TN.

104We Shall Overcome Fund, Disbursement Schedule, 1967–1976,” 1976, part 9, box 7, folder 48, WISC-HREC; “‘We Shall Overcome’ Fund Grant Reports,” September 2004, Highlander Archive, TN.
art in terms of fueling activism but it just doesn’t happen like this. I’ve never been a part of anything like it.106

Although Reagon has been clear about her critiques of the copyright itself, she has been the Fund’s greatest champion.107 She has stewarded the song—from the frontlines in Albany, Georgia to the behind-the-scenes work of the WSOF—for a remarkable 60 years and hails the Fund as “one of the most amazing copyright structures” in our nation’s history.108

The power of “We Shall Overcome” lies not only in its sound but in the work for justice it has inspired and facilitated. As Reagon told participants of a 2005 cultural organizing workshop sponsored annually by the WSOF, “As a song, ‘We Shall Overcome’ does not really exist with a rendering of the melody and the lyrics. The song does not exist unless you channel your commitment to social transformation.”109 Despite the recent loss of the copyright, that commitment continues through the dedication of the WSOF committee and Highlander’s staff. Although new strategies for ensuring the longevity of the Fund are still being determined to supplement the investment earnings discussed above, at the time of this writing the first WSOF grant proposals of 2021 were under review. As Highlander’s Co-Director Ash-Lee Henderson told those gathered for Highlander’s eighty-fifth anniversary celebration, “[W]e’re going to keep fighting for that song…. There ain’t no law that can stop us.”110

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