

**TIME IS RUNNING OUT FOR BABETTE ORY.
IN ONE OF THE STRANGEST CASES IN MEMORY:
DAUGHTER OF ONE OF JAZZ' FOUNDING FATHERS
HAS 40 DAYS TO FIND WAY TO SAVE HER DAD'S LEGACY**

By Thomas Brennan

A funny thing happened to a friend of mine on her way to preserving a precious piece of American History. My friend is Babette Ory, and she works as a caterer in Los Angeles. She is a good-hearted person who for some twenty years has been working to preserve the legacy of one of America's musical treasures, the work of her dad, the late Edward "Kid" Ory.

Babette Ory is not a household name, but if there were was a Mount Rushmore for American Music, her father would be one of the faces honored on such a monument, right next to his lifelong friend Louis "Satchmo" Armstrong. Kid Ory was the trombonist in the original "Hot Five" with Louis Armstrong, and together they birthed Jazz as we know it, and, as a consequence, greatly influenced and expanded the vocabulary of the American music you listen to, from Rock 'n' Roll to Hip Hop.

The crux of the story is this: If you were listening to the radio one day and a famous musician admitted in an interview that he had taken the melody of one of your dad's songs and then used it as the basis of his most famous song, you might reasonably think that there would be good cause to ask for some compensation on your father's behalf.

You would be wrong.

In 2001, "Country Joe" McDonald appeared on a radio program on KPFK-FM in Los Angeles, and talked about how Kid Ory's "Muskrat Ramble" was the basis for his most famous song, "I Feel Like I'm Fixin' To Die Rag." The song was prominently featured in the "Woodstock" documentary, released in 1970, with its famous public invocation of the "F" word.

This 2001 interview was the impetus for Babette Ory to seek deserved credit and a share of royalties to honor her dad's legacy. After all, if the publisher of "She's So Fine" could win a lawsuit against George Harrison that was based on George "subconsciously stealing" melody of that hit song and composing "My Sweet Lord" from it, here was a case where Babette Ory seemed to have every right under the law to pursue this matter. After all, an admission is an admission.

Her lawyer agreed. Her lawyer said that the case could be won. It went to trial. The judge, however, ruled that too much time had elapsed since Country Joe McDonald wrote the song and

the lawsuit was brought, and the question hung in the air: Why hadn't Babette Ory brought the lawsuit earlier? There are three common sense answers to that question. Babette Ory was 10 years old in 1965 when the song first appeared on a Country Joe album, she was 15 in 1970 when the "Woodstock" documentary was released, and it was not until 2001 that Country Joe publicly admitted the source from which he had derived the song's melody.

But, amazingly, none of that mattered in the ruling. There is a legal mechanism built into these kinds of lawsuits called the Doctrine of Laches. It is almost set in stone that if too much time has elapsed, your suit will be considered of no merit and thrown out, and you, of course, will owe attorneys' fees. In this case, Country Joe McDonald's attorneys are asking for fees close to \$750,000. The crucial fact of this ruling is that : Babette Ory has until September 1st to pay the attorneys, and also sell off the precious copyrights her dad wanted her to have. One can easily feel how tormenting this is, since her only intention was to bring the truth to light about the Country Joe song's origins, and also receive her due financially.

Now the big questions arise. Why should the Doctrine of Laches not be amended to a more realistic working template. It seems devised to hinder dead artists' relatives from ever receiving the money and legacy that the artist intended. Also, quite simply, why would Country Joe McDonald, who is an admitted admirer of Kid Ory's work, allow such an ordeal to be visited upon the woman who is fighting hard to increase public knowledge of one of his musical heroes? Why not call off his attorneys, and reach an amicable solution?

There is a beautiful color documentary of a concert at Disneyland in 1962 featuring Satchmo and Kid Ory. In it one can plainly see and hear the joyous musical union in sound and spirit that these two men achieved. Digitalizing that documentary and making it available, as well as all of the other recorded treasures of Kid Ory, should be the work that Babette Ory is allowed to do.

After all, they are attorneys based in Los Angeles and Chicago, two music-rich cities to be sure, and Edward Kid Ory is the first artist ever to record Jazz in Los Angeles. The recording session actually took place in 1922 at Nordskog Records in Santa Monica.

The system of laches needs to be changed to allow for common sense within the Golden Gulag of copyright law, but with September 1, 2006 being the date Babette is being asked by the Judge in the case to pay Country Joe's attorneys, there is not enough time to do that. But there surely is enough time for a group of attorneys who do love music to step forward and help to make some sense of this situation. That is all Babette asks. This rich legacy is something that needs a family member to speak on behalf of, not strangers who inherit this legacy due to a legal complexity not of Babette's making. Babette Ory, working on a shoestring budget, has kept the flame for her dad and his music alive. Among the successful efforts was seeing Kid Ory awarded a posthumous Grammy Award in 2003 for his work with Satchmo on the Hot Five recordings.

Babette Ory should be honored for her work, not subjected to this Kafka nightmare which has hung over her since she became aware of Country Joe's admission on radio 5 years ago. Kid Ory recorded the first Jazz music west of the Mississippi, long before Country Joe's attorneys were born and long before they knew how lucrative this music biz could be. The music should win out. Beautiful notes from "Kid" Ory's trombone are should be heard, when we speak of his legacy . Not the sounds of people cutting up another person's creations into little, hollow pieces of gold. Babette Ory needs our help, and she needs it, literally, within 40 days.

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Thomas Brennan is a co-owner of Tom Brennan Media, a media placement firm based in Santa Monica, California.

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