

Changes in U.S. Copyright Law Needed to Preserve Our Audio Heritage

ARSC and the Historical Recording Coalition for Access and Preservation urge changes in U.S. copyright law to facilitate preservation of and public access to America's audio heritage, which stretches back to the late 19th century.

The Music Modernization Act of 2018 was a good first step--at last!--at addressing some of these issues. It showed that change is possible. But more needs to be done.

We support strong and effective copyright to protect the legitimate needs of creators and preserve jobs. But we also believe that copyright should not be used to lock up our history. The interests of the public, as well as those of commercial entities, should be recognized in the law.

The Problem: United States copyright law has placed historical sound recordings at significant risk of loss and has made it difficult for students, scholars and the general public to hear the vast majority of music and spoken word recordings produced in the U.S. during the twentieth century. Recordings as diverse as those of 1890s "march king" John Philip Sousa, the very first African-American recording artists, immigrant groups, early jazz bands, symphony orchestras and even some U.S. presidents are difficult to hear due to copyright restrictions. (Examples are at www.recordingcopyright.org).

Our Proposal: U.S. law treats older recordings differently, and more harshly, than other intellectual property. We have recommended five essential changes:

1. Bring pre-1972 recordings under federal law. *This was essentially accomplished by the 2018 Music Modernization Act.*
2. Harmonize the term of coverage for U.S. recordings with that of most foreign countries, i.e. a term of between 50 and 75 years maximum.
3. Legalize the use of "orphan" recordings, those for which no owner can be located, for any purpose. "Orphan Works" legislation has repeatedly been considered by Congress, and is supported by many stakeholders.
4. Permit the reissue by third parties of "abandoned" recordings, those that remain out of print for extended periods, with appropriate compensation to the copyright owners. *A limited start was made on the last two points by the Music Modernization Act, however it permits only non-profit streaming, and even that can be forbidden by an owner. All uses should be permitted.*
5. Change copyright law to permit the use of current technology and best practices in the preservation of sound recordings by non-profit institutions. The Copyright Office recommended such changes in its "Section 108 Report."

Our goal, simply, is to work for laws that permit and encourage the preservation of our rich and varied audio heritage, and--equally important--access to it by all Americans.

For more information visit www.recordingcopyright.org.

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(over...)

Members of the coalition:

Association for Recorded Sound Collections

Music Library Association

Society for American Music

Popular Culture Association

In addition the following have formally endorsed some or all of our goals:

American Library Association

Association of Moving Image Archivists

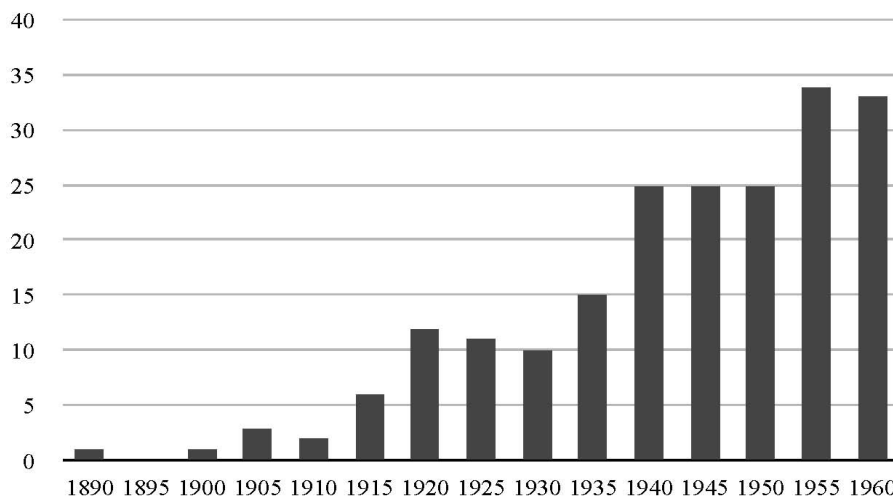
International Association of Jazz Record Collectors

Society of American Archivists

Fact: An average of only 10% of historic recordings made before 1955 are available from (or licensed by) rights holders. Moreover this figure is heavily skewed toward more recent periods. Historic recordings from the 1930s, 1920s and earlier are rarely made available to the public by rights holders. (Source: *Survey of Reissues of U.S. Recordings*, Council on Library and Information Resources and the Library of Congress, 2005.)

Reissue Availability

(% Available from Rights Holder)



References:

Federal Copyright Protection for Pre-1972 Sound Recordings, A Report of the Register of Copyrights, December 2011. At <http://copyright.gov/docs/sound/pre-72-report.pdf>

Report on Orphan Works: A Report of the Register of Copyrights, January 2006. At <http://copyright.gov/orphan/orphan-report.pdf>. An Orphan Works Act, H.R. 5889 and S.2913 (2008), was passed by the Senate but died in the House.

Recording Artist Groups, “Comments of Recording Artist Groups on Orphan Works,” U.S. Copyright Office, Orphan Works Inquiry, Comment No. OW0669, 25 March 2005, pp.7-10. At <http://www.copyright.gov/orphan/comments/OW0669-FMC-AFTRA-AFM.pdf>

The Section 108 Study Group Report, An Independent Report Sponsored by the United States Copyright Office and the National Digital Information Infrastructure and Preservation Program of the Library of Congress, March 2008. At <http://www.section108.gov/docs/Sec108StudyGroupReport.pdf>.