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Copyright Laws are Changing: What You Need to Know!

Laura Burtle

Georgia State University, lburtle@gsu.edu

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Copyright Laws are Changing: What You Need to Know!

Laura Burtle
Georgia State University



When was the last time Congress made a significant update to the Copyright Act?

A. 1976

B. 1998

C. 2018

D. 2020



1976 – Copyright Act of 1976

1998 – Digital Millennium Copyright Act and the Sonny Bono
Copyright Extension Act

2018 – Music Modernization Act

2020 – Copyright Alternative in Small-Claims Enforcement Act
(CASE Act)



Music Modernization Act

Title I—Musical Works Modernization Act

- Downloads and Streaming
 - Establishes a blanket licensing system for digital music providers

Title III - Allocation for Music Producers Act

- Allows music producers, mixers, and sound engineers to receive royalties collected for uses of sound recordings



Title II - Classics Protection and Access Act (CPA)

Title II brings pre-1972 sound recordings **partially** into the federal copyright system and provides federal remedies for unauthorized use of sound recordings fixed before February 15, 1972.



What is a sound recording?

“Sound recordings” are works that result from the **fixation** of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the **material objects**, such as disks, tapes, or other phonorecords, in which they are embodied.



Pre-1972 Sound Recordings before Classics Act

- Not covered by federal copyright law
- Patchwork of state laws
- Most covered illegal copying and selling
- Fewer covered unauthorized public performance



Georgia (OCGA § 16-8-60)

Illegal to

- (1) Transfer or cause to be transferred
- (2) Sell; distribute; circulate...

the tangible object on which the sounds are transferred or recorded without the consent of the person who owns the master recording

Does not apply when

1. Intended radio or television broadcast transmission
- 2. For archival purposes**
3. Solely for the personal use



CPA

- Extends remedies for copyright infringement to **owners of sound recordings** fixed before February 15, 1972, when the recordings are used without authorization
- No notice or renewal requirement
- No reversion rights
- Different statutory licensing rights than Sound Recordings fixed Feb. 15, 1972, and forward
- Sets terms for the new copyright protection



Terms

95 years after the year of first publication of the recording, subject to certain additional periods:

- For recordings first published before 1923, the additional time period ends on December 31, 2021.
- 1923-1946, the additional time period is 5 years after the general 95-year term.
- 1947-1956, the additional time period is 15 years after the general 95-year term.
- For all remaining recordings first fixed prior to February 15, 1972, the additional transition period shall end on February 15, 2067.

Reproduction and Distribution Rights.

	Interactive Streaming	Noninteractive Streaming
Musical Works	Defined as a mechanical copy Rate standard for statutory license: willing buyer/willing seller	Not a mechanical copy—no license needed
Sound Recordings	Privately negotiated agreements	Statutory license Rate standard: willing buyer/willing seller

Public Performance Rights.

	Interactive Streaming	Noninteractive Streaming	Nondigital Public Performance
Musical Works	Within © owners' rights Licenses available from PROs	Within © owners' rights Licenses available from PROs	Within © owners' rights Licenses available from PROs
Sound Recordings	Within © owners' rights Licenses through privately negotiated agreements	Within © owners' rights Statutory License Rate standard: willing buyer/willing seller	Not within © owners' rights

Comparison of Pre- and Post-1972 Sound-Recording Rights

	Interactive Streaming Royalties	Noninteractive Streaming Royalties	Termination Rights
Pre-1972	Direct payments to performing artists	Direct payments to performing artists	None
Post-1972	No requirements (privately negotiated agreements)	Direct payments to performing artists	1972-1976: § 304 terminations § 203 terminations 1978-present: § 203 terminations

Loren, Lydia Pallas. 2019. "Copyright Jumps the Shark: The Music Modernization Act." *Boston University Law Review* 99 (6): 2519–50.



Did archives in Georgia lose rights in Sound Recordings?



Exceptions and Limitations

- The legislation applies several of the standard exceptions to the new protection:
 - 107 (fair use),
 - 108 (libraries and archives),
 - 109 (first sale),
 - 110 (certain public performances),
 - 112(f) (certain ephemeral copies) and
 - 512 (safe harbor provisions for online service providers)



Orphan Works

The legislation also establishes a process for lawfully engaging in noncommercial uses of Pre-1972 Sound Recordings that are not being commercially exploited. To qualify for this exemption, a user must file a notice of noncommercial use after conducting a good faith, reasonable search, and the rights owner of the sound recording must not object to the use within 90 days.



Questions about the Classics Protection and Access Act?



Copyright in Small Claims Enforcement (CASE) Act

- Small-claims court for
 - Copyright infringement claims
 - Declarations of non-infringement
 - Misrepresentation claims under DMCA (section 512(f))
 - Statutory damages up to \$15,000 per work/\$30,000 per claim
- New Chapter 15 of the Copyright Act



Copyright Claims Board

- Established by the CASE Act
 - Located in the Copyright Office – not an “Article III” court
 - Cases decided by Copyright Claims Officers (not judges)
 - Began accepting claims on June 16
 - Process
 - Filing
 - Review
 - Service
 - Proceedings
 - (Settlement)
 - Final Determination



Opt-Out

- Voluntary Process – cannot force a respondent to CCB
- Effect of Opt-out
 - Claimant can file in Federal Court
- Library and Archives Pre-emptive Opt-out
- Statutory Exclusions
 - Already in federal court
 - Against a Federal or State Entity
 - Against a person residing outside the U.S.



Service of Process

- Waiver of process
- Responding to a claim
 - Response
 - Opt-out
- Effect of non-response
 - Default judgment



Questions?



The Public Domain

1923



Which published works entered the public domain in
January 2022?

What about Sound Recordings?

Questions?



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