

Pre-1972 Sound Recordings

This circular provides an introduction¹ to the federal remedies available for owners of U.S. pre-1972 sound recordings. Topics covered include:

- Who qualifies as the owner of a pre-1972 sound recording
- What constitutes unauthorized use
- Exceptions and limitations to unauthorized use
- Remedies available for unauthorized use
- Term
- Submitting sound recording schedules

The Office's online database of indexed pre-1972 sound recording schedules is located on the **Classics Protection and Access Act website**.

Sound recordings are the fixation of a series of sounds, often of musical performances. Copyright law treats sound recordings differently depending on whether they were first fixed before, on, or after February 15, 1972. U.S. copyright law protects sound recordings fixed on or after February 15, 1972. For more information, see *Copyright Registration of Sound Recordings* (**Circular 56**). Additionally, U.S. sound recordings fixed prior to February 15, 1972 (pre-1972 sound recordings) are protected, but in a slightly different way. While owners of pre-1972 U.S. sound recordings have the same remedies for unauthorized use as all copyright owners, there are unique considerations for pre-1972 sound recordings regarding ownership, term of protection, unauthorized use, and establishing full remedies. This circular focuses on the protection of U.S. pre-1972 sound recordings, provides an introduction to these concepts, and links to additional resources.

NOTE: The Uruguay Round Agreements Act (URAA) granted copyright protection in the United States to certain foreign pre-1972 sound recordings. Any copyright protection afforded to foreign pre-1972 sound recordings runs parallel to protection granted to U.S. pre-1972 sound recordings. For more information about the protection of foreign pre-1972 sound recordings, see *Copyright Restoration Under the URAA* (**Circular 38B**).

NOTE: A sound recording is distinct from a musical composition for copyright purposes. For more information, see *Copyright Registration of Music Compositions and Sound Recordings* (**Circular 56a**).

Ownership of a Pre-1972 Sound Recording

The rights owner of a pre-1972 sound recording is the person who, on October 10, 2018, had the exclusive right to reproduce a sound recording under the laws of any U.S. state.

A rights owner may also be a person or entity who acquired these rights from the original owner after October 10, 2018. A person may acquire ownership by any means of conveyance or by operation of law, including by will or passed as personal property by the applicable laws of intestate succession. When ownership has not previously been transferred voluntarily, the rights of the pre-1972 sound recording cannot be involuntarily transferred.

Unauthorized Use

An unauthorized use occurs when the pre-1972 sound recording is reproduced, distributed, adapted, or publicly performed by means of a digital audio transmission without the authorization of the rights owner.

The user of a pre-1972 sound recording, however, does not need authorization from the owner if engaged in activity that:

- **constitutes fair use;**
- **falls under the libraries and archives exception;**
- **falls under the first sale doctrine;**
- is a specific statutorily defined public performance or ephemeral copy; or
- is covered by a statutory license.

In addition, the law provides an exception for engaging in certain 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 with the Copyright Office after conducting a good faith reasonable search and determining the sound recording is not being commercially exploited, and the rights owner of the sound recording must not object to the use within ninety days of the notice being indexed in the Copyright Office's public record. For more information, including how to file a notice of noncommercial use, see the [Copyright Office's website](#).

Term

Remedies are available to rights owners of pre-1972 sound recordings until ninety-five years after the year of first publication of the recording, subject to additional periods. These additional periods are:

- For recordings first published before 1923, the additional time period ends on December 31, 2021.
- For recordings first published from 1923 through 1946, the additional time period is five years after the general ninety-five-year term.
- For recordings first published from 1947 through 1956, the additional time period is fifteen years after the general ninety-five-year term.
- For all remaining recordings first fixed prior to February 15, 1972, the additional transition period shall end on February 15, 2067. Unpublished sound recordings fall into this category.

Securing Remedies

The owner of a pre-1972 sound recording is eligible for the same remedies for unauthorized use as copyright owners: actual damages, statutory damages, attorneys' fees, and injunctive relief. Rights owners are automatically eligible for actual damages and injunctive relief; however, to be eligible for statutory damages and attorneys' fees, U.S. rights owners must file a schedule with the Copyright Office listing their pre-1972 sound recordings.

The Copyright Office then indexes the schedule into its **online database**, which sets the "index date." This date governs eligibility for statutory damages and attorneys' fees, as these remedies are only available for unauthorized uses that have occurred more than ninety days after indexing. While this is the general rule, the next two sections highlight how the timing of statutory damage and attorneys' fees eligibility can be affected by amendments, supplements, and a notice of contact information filed by a transmitting entity.

Full instructions on submitting a schedule are available on the Office's **website**. In brief, to file a schedule you must:

1. complete a schedule using the **Office's template**, including at least the owner's name, title, and featured artist for each recording. If known and practicable, include the International Standard Recording Code (ISRC);
2. complete a **cover sheet**;
3. calculate payment. For current fees, see Copyright Office Fees (**Circular 4**).
4. indicate payment by credit card or deposit account; and
5. email the completed materials to **pre72schedules@copyright.gov**.

Amendments, Supplements, and Deletions

A schedule may be corrected or supplemented if the information was incorrect or omitted at the time it was submitted to the Office. The operative index date for a given pre-1972 recording will change only in the event that information in one of the statutorily required fields (title, featured artist(s), and rights owner) is changed or amended.

In limited situations, a rights owner may request that the Copyright Office delete a pre-1972 sound recording from its database. The Office may delete a pre-1972 sound recording if (1) there was a substantive defect about the sound recording in the pre-1972 schedule when it was filed; or (2) upon a showing of good cause, at the discretion of the Office. The Office will keep a record of removed pre-1972 sound recordings and a timestamp of when each deletion occurs.

Once the Copyright Office removes a pre-1972 sound recording from the Office's database, it is no longer considered "indexed" for purposes of eligibility to recover statutory damages and attorneys' fees for the unauthorized use of that sound recording, or included in the Office's database to prevent a user from taking advantage of the noncommercial use exception.

Notices of Contact Information and Transmitting Entities

On or after October 16, 2018 and before April 10, 2019, entities publicly performing pre-1972 sound recordings by means of digital audio transmission as of October 11, 2018, could file notices of contact information with the Copyright Office. If a transmitting entity filed a valid notice of contact information during this time, to become eligible for statutory damages, a rights owner must send the entity a notice that it is not legally authorized to use the pre-1972 sound recording. Statutory damages then become available for any unauthorized use that occurs at least 90 days after receipt of notice. For more information, see the Office's website.

NOTE

1. This circular is intended as an introduction to the legal remedies for owners of U.S. pre-1972 sound recordings. The authoritative source for U.S. copyright law is the Copyright Act, codified in Title 17 of the *United States Code*. Copyright Office regulations are codified in Title 37 of the *Code of Federal Regulations*. Copyright Office practices and procedures are summarized in the third edition of the *Compendium of U.S. Copyright Office Practices*, cited as the *Compendium*. The copyright law, regulations, and the *Compendium* are available on the Copyright Office website at www.copyright.gov.

For Further Information

By Internet

The copyright law, the *Compendium*, electronic registration, application forms, regulations, and related materials are available on the Copyright Office website at www.copyright.gov.

By Email

To send an email inquiry, click the *Contact Us* link on the Copyright Office website.

By Telephone

For general information, call the Copyright Public Information Office at (202) 707-3000 or 1-877-476-0778 (toll free). Staff members are on duty from 8:30 am to 5:00 pm, eastern time, Monday through Friday, except federal holidays. To request application forms or circulars by postal mail, call (202) 707-9100 or 1-877-476-0778 and leave a recorded message.

By Regular Mail

Write to

Library of Congress
U.S. Copyright Office
Publications Section
101 Independence Avenue, SE #6304
Washington, DC 20559-6304

