

Compulsory License for Making and Distributing Phonorecords

Other Than Digital Phonorecord Deliveries

Copyright law provides a compulsory license for making and distributing phonorecords of certain nondramatic musical works. This circular addresses the compulsory license for phonorecords other than digital phonorecord deliveries (DPDs).

It covers:

- When a compulsory license can be used
- Activities covered by the compulsory license
- How to obtain a compulsory license
- When royalties must be paid

For information on the compulsory license for DPDs, see *Compulsory License for Making and Distributing Digital Phonorecord Deliveries and Limitations on Liability Prior to the License Availability Date, January 21, 2021 (Circular 73B)*.

Under section 115 of the Copyright Act, an individual or entity, subject to certain terms and conditions, may make and distribute “non-DPD phonorecords” — phonorecords of nondramatic musical works made by means other than digital phonorecord deliveries — if the nondramatic musical works have been distributed as phonorecords to the public in the United States under the authority of the copyright owner. As discussed below, this compulsory license includes the right to authorize others to engage in the making and distribution of phonorecords.

NOTE: A nondramatic musical work is an original work of authorship consisting of music—the succession of pitches and rhythm—and any accompanying lyrics not created for use in a motion picture or dramatic work.

On October 11, 2018, the Orrin G. Hatch–Bob Goodlatte Music Modernization Act updated section 115 to establish a new blanket license for **digital** music providers to engage in specific covered activities, namely, permanent downloads, limited downloads, and interactive streaming.

The new law, however, maintains the process for obtaining a compulsory license for non-DPD phonorecords, which still operates on a per-work, song-by-song basis.

This circular provides an introduction to legal concepts and Office practice related to the compulsory license for distributing non-DPD phonorecords. For full information regarding the procedures that must be followed to operate under a compulsory license, visit the Office’s [website](#) or refer to sections **201.18** and **210** of Office regulations.¹

What Is a Phonorecord?

A phonorecord is a material object in which sounds are fixed by any method now known or later developed and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Examples include a cassette tape, a vinyl disc, or a compact disc. Digital phonorecords are types of phonorecords. A phonorecord does not include sounds accompanying a motion picture or other audiovisual work.

What Is a Digital Phonorecord Delivery?

A digital phonorecord delivery (DPD) is the individual digital transmission of a sound recording resulting in a specifically identifiable reproduction by or for a recipient, regardless of whether the digital transmission is also a public performance of the sound recording or any underlying non-dramatic musical work. The reproduction must be sufficiently permanent or stable to permit to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. The reproduction may be permanent or available to the recipient for a limited period of time or for a specified number of performances. A DPD includes all phonorecords that are made for the purpose of making the delivery. Permanent downloads, limited downloads, and interactive streams are DPDs.

The compulsory license for making and distributing DPDs is addressed further in *Compulsory License for Making and Distributing Digital Phonorecord Deliveries and Limitations on Liability Prior to the License Availability Date, January 21, 2021* (**Circular 73B**).

Does a Compulsory License Cover Making and Reproducing a Sound Recording?

No. Section 115 does not cover sound recordings. Rather, it covers the reproduction and distribution of nondramatic musical works. You can use the musical work to make your own sound recording.

A musical work and a sound recording are two separate works for copyright purposes. The author of a musical work is generally the composer and any lyricist. A sound recording, on the other hand, is the fixation of a series of musical spoken, or other sounds, often of a musical work. The author(s) of a sound recording is generally the performer(s) whose performance is fixed and/or the producer(s) who captures and processes the performance to make the final recording.

Licenses generally must be obtained separately from the copyright owners of the sound recording and the underlying musical work. Copyright in a sound recording is not the same as, or a substitute for, copyright in the underlying musical work.

For more general information about these works, see *Copyright Registration for Musical Compositions* (**Circular 50**), *Copyright Registration for Sound Recordings* (**Circular 56**), and *Copyright Registration of Musical Compositions and Sound Recordings* (**Circular 56A**).

Must I Use a Compulsory License?

No. Anyone wishing to make and distribute non-DPD phonorecords of a nondramatic musical work can negotiate directly with the copyright owner or his or her agent. But if the copyright owner is unwilling to negotiate, or if the copyright owner cannot be contacted, the person intending to record the work or reproduce and distribute non-DPD phonorecords of the work may be eligible to use the compulsory license.

When Can a Compulsory License Be Used?

A compulsory license to reproduce and distribute non-DPD phonorecords is available to anyone as soon as phonorecords of a nondramatic musical work have been distributed to the public in the United States and its territories under the authority of the copyright owner.

What Can I Do With a Compulsory License?

If you meet the statutory requirements, including payment of required royalties, you may engage in the following activities with the compulsory license:

- Make and distribute phonorecords of the eligible nondramatic musical work, where the primary purpose is distribution to the public for private use, as opposed to a public performance.
- Authorize others to engage in the making and distributing of the phonorecords.
- Make a musical arrangement of the work to the extent necessary to conform it to the style or manner of interpretation of the performance involved.

You cannot engage in the following activities with the compulsory license. You will need to seek permission from the copyright owner to:

- Make, reproduce, or distribute a sound recording publicly distributed in phonorecords.
- Distribute phonorecords intended for use in background music systems, jukeboxes, broadcasting, or any other public use.
- Change the basic melody or fundamental character of the work in the arrangement.
- Claim copyright protection in your arrangement as a derivative work.

How Do I Obtain a Compulsory License?

In order to obtain a compulsory license to reproduce and distribute non-DPD phonorecords, you must (1) serve a timely Notice of Intention to Obtain a Compulsory License (NOI), either on the copyright owner or on the Copyright Office if the identity or address of the copyright owner is unknown; and (2) when the copyright owner is known, make monthly royalty payments and provide monthly statements of account to the copyright owner.

On Whom Do I Serve a Notice of Intention to Obtain a Compulsory License?

The recipient of an NOI will depend on whether the copyright owner's identity and address are revealed in the Copyright Office's public records. If those records identify the copyright owner and include an address at which notice can be served, you must serve the NOI on the copyright owner or the owner's authorized agent. Where a work has more than one copyright owner, service of an NOI on any one of the co-owners or the authorized agent of one of the co-owners is sufficient. Where no copyright owner is identified in the Office's public records, or the public records do not include an address at which notice can be served, you must instead file an NOI with the Office.

To determine whether the Office's records identify a copyright owner, you can either search the Office's records or ask the Office to conduct a search for you. For more information about searching the Office's records, see *How to Investigate the Copyright Status of a Work* (**Circular 22**). For more information on requesting a search conducted by the Office, see *Obtaining Access to and Copies of Copyright Office Records and Deposits* (**Circular 6**).

NOTE: The name or address of a copyright owner may appear in the Office's records subsequent to your initial search of the records. Because royalty payments must be made after the owner is identified, you should periodically search the Office's records to determine whether the copyright owner has been identified.

When Do I Serve a Notice of Intention to Obtain a Compulsory License?

An NOI must be served before, or within thirty days after, making, and before distributing, any non-DPD phonorecords of the work.

What Must Be Contained in a Notice of Intention to Obtain a Compulsory License?

The Office does not provide NOI forms to serve on copyright owners or authorized agents, or to use to file a paper NOI with the Office. For NOIs filed with the Office electronically, the Office requires a cover sheet and Excel templates. For detailed instructions on the required contents of an NOI, see **37 CFR § 201.18**.

How Do I Serve a Notice of Intention to Obtain a Compulsory License on a Copyright Owner?

Service must be made by sending the NOI to either the last address of the copyright owner shown in the records of the Office or to a different address for the copyright owner or authorized agent known to the licensee, subject to certain conditions. If the NOI is sent to the last address for the copyright owner shown by the records of the Office and the NOI is returned to the sender because the copyright owner is no longer located at that address or has refused to accept delivery, the original NOI must instead be filed with the Office with the required filing fee in accordance with the paper filing instructions below. The NOI and filing fee must be accompanied by a brief statement that the NOI was sent to the last address for the copyright owner shown by the records of the Copyright Office

but was returned, and may be accompanied by appropriate evidence that the NOI was mailed to that address. Returned NOIs cannot be filed with the Office electronically.

NOTE: You must send the NOI to the copyright owner. Only if the NOI is returned and you cannot locate the owner can you file the NOI with the Office. You do not need to serve a successfully owner-served copy of a notice with the Office.

How Do I File a Notice of Intention to Obtain a Compulsory License with the Copyright Office?

You may file an NOI to reproduce and distribute non-DPD phonorecords with the Office either on paper or online.

The existing system for filing NOIs with the Copyright Office to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works on a song-by-song basis will remain in place for non-digital uses (e.g., CDs, vinyl). However, the Office will no longer accept NOIs for making a DPD of a musical work, such as in the form of a permanent download, limited download, or interactive stream.

For information about NOIs for making and distributing DPDs, see *Compulsory License for Making and Distributing Digital Phonorecord Deliveries and Limitations on Liability Prior to the License Availability Date, January 21, 2021* (**Circular 73B**).

By Paper

The Office accepts Notices of Intention to reproduce and distribute non-DPD phonorecords sent with the required filing fee paid by check or deposit account to the following address:

Library of Congress
Copyright Office-LS
101 Independence Avenue SE
Washington, DC 20557-6400

The Licensing Section will acknowledge receipt of the filing. However, if certification of a document is required, see *Obtaining Access to and Copies of Copyright Office Records and Deposits* (**Circular 6**) for information and associated fees.

Online

The Office accepts electronic filings of NOIs to reproduce and distribute non-DPD phonorecords that meet certain requirements and are paid for using a deposit account. The NOI must be created using an Excel spreadsheet template provided by the Office, contain all information required by Office regulations, contain identical information in the first thirteen columns, include an attestation from the individual actually submitting the NOI to the Office, and be accompanied by a cover sheet. Completed submissions should be sent to the Office at licensing115@copyright.gov. For detailed instructions, cover form, and Excel spreadsheet, see the Office's **Section 115 NOI website**.

NOTE: Copyright Office fees are subject to change. For current fees, see *Copyright Office Licensing Section Service Fees (Circular 76)*, available on the Office's website at www.copyright.gov or call the Licensing Section at (202) 707-8150. For information about deposit accounts, see *How to Open and Maintain a Copyright Office Deposit Account (Circular 5)*.

The Licensing Section will acknowledge receipt of the filing. Upon confirmation that the submission complies with all procedural requirements, the Licensing Section will also confirm that the NOI has been successfully filed with the Office. All NOIs submitted electronically are made publicly available on the Office's [website](#).

NOTE: The Office does not review NOIs for legal sufficiency, errors, or discrepancies.

When Are Royalty Payments Owed?

To be entitled to receive royalty payments under the compulsory license to reproduce and distribute non-DPD phonorecords, the copyright owner must be identified in the certificate of registration for the work or other public records of the Copyright Office.

How Do I Make Royalty Payments?

Royalty payments, accompanied by a monthly statement of account for reproduction and distribution of non-DPD phonorecords, must be sent to the copyright owner or authorized agent of the owner on or before the twentieth day of each month for every phonorecord made and distributed in accordance with the compulsory license. You must also send an annual statement of account to the copyright owner. In certain circumstances, generally when a statement of account is undeliverable, statements of account may be filed with the Office. In such circumstances, statements of account, but not royalty payments, and other required documentation should be mailed to:

Library of Congress
Copyright Office-LS
101 Independence Avenue SE
Washington, DC 20557-6400

NOTE: The Office will not accept royalty fee payments submitted with the statements of account.

The Office does not provide forms for the monthly or annual statements of account. For detailed instructions about the content of statements of account, see section **210** of Office regulations.

If the copyright owner does not receive monthly royalty payments and monthly and annual statements of account when due, the copyright owner may give written notice to the licensee that, unless the default is remedied within thirty days from the date of the notice, the compulsory license will be automatically terminated.

For current copyright royalty rates under the compulsory license for making and distributing phonorecords, see **Mechanical Copyright Royalty Rates** or contact the Licensing Section of the Copyright Office. The Copyright Royalty Board sets the rates and terms for use of the compulsory licenses pursuant to an administrative proceeding. For more information, visit www.crb.gov.

NOTE

1. This circular is intended as an overview of the section 115 compulsory license as it applies to non-DPD phonograph deliveries. 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, and related materials are available from the Copyright Office website at www.copyright.gov.

By Email

To send a licensing related inquiry, e-mail licensing@copyright.gov. To send a general email inquiry, click the *Contact Us* link on the Copyright Office website.

By Telephone

For licensing related information, call the Licensing Section at (202) 707-8150. For general information about copyright, 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 paper application forms or circulars by postal mail, call (202) 707-9100 or 1-877-476-0778 (toll free) and leave a recorded message.

By Regular Mail

Write to

Library of Congress
Copyright Office-LS
101 Independence Avenue SE
Washington, DC 20557-6400

