

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2010-4]

Federal Copyright Protection of Sound Recordings Fixed Before February 15, 1972

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public meeting.

SUMMARY: The Copyright Office will host a public meeting to discuss the desirability and means of bringing sound recordings fixed before February 15, 1972 under Federal jurisdiction. The meeting will provide a forum, in the form of a roundtable discussion, for interested parties to address the legal, policy, and factual questions raised so far regarding pre-1972 sound recordings. It will take place on June 2 and 3, 2011 at the Copyright Office in Washington, DC. In order to participate in the meeting, interested parties should submit a request via the Copyright Office website.

DATES: The public meeting will take place on Thursday, June 2, 2011 from 9:00 am to 5:00 pm and Friday, June 3, 2011 from 9:00 am to 1:30 pm. Requests for participation must be received in the Office of the General Counsel of the Copyright Office no later than Monday, May 16, 2011 at 5:00 pm E.D.T.

ADDRESSES: The public meeting will take place in the Copyright Office Hearing Room, Room LM-408 of the Madison Building of the Library of Congress, 101 Independence Ave., SE, Washington, DC. The Copyright Office strongly prefers that requests for participation be submitted electronically. A public meeting page containing a request form is posted on the Copyright Office Website at <http://www.copyright.gov/docs/sound/>. Persons who are unable to submit a request electronically should contact Attorney-Advisor Chris Weston at 202-707-8380.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Chris Weston, Attorney-Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024.

Telephone: (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION:

Background

Congress has directed the U.S. Copyright Office to conduct a study on the desirability and means of bringing sound recordings fixed before February 15, 1972 under Federal jurisdiction.

Currently, such sound recordings are protected under a patchwork of state statutory and common laws from their date of creation until 2067. The legislation mandating this study states that it is to:

cover the effect of federal coverage on the preservation of such sound recordings, the effect on public access to those recordings, and the economic impact of federal coverage on rights holders. The study is also to examine the means for accomplishing such coverage.

H.R. 1105, Public Law 111–8 [Legislative Text and Explanatory Statement] 1769.

On November 3, 2010, the U.S. Copyright Office published a Notice of Inquiry seeking comments on the question of bringing pre-1972 sound recordings under Federal jurisdiction. 75 FR 67777 (November 3, 2010). The notice provided background as to why state law protection of pre-1972 sound recordings has not been preempted, unlike state law protection of other kinds of potentially copyrightable works. It also discussed the belief of some in the library and archives community that the absence of a Federal protection scheme for sound recordings has impeded the preservation and public availability of these recordings. In an attempt to understand the various effects that federalizing protection for pre-1972 sound recordings might have, the notice posed 30 specific questions to commenters regarding preservation and access, economic impact, term of protection, constitutional considerations, and other aspects of federalization.

The Copyright Office received 58 comments in response to its inquiry, along with 231 copies of a form letter. The Office subsequently received 17 reply comments. All comments, along with

the notice of inquiry, are available at <http://www.copyright.gov/docs/sound/>. The comments ran the gamut from general policy arguments to proposals for new legislative language and, as anticipated, illuminate a variety of experiences and perspectives. Some comments raised new legal questions, and others deepened the Office's understanding of the number and variety of pre-1972 sound recordings at issue. The Copyright Office is holding a public meeting in order to permit interested parties to present their views and discuss areas of agreement and disagreement through a roundtable discussion.

Requests for Participation

The Office has divided up the topics it wishes to discuss into nine sessions – five on June 2, 2011 and four on June 3, 2011 – and briefly describes them below. These descriptions only note the major issues for each session and do not necessarily list every subject appropriate for discussion.

Day 1, Session 1 – Assessing the Landscape: What are the legal and cultural difficulties – as well as benefits – attributable to state law protection of pre-1972 sound recordings?

Day 1, Session 2 – Availability of Pre-1972 Sound Recordings: What is the true extent of public availability of pre-1972 sound recordings? In relation to the overall availability of such recordings, how significant are rights-holder reissue programs and recent donations to the Library of Congress?

Day 1, Session 3 – Effects of Federalization on Preservation, Access, and Value: What benefits would federalization have with respect to preservation of and public access to pre-1972 sound recordings? Are those benefits quantifiable (i.e., in economic or cultural terms)? How would federalization affect the economic and cultural value of pre-1972 sound recordings? Are such effects quantifiable?

Day 1, Session 4 – Effects of Federalization on Ownership and Business Expectations: What effects would federalization have with respect to ownership status, publication status, contracts, termination rights, registration requirements, and other business aspects of pre-1972 sound

recordings? To what extent would these results depend on the manner in which federalization might be effected?

Day 1, Session 5 – Effects of Federalization on Statutory Licensing: As a matter of logic, policy, and law, should pre-1972 sound recordings be eligible for the section 114 statutory license? Can and should they be subject to the section 114 statutory license if they are not otherwise brought into the Federal statutory scheme?

Day 2, Session 1 – Term of Protection: Assuming that copyright protection for pre-1972 sound recordings is federalized, what are the best options for the term of protection of federalized pre-1972 sound recordings? Should pre-1923 recordings be considered separately? What about unpublished recordings? If federalized pre-1972 sound recordings are given shorter terms than they had under state law, should term extensions be offered as an incentive to rights-holders who make their recordings publicly available within a specified period of time?

Day 2, Session 2 – Constitutional Considerations: Is it appropriate to grant Federal copyright protection to works already created, fixed, and in some cases published? Are there circumstances under which federalization of pre-1972 sound recordings would effect a “taking” under the Fifth Amendment? If so, how could this be addressed in the legislation?

Day 2, Session 3 – Alternatives to Federalization: What alternatives to federalization, if any, should be considered and why?

Day 2, Session 4 – Summing Up: In light of this public meeting and of the comments received, please sum up your views on (1) whether pre-1972 sound recordings should be brought within the protection of federal copyright law and (2) in the case of federalization, what adaptations to existing law would be necessary or advisable.

Requests to participate should be submitted online at <http://www.copyright.gov/docs/sound/>. The online form asks for the requestor’s name, organization, title, postal mailing address, telephone number, fax number, and an e-mail address, although not all of the information is required. The

requestor should also indicate, in order of preference, the sessions in which the requestor wishes to participate. Depending upon the level of interest, the Copyright Office may not be able to seat every participant in every session he or she requests, so it is helpful to know which topics are most important to each participant. In addition, please note that while an organization may bring multiple representatives, only one person per organization may participate in a particular session. A different person from the same organization may, of course, participate in another session.

Requestors who have already submitted a comment, or who will be representing an organization that has submitted a comment, are asked to identify their comments on the request form. Requestors who have not submitted comments should include a brief summary of their views on the topics they wish to discuss, either directly on the request form or as an attachment. To meet accessibility standards, all attachments must be uploaded in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The name of the submitter and organization (if any) should appear on both the form and the face of any attachments.

Nonparticipants who wish to attend and observe the discussion should note that seating is limited and, for nonparticipants, will be available on a first come, first served basis.

Dated: May 4, 2011

Maria A. Pallante,
Acting Register of Copyrights.

[BILLING CODE: 1410-30-P]