

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

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

We support strong and effective copyright to protect the legitimate interests of creators. But we also believe that copyright should not be used to lock up our history.

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

U.S. law treats older recordings differently from other intellectual property. Because all pre-1972 recordings have been left under state law there are many restrictions on preservation and fair use. At present there is NO public domain for recordings in the U.S., no matter how old they are. No other country in the world does this. This was codified in the 2005 *Capitol v. Naxos* decision in New York. Since rights holders release very few historical recordings *no one* benefits, copyright owners or the public.

**Our Proposal:** First, pre-1972 sound recordings must be brought under federal law. This would accord them the same treatment as all other intellectual property, such as fair use and an eventual public domain, and would greatly benefit the public. It would also have benefits for rights holders, providing them with the protections and privileges of federal law for pre-1972 recordings. In all, we recommend five changes to federal copyright law:

1. Bring pre-1972 recordings under federal law. This has been recommended by the U.S. Copyright Office.
2. Legalize the use of “orphan” recordings, those for which no owner can be located. (“Orphan Works” legislation has repeatedly been considered by Congress, and is supported by many stakeholders.)
3. 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. (The AFM and AFTRA also support this idea.)
4. Update 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 has recommended such changes in its “Section 108 Report”).
5. 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.

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.

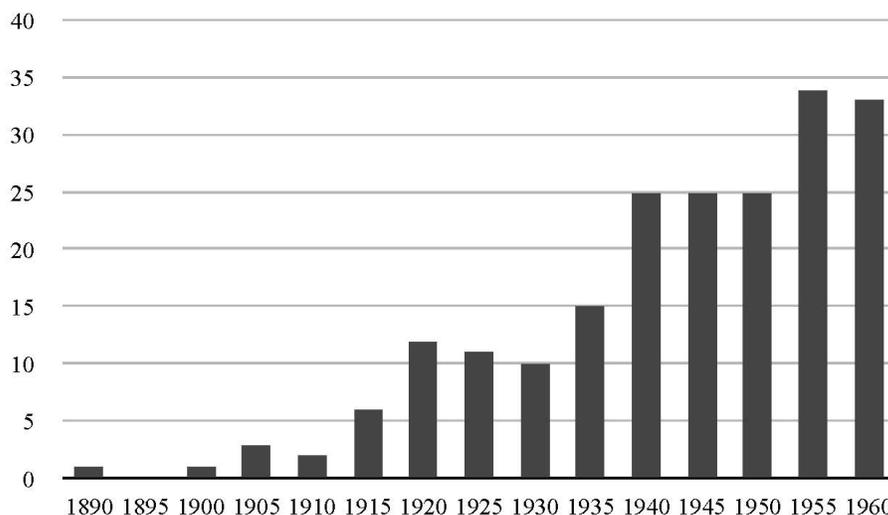
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For more information go to [www.recordingcopyright.org](http://www.recordingcopyright.org) and [www.arsc-audio.org](http://www.arsc-audio.org)  
Contact: Tim Brooks, Director HRCAP, at [brooks@recordingcopyright.org](mailto:brooks@recordingcopyright.org)

**Fact:** An average of only 10% of historic recordings made before 1955 have been made available by (or licensed by) rights holders. Moreover this figure is heavily skewed toward recent periods. Historic recordings from the 1930s, 1920s and earlier are rarely made available to the public by rights holders, nor can they legally be reissued by anyone else.

## Reissue Availability

(% Available from Rights Holder)



(Source: *Survey of Reissues of U.S. Recordings* by Tim Brooks, Council on Library and Information Resources and the Library of Congress, 2005.)

### 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>.