



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

The Historical Recording Coalition for Access and Preservation urges changes in U.S. copyright law to facilitate preservation of and public access to America's audio heritage, which stretches back to the late 19<sup>th</sup> century.

We support strong and effective copyright to protect the legitimate interests of creators and preserve jobs. 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, 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 is currently being studied by the U.S. Copyright Office, under a mandate included in H.R. 1105 (2009).

2. 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.

3. Legalize the use of “orphan” recordings, those for which no owner can be located. (Note: “Orphan Works” legislation has repeatedly been considered by Congress, and is supported by many stakeholders.)

4. 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. (Note: the AFM and AFTRA support this idea.)

5. Change copyright law to permit the use of current technology and best practices in the preservation of sound recordings by non-profit institutions. (Note: the Copyright Office has recommended such changes in its “Section 108 Report”).

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.

For more information go to [www.recordingcopyright.org](http://www.recordingcopyright.org).

Contact: Tim Brooks, Director, HRCAP, at [info@recordingcopyright.org](mailto:info@recordingcopyright.org)

*Members of the coalition:*

Association for Recorded Sound Collections

Music Library Association

Society for American Music

*In addition the following have formally endorsed some or all of our goals:*

American Library Association

Association of Moving Image Archivists

International Association of Jazz Record Collectors

Popular Culture Association

Society of American Archivists

**Fact:** An average of only 10% of historic recordings made before 1955 are available from (or licensed by) rights holders. Moreover this figure is heavily skewed toward more recent periods. Historic recordings from the 1930s, 1920s and earlier are rarely made available to the public by rights holders. (Source: *Survey of Reissues of U.S. Recordings*, Council on Library and Information Resources and the Library of Congress, 2005.)

## Reissue Availability

(% Available from Rights Holder)

