




The Music Modernization Act and Libraries: New Opportunities for Music Collections

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I am not a lawyer

Goals of session

1. Understand the basics of the Music Modernization Act (MMA)
2. Discuss how compulsory and blanket licensing affects libraries
3. Understand opportunities for libraries regarding pre-1972 sound recordings in our collections

Music Copyright Basics



Sound Recordings Can Have Two Copyrights



- The work represented on the sound recording ©
- The sound recording itself ®

Compulsory and Blanket Licenses



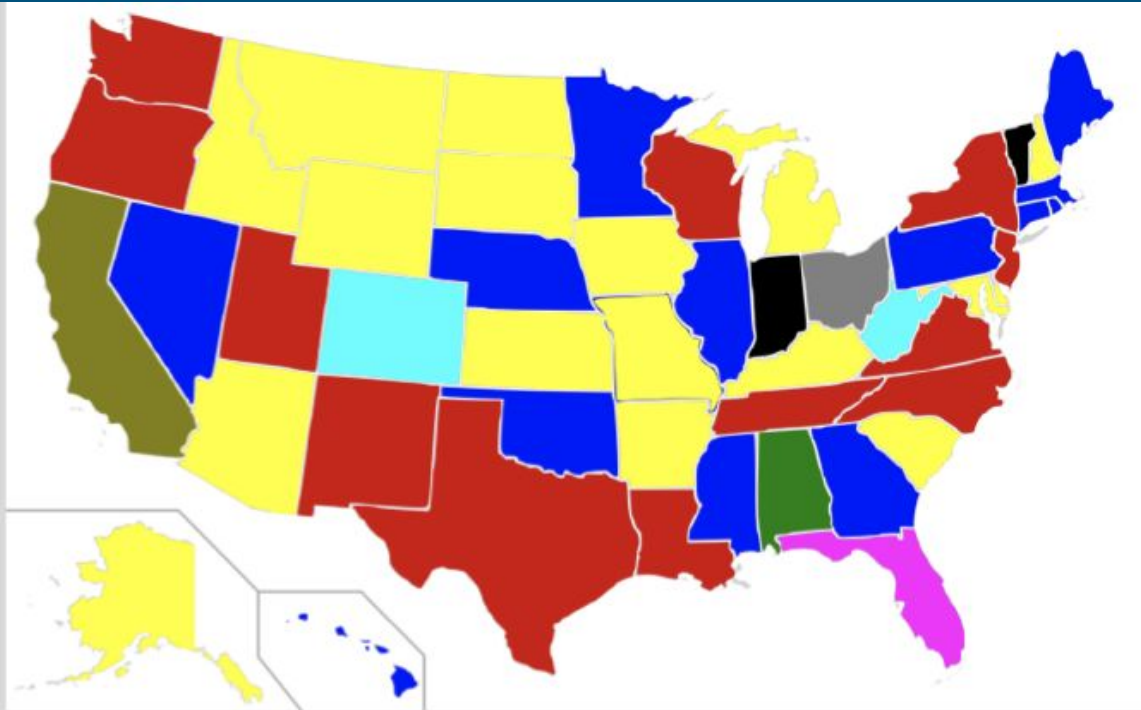
- Public performance blanket licenses
- Mechanical compulsory licenses

What was the
problem?



Music industry problems in 2018

1. Unfair royalty balance between publishers © and sound recording owners ℙ
2. Artists © and ℙ and weren't getting paid for streaming because of bad metadata
3. It was very hard to find © information for the mechanical licensing
4. No federal copyright protection for sound recordings before February 15, 1972



Patchwork of State Laws: Definitions of SR Ownership



American Music Research Center
UNIVERSITY OF COLORADO BOULDER

Disappearing Collections

Wax cylinders (1870s–1910s) - decay through use, time

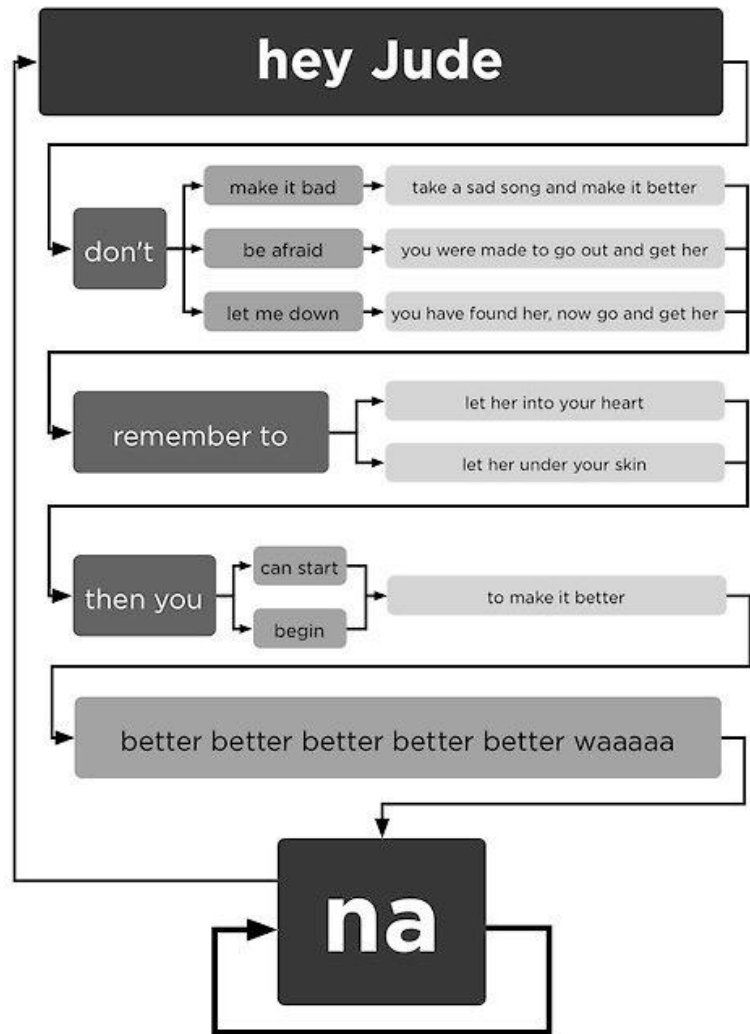
Shellac discs (1910–1950s) - falling apart

Magnetic tapes (1940s–present) - deterioration

Vinyl discs (1940s–present) - mold

Master recordings - Label negligence

What has changed?



Orrin G. Hatch–Bob Goodlatte
Music Modernization Act (MMA)

Enacted October 11, 2018

MMA Has Three Parts

Title I – Musical Works Modernization Act (MWMA)

Title II – Classics Protection and Access Act (CPAA)

Title III – Allocation for Music Producers Act (AMP)

Musical Works Modernization Act (MWMA)

The Mechanical Licensing Collective (MLC)

- Administers compulsory and blanket licenses for music
- Public database
- Collects and pays out royalties to songwriters, composers, lyricists, and music publishers
- Only manages © for non-dramatic works, not ®

Ready to sign up as a DMP?

- Extensive data tracking required
- Administrative fees of at least \$5000; dependent on available number of unique sound recordings
- We're still not sure if libraries qualify

Classics Protection and Access Act (CPAA)

CLASSICS Act



ACCESS Act



Classics (CPAA)

For pre-1972 sound recordings ©:

- Federal copyright protection
- Public domain schedule
- “Orphan Works” provision
- Access to federal copyright exceptions

Federal Copyright for Pre-1972 Sound Recordings

- Law treats as if they were under copyright, for the purpose of suing and damages
- Retains copyright exceptions for public performance of sound recordings
- Does cover public performance of digital audio transmissions ([Title 17 Sec 106\(6\)](#))

Sound Recordings and the Public Domain

- Sound recordings first published
 - a. Pre-1923 entered public domain Jan. 1, 2022
 - b. 1923–46 have a 100-year term from publication*
 - c. 1947–56 have a 110-year term from publication
 - d. 1957–1972 have protections until 2067
- All protection ends February 15, 2067 (including *unpublished* recordings)



*Terms are described in the law as 95 years, plus an addition term. So 1923–1946 recordings receive 95+5 years. 17 USC 1401(a)(2)(B).

“Orphan Works” Provision

- Not an infringement to make a noncommercial use of a pre-1972 sound recording (published OR unpublished)
- CONDITIONS:
 - You conduct a reasonable search:
<https://www.copyright.gov/rulemaking/pre1972-soundrecordings-noncommercial/>
 - You provide notice to the Copyright Office of your intended use
 - The copyright owner does not object within 90 days of that notification
 - Filing fee for every work

“Orphan Works” Provision (cont.)



- No one has used this in almost 5 years
- Copyright Office’s Notice of Noncommercial Uses Database still unpublished

Section 108(h)

- **All** pre-1972 sound recordings considered to be in their last 20 years of copyright for the purpose of 108(h) exceptions (published or unpublished!)
- Libraries and archives can “reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of the work or portions of the work”*
- ...**If** the recording cannot be found for a fair price after a “reasonable search” and is not being “commercially exploited”
- Even commercial uses!

* US Copyright Office, “Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price” (1998), <https://www.copyright.gov/docs/nla.html>

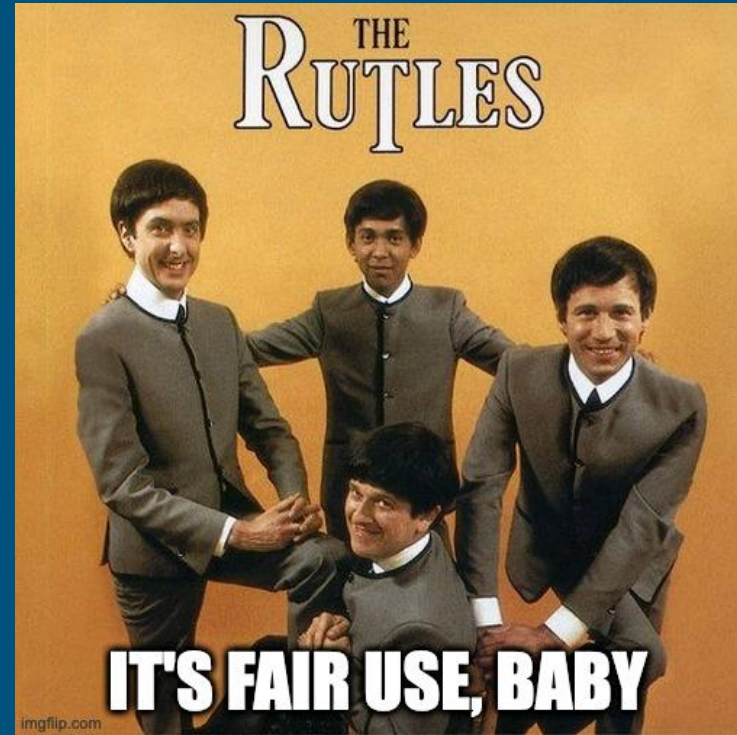
Section 108(h) cont'd

“For most classes of works, Sec. 108(h) applies only to published works. **In the case of pre-1972 recordings**, because of the way the statute was worded, it is clear that the new rule of construction means that **Sec. 108(h) applies regardless of publication status**. Because of this, Sec. 108(h) may now prove especially useful to libraries and archives with extensive collections of unpublished recordings, such as archival recital or ethnographic recordings.”

–Eric Harbeson (2021), “The Orrin Hatch–Bob Goodlatte Music Modernization Act: A Guide for Sound Recordings Collectors,” 30

Section 107: Fair Use

- Course reserves
- Exhibits
- Digitization
- Accessibility



AMP : Allocations for Music Producers

Applies to SoundExchange blanket licenses for digital transmission of audio recordings via non-interactive services

50% to sound recording rights holders

45% to featured artists

2.5% non featured instrumentalists

2.5% non featured singers

0%: Producers*

**Codifies the ability for a letter of intent directing SoundExchange to directly pay Producers as a featured artist*

Conclusion

- Our users are making music and they have questions!
- New opportunities to re-examine our preservation and access of highly at-risk media
- We can ensure access to the creative history of a more diverse set of creative voices

References

Orrin G. Hatch – Bob Goodlatte Music Modernization Act, H.R. 1551, Pub. L. 115-264 (2018) <https://www.congress.gov/115/plaws/publ264/PLAW-115publ264.pdf>

Eric Harbeson (2021), “The Orrin Hatch–Bob Goodlatte Music Modernization Act: A Guide for Sound Recordings Collectors,” [go.usa.gov/x6q7B](https://www.go.usa.gov/x6q7B)

Eric Harbeson (2019), “Copyright and the Music Modernization Act,” *Archival Outlook* (March/April), 7

Kyra Folk-Farber (2020), “The Music Modernization Act and its Impact on Access to Sound Recordings,” *ARSC Journal*, 51(1), 37-41

Questions?

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A version of this presentation was done with Kathleen DeLaurenti at ALA Chicago, 2023

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