

Comment from Robert C. Lancefield (Ph.D., Ethnomusicology)

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To the Office of the General Counsel, Copyright Office, Library of Congress

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

Sound recordings fixed before February 15, 1972 categorically should be brought under Federal copyright protection. The likely effect of this upon both preservation and public access would be hugely beneficial to research, scholarship, knowledge-sharing, teaching, and learning. These good effects would be broadly felt, but I will limit my comments here to an area to which I can speak most meaningfully from experience: the value of a public domain in regard to educational access. This goes directly to questions 22 and 29 as published in the *Federal Register* (75 Fed. Reg. 67777):

22. Currently, States are permitted to protect pre-1972 sound recordings until February 15, 2067. If these recordings were incorporated into Federal copyright law and the ordinary statutory terms applied, then all works fixed prior to 1923 would immediately go into the public domain. Most pre-1972 sound recordings, including all published, commercial recordings, would experience a shorter term of protection. ... [and:]

29. To the extent not addressed in response to... [question 28], to what extent are people currently refraining from making use, commercial or noncommercial, of pre-1972 sound recordings in view of the current status of protection under State law; and if so, in what way? ...

My scholarly work draws heavily upon sound recordings commercially published from the late 19th century until circa 1930. For reasons arising from the unduly burdened copyright status of early recordings, this research has been served most effectively by physically collecting original phonograph recordings in cylinder and disk formats. For years, I have wished to make freely available on the Web a selection of these recordings with musical analysis, cultural interpretation, and images from contemporary print media, with most such images already being in the public domain. Many of these recordings should by rights be in the public domain as well, but none yet are. This needless barrier prevents scholars from offering educational access to collections of audio sources. The current hodgepodge of State law protections for pre-1972 sound recordings, and those recordings' unjustifiable inability to rise into the public domain after a reasonable time, does worse than impede or cripple our ability to share our findings accompanied by an optimal depth of supporting source material. In practice, it often blocks the academic sharing of sources in ways that could offer the best grounding for a study's interpretations; the best sense of key historical, aural contexts for those sources; the best platform from which other scholars might assess, recontextualize, reinterpret, and teach from those sources; and the richest means by which students and the public could explore and learn from documents of our musical past.

A public domain into which sound recordings fixed prior to 1923 would rightly rise, and into which those fixed after 1923 could rise based on their individual histories of registration and renewal, would enable a wealth of source sharing, comparison, aggregation, and re-evaluation; knowledge exchange; and widespread learning, via tremendously enhanced access to our sonic heritage.

As a complement to this scholarly case, I should note that I also am a composer and musician. In those capacities as well, I strongly advocate enabling recorded performances of musical works to rise into the public domain after a reasonable, but not excessive, period of copyright protection.

Respectfully submitted,
Robert C. Lancefield