

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2916.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in text, is Oct. 28, 1998. See Effective Date note set out under section 1301 of this title.

CHAPTER 14—UNAUTHORIZED USE OF PRE-1972 SOUND RECORDINGS

Sec.

1401. Unauthorized use of pre-1972 sound recordings.

§ 1401. Unauthorized use of pre-1972 sound recordings

(a) IN GENERAL.—

(1) UNAUTHORIZED ACTS.—Anyone who, on or before the last day of the applicable transition period under paragraph (2), and without the consent of the rights owner, engages in covered activity with respect to a sound recording fixed before February 15, 1972, shall be subject to the remedies provided in sections 502 through 505 and 1203 to the same extent as an infringer of copyright or a person that engages in unauthorized activity under chapter 12.

(2) TERM OF PROHIBITION.—

(A) IN GENERAL.—The prohibition under paragraph (1)—

(i) subject to clause (ii), shall apply to a sound recording described in that paragraph—

(I) through December 31 of the year that is 95 years after the year of first publication; and

(II) for a further transition period as prescribed under subparagraph (B) of this paragraph; and

(ii) shall not apply to any sound recording after February 15, 2067.

(B) TRANSITION PERIODS.—

(i) PRE-1923 RECORDINGS.—In the case of a sound recording first published before January 1, 1923, the transition period described in subparagraph (A)(i)(II) shall end on December 31 of the year that is 3 years after the date of enactment of this section.

(ii) 1923-1946 RECORDINGS.—In the case of a sound recording first published during the period beginning on January 1, 1923, and ending on December 31, 1946, the transition period described in subparagraph (A)(i)(II) shall end on the date that is 5 years after the last day of the period described in subparagraph (A)(i)(I).

(iii) 1947-1956 RECORDINGS.—In the case of a sound recording first published during the period beginning on January 1, 1947, and ending on December 31, 1956, the transition period described in subparagraph (A)(i)(II) shall end on the date that is 15 years after the last day of the period described in subparagraph (A)(i)(I).

(iv) POST-1956 RECORDINGS.—In the case of a sound recording fixed before February 15, 1972, that is not described in clause (i), (ii), or (iii), the transition period described in subparagraph (A)(i)(II) shall end on February 15, 2067.

(3) RULE OF CONSTRUCTION.—For the purposes of this subsection, the term “anyone” includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in the official capacity of the officer or employee, as applicable.

(b) CERTAIN AUTHORIZED TRANSMISSIONS AND REPRODUCTIONS.—A public performance by means of a digital audio transmission of a sound recording fixed before February 15, 1972, or a reproduction in an ephemeral phonorecord or copy of a sound recording fixed before February 15, 1972, shall, for purposes of subsection (a), be considered to be authorized and made with the consent of the rights owner if—

(1) the transmission or reproduction would satisfy the requirements for statutory licensing under section 112(e)(1) or section 114(d)(2), or would be exempt under section 114(d)(1), as the case may be, if the sound recording were fixed on or after February 15, 1972; and

(2) the transmitting entity pays the statutory royalty for the transmission or reproduction pursuant to the rates and terms adopted under sections 112(e) and 114(f), and complies with other obligations, in the same manner as required by regulations adopted by the Copyright Royalty Judges under sections 112(e) and 114(f) for sound recordings that are fixed on or after February 15, 1972, except in the case of a transmission that would be exempt under section 114(d)(1).

(c) CERTAIN NONCOMMERCIAL USES OF SOUND RECORDINGS THAT ARE NOT BEING COMMERCIALY EXPLOITED.—

(1) IN GENERAL.—Noncommercial use of a sound recording fixed before February 15, 1972, that is not being commercially exploited by or under the authority of the rights owner shall not violate subsection (a) if—

(A) the person engaging in the noncommercial use, in order to determine whether the sound recording is being commercially exploited by or under the authority of the rights owner, makes a good faith, reasonable search for, but does not find, the sound recording—

(i) in the records of schedules filed in the Copyright Office as described in subsection (f)(5)(A); and

(ii) on services offering a comprehensive set of sound recordings for sale or streaming;

(B) the person engaging in the noncommercial use files a notice identifying the sound recording and the nature of the use in the Copyright Office in accordance with the regulations issued under paragraph (3)(B); and

(C) during the 90-day period beginning on the date on which the notice described in subparagraph (B) is indexed into the public records of the Copyright Office, the rights owner of the sound recording does not, in its discretion, opt out of the noncommercial use by filing notice thereof in the Copyright Office in accordance with the regulations issued under paragraph (5).

(2) RULES OF CONSTRUCTION.—For purposes of this subsection—