

Compulsory License for Making and Distributing Phonorecords

Section 115 of the Copyright Act provides a compulsory license to make and distribute phonorecords once a phonorecord of a work has been distributed to the public in the United States under authority of the copyright owner, subject to certain terms and conditions of use. Such a license includes the right of the compulsory licensee to make and distribute, or to authorize the making and distribution of, a phonorecord of a nondramatic musical work by means of a digital transmission, which constitutes a digital phonorecord delivery. The Copyright Office's regulations set out in detail the procedures that must be followed to operate under a compulsory license. See www.copyright.gov/title37/201/37cfr201-18.html and www.copyright.gov/title37/201/37cfr201-19.html.

Frequently Asked Questions

The Licensing Division often receives questions about the following points regarding the section 115 compulsory license.

What Is a Phonorecord?

The statute defines phonorecords as “material objects in which sounds, *other than those accompanying a motion picture or other audiovisual work*, are fixed.” (See www.copyright.gov/title17/92chap1.html#101.) Since the compulsory license applies only to the making and distributing of phonorecords, and soundtracks are not phonorecords, the compulsory license is not available to those who want to record a soundtrack.

What Is a Digital Phonorecord Delivery?

The term *digital phonorecord delivery*, or DPD, is defined, in part, as each individual delivery of a phonorecord by digital transmission of a sound recording that results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording. A digital phonorecord delivery includes all phonorecords that are made for the purpose of making the digital phonorecord delivery. (See section 115(d) of title 17 of the *U.S. Code* and section 201.19(a)(3) of title 17 of the *Code of Federal Regulations*.)

Must One Use a Compulsory License?

No. Anyone wishing to make and distribute phonorecords of a nondramatic musical work can negotiate directly with the copyright owner or his or her agent. But if the copyright owner is unwilling to negotiate, or if the copyright

owner cannot be contacted, the person intending to record the work or make a DPD can use the compulsory licensing provisions of the copyright law.

When Can One Obtain a Compulsory License?

A compulsory license is available to anyone as soon as “phonorecords of a nondramatic musical work have been distributed to the public in the *United States and its territories* under the authority of the copyright owner.”

NOTE: For the purpose of computing royalties, a phonorecord will generally be considered “voluntarily distributed” if the compulsory licensee has voluntarily and permanently parted with possession of the phonorecord. A digital phonorecord delivery will be treated as having been voluntarily distributed and relinquished from possession, and a compulsory licensee will be treated as having permanently parted with possession of a digital phonorecord delivery, on the date the phonorecord is digitally transmitted.

Does a Compulsory License Also Cover Making and Reproducing a Sound Recording?

No. Section 115 does not cover sound recordings. Rather, it covers the reproduction and distribution of musical compositions. It is important to note that there are two separate components of a musical work: the musical composition and the sound recording. A musical composition consists of music, including any accompanying words. The author of a musical composition is generally the composer and the lyricist, if there are lyrics. A musical composition can be in the form of a notated copy (for example, sheet music); a phonorecord (for example, cassette tape, LP, or CD); or a DPD. A sound recording, on the other hand, results from the fixation of a series of musical, spoken, or other sounds. The author of a sound recording is the performer(s) whose performance is fixed, the record producer who processes the sounds and fixes them in the final recording, or both. Copyright in a sound recording is not the same as, or a substitute for, copyright in the underlying musical composition. A separate license must be obtained from the copyright owner of the sound recording before a musical work can be used.

Under What Conditions Can One Obtain a Compulsory License?

A compulsory license can be obtained only if the primary purpose in making the phonorecords is to *distribute them to the public for private use*. It is not available for phonorecords intended for use in background music systems, jukeboxes, broadcasting, or any other public use.

Can One Make a New Arrangement of the Copyrighted Musical Work for the Recording?

Yes. The compulsory license includes the privilege of making a musical arrangement of the work to the “extent necessary to conform it to the style or manner of interpretation of the performance involved.” However, section 115 also provides that the arrangement “shall not change the basic melody or fundamental character of the work, and shall not be subject to protection as a derivative work . . . except with the express consent of the copyright owner.”

Steps to Obtain a Compulsory License

The first step is to identify the copyright owner of the non-dramatic musical work. This can be done by either personally searching the records of the Copyright Office or asking the Copyright Office to conduct a search. For details about searching Copyright Office files, see Circular 22, *How to Investigate the Copyright Status of a Work*, and Circular 75, *The Licensing Division of the Copyright Office*. These circulars are available on the Copyright Office website at www.copyright.gov.

The second step in obtaining a compulsory license depends on the findings of the search for a copyright owner.

If the Name and Address of the Copyright Owner Are Known

- 1 Before or within 30 days of making, and before distributing, any phonorecords of the work, serve a Notice of Intention to Obtain a Compulsory License on the copyright owner or authorized agent of the owner. There is no need to file a copy of the notice in the Copyright Office.

NOTE: A notice of intention can designate any number of nondramatic musical works, provided that the copyright owner of each designated work is the same or, in the case of any work having more than one copyright owner, any one of the copyright owners is the same and provided that certain other information required in the notice does not vary. (See section 201.18 of title 37 of the *Code of Federal Regulations* at www.copyright.gov/title37/201/37cfr201-18.html for more information and regulations.)

- 2 Make royalty payments, accompanied by a monthly statement of account, to the copyright owner or authorized agent of the owner on or before the 20th day of each month for every phonorecord made and distributed in accordance with the license.

- File with the copyright owner or authorized agent of the owner a detailed annual statement of account, certified by a certified public accountant.

If the Owner Is No Longer at the Address or Refuses to Accept Delivery

If the Notice of Intention to Obtain a Compulsory License is sent by mail or reputable courier service to the last address for the copyright owner shown in the records of the Copyright Office, or to an updated address otherwise identified, and the notice is returned to the sender because the copyright owner is no longer located at the address or has refused to accept delivery, file the original notice as sent in the Licensing Division of the Copyright Office (see address at the end of this circular). Include a brief statement specifying that the notice was sent to the last address identified for the copyright owner but was returned; appropriate evidence that it was mailed to that address may be submitted. No filing fee is required for notices filed under these circumstances. (See section 201.18 of title 37 of the *Code of Federal Regulations* at www.copyright.gov/title37/201/37cfr201-18.html for more information and regulations.)

The Licensing Division will acknowledge receipt of the filing.

If the Name and Address of the Copyright Owner Are Not Known

- File a Notice of Intention to Obtain a Compulsory License in the Licensing Division of the Copyright Office (see the address at the end of this circular).
- Submit the statutory filing fee for each title listed in the notice in a single payment. (See Circular SL 4L, *Copyright Office Licensing Division Service Fees*, available on the Copyright Office website.) The Licensing Division will acknowledge receipt of the filing. However, if certification of a document is required, see Circular 6, *Obtaining Access to and Copies of Copyright Office Records and Deposits*, for information and associated fees.
- Make checks payable to *Register of Copyrights* or authorize deduction from a deposit account for the filing fee. (See Circular 5, *How to Open and Maintain a Copyright Office Deposit Account*.)

IMPORTANT: The name and address of the copyright owner may be known or appear in the records of the Copyright Office at a later time. Since royalty payments must be made after the copyright owner is identified, the licensee should periodically search these records to ascertain if the copyright owner has been identified. *If* and *after* the copyright owner is identified, the licensee should make royalty payments for phonorecords

made and distributed directly to the copyright owner or authorized agent of the owner. Do not send royalty payments to the Copyright Office.

The Copyright Office does not provide forms for the Notice of Intention to Obtain a Compulsory License, the monthly statement of account, or the annual statement of account. For detailed instructions about the content of the notice of intention and statements of accounts, see sections 201.18 and 201.19 of title 37 of the *Code of Federal Regulations* at www.copyright.gov/title37/201/37cfr201-18.html and www.copyright.gov/title37/201/37cfr201-19.html, or contact the Licensing Division of the Copyright Office:

*Library of Congress
Copyright Office
Licensing Division
101 Independence Avenue SE
Washington, DC 20557-6400*

TEL: (202) 707-8150

FAX: (202) 707-0905

EMAIL: licensing@loc.gov

WEB: www.copyright.gov/licensing

What Are the Current Royalty Rates for Using the Compulsory License?

For current copyright royalty rates under the compulsory license for making and distributing phonorecords, see *Mechanical Copyright Royalty Rates* at www.copyright.gov/licensing/m200a.pdf or contact the Licensing Division of the Copyright Office.

Rate-Setting Proceedings

The Copyright Royalty Board, created under the Copyright Royalty and Distribution Reform Act of 2004, sets the rates and terms for use of the compulsory licenses in accordance with copyright law. For information about rate setting, write to the Copyright Royalty Board at P.O. Box 70977, Washington, DC 20024-0977; call (202) 707-7658; or visit www.loc.gov/crb.

Contact Us

The Licensing Division is in the James Madison Memorial Building of the Library of Congress, located on Capitol Hill

between First and Second Streets, SE, Washington, D.C.
Please address all correspondence to the division to

*Library of Congress
Copyright Office-LD
101 Independence Avenue SE
Washington, DC 20557-6400*

TEL: (202) 707-8150

FAX: (202) 707-0905

EMAIL: licensing@loc.gov

WEB: www.copyright.gov/licensing

Licensing Division staff members are available to answer questions between 8:30 AM and 5:00 PM, eastern time, Monday through Friday, except federal holidays.