FAIR USE AND SOUND RECORDINGS

How one has impact on the other

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OVERVIEW OF COPYRIGHT FOR SOUND RECORDINGS

- Post 1972 federal copyright protection
- Pre 1972 state by state copyright protection
- Essentially no public domain (except for U.S. Government owned and/or produced)
- Historical recordings ca. 1900
- Musical rights versus recordings rights (etc.)
- U.S. copyright law and other countries
- Who owns the copyright for a recording?
- Change is on the way
FAIR USE (AND RECORDED SOUND)

Judgment call – not black and white

Start with why and for what purpose is the recording being used

Permission, because of Fair use, is not always necessary

Responsibility is on the user

Rules of thumb do not apply (legally).

“Fifth Factor” -- transformative
COMMON APPLICATIONS OF FAIR USE AND SOUND RECORDINGS

- Classroom instruction
- Class assignments (analysis, reports, papers etc.)
- Academic presentations
- Research analysis
- Pre-concert lectures
- Exhibits
- Etc.
YALE’S MUSIC LIBRARY/HSR AND FAIR USE

- Digital collections
- Secured rights: Grammy examples
- Low risk (older recordings) e.g. UCSB cylinders
- Patron requests (pre-existing copies and no copies)
- Reproduction form
- Exhibits
There is a legal distinction between a sound recording and the soundtrack for a motion picture or other audiovisual work. The Copyright Act states that “sounds accompanying a motion picture or audiovisual work” are not sound recordings. These types of sounds are considered part of the motion picture or audiovisual work. Common examples of works that do not qualify as sound recordings include: • The soundtrack for a cartoon, documentary, or major motion picture. • The soundtrack for an online video, music video, or concert video. • A musical performance during a scene or during the credits for a motion picture (Circular 56: Copyright Registration for Sound Recordings)
THE MUSIC MODERNIZATION ACT
(INCLUDING THE CLASSICS ACT)

- Best practices prior to the Music Modernization Act
- Digital public performance of pre 1972 recordings
- Free public database
- Phased entry into the public domain
- Federal copyright exceptions to all sound recordings
- Impact on preservation
Rights Information (Great 78s Project)

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FAIR USE AND INTERNET ARCHIVES
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