



April 30, 2018

The Honorable Chuck Grassley  
Chairman, Committee on the Judiciary  
U.S. Senate

The Honorable Dianne Feinstein  
Ranking Member, Committee on the Judiciary  
U.S. Senate

Re: The CLASSICS Act, S. 2393

Dear Chairman Grassley and Ranking Member Feinstein:

The Library Copyright Alliance (“LCA”) consists of three major U.S. library associations: the American Library Association, the Association of College and Research Libraries, and the Association of Research Libraries. These associations represent over 100,000 libraries in the United States employing more than 350,000 librarians and other personnel. An estimated 200 million Americans use these libraries over two billion times each year. These libraries spend over \$4 billion annually acquiring books and other copyrighted material.

We have carefully reviewed the CLASSICS Act, S. 2393, which provides remedies for the digital performance of sound recordings fixed before 1972. We appreciate the limitations on remedies included in the bill, particularly the application of the limitations described in section 107, and 108, and 512 to claims for unauthorized performances of pre-1972 sound recordings.

However, we have two serious concerns with the bill. One of these concerns was completely addressed in the version of CLASSICS Act passed by the House last week as Title II of H.R. 5447. The other was only partially addressed in the House-passed version. We hope that the Senate Judiciary Committee resolves both of these issues completely as it considers this legislation.

First, S. 2393 should apply the limitations described in sections 110(1) and (2) to claims for unauthorized performances of pre-1972 sound recordings. Educational institutions currently rely on these limitations, as well as fair use under section 107, when they

stream post-1972 sound recordings to classrooms and remote locations. The bill should not provide pre-1972 sound recordings with more protection than post-1972 sound recordings, especially in the educational context. We raised this issue with the House Judiciary Committee, and it included sections 110(1) and (2) in the list of exceptions when it reported out the CLASSICS Act.

Second, the bill should create a 95-year term for the protection it creates. Under current law, a musical composition published before 1923 is in the public domain, while a musical composition published between 1923 and 1977 receives a 95-year term of protection. In contrast, S. 2393 would provide a sound recording fixed in 1910 or 1930 with protection until 2067.

The House Judiciary Committee partially responded to this concern, excluding from protection pre-1923 sound recordings. However, the House-passed bill did not include a 95-year term for sound recordings fixed between 1923 and 1972. Thus, a sound recording fixed in 1930 would receive protection until 2067—a term lasting 137 years after fixation.

The collections of U.S. libraries contain thousands of sound recordings fixed between 1923 and 1972. The vast majority of these—certainly those fixed before 1950—have little commercial value. But they often are rare, or even unique, and accordingly have significant cultural and historical value. Under the House-passed bill, a library would not be able to stream these sound recordings to researchers and other users until 2067, unless the library concluded that such streaming would constitute fair use. Smaller libraries without ready access to legal counsel would be particularly hesitant to rely on fair use to stream these older sound recordings.

Extending CLASSICS protection to these sound recordings for such a long term would interfere with the dissemination of a large body of cultural artifacts while providing compensation to the estates of a handful of artists. Few, if any, of the still-popular recording artists from the 1930s and 1940s are still alive. The CLASSICS Act should be amended to provide pre-1972 sound recordings with protection for 95 years from fixation, thereby bringing their term into parity with other works published before 1978.

We look forward to working with the Committee on this legislation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Band'.

Jonathan Band  
LCA Counsel  
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