



PPL GUIDANCE NOTE ON REMASTERS

(This Guidance Note is for general reference purposes only and is not a substitute for obtaining independent legal advice. PPL is not able to advise on whether any specific instance of remastering will give rise to a new sound recording copyright, or to provide a definitive statement of the law.)

About this Guidance Note

Some of PPL's recording rightsholders members remaster their sound recordings. In certain circumstances, a remastered recording may be protected by copyright separately from the original (un-remastered) recording.

PPL has developed this Guidance Note to assist recording rightsholders when they are deciding whether or not they should register a remaster with PPL as a separate recording. It is also designed to help performers understand when they will be eligible to receive payments from PPL in respect of remasters.

The Guidance Note sets out PPL's views, based on external legal advice, and explains the approach that PPL is adopting. It deals with the position in the UK and is not designed to deal with how remastering would be treated under the copyright laws of other countries. PPL will keep this Guidance Note under review and will update it periodically.

1. When will a remaster attract a new sound recording copyright?

Under the Copyright, Designs and Patents Act 1988, a sound recording (unlike some other types of copyright work) does not have to meet a test of "originality" (traditionally assessed by reference to the skill, labour and judgment exercised in creating the work, or in some cases whether the work is "the author's own intellectual creation") in order to be protected by copyright.

However, the law states that a sound recording is not protected by copyright to the extent that it is a copy of a previous sound recording.

Accordingly, a new sound recording created by remastering would be protected by a new sound recording copyright except to the extent that it is not a copy of the previous (unremastered) sound recording.

PPL's view is that, for a new copyright to arise in the remastered sound recording, it must be audibly different from the previous recording, as a result of the steps undertaken in the course of the remastering process.

It is also important to note that, regardless of whether a new copyright arises in the remastered sound recording, the act of remastering the recording and any subsequent acts in respect of the remastered recording (such as making and issuing copies to the public) may infringe copyright in the original recording if the original recording is protected by copyright and the permission of the relevant rightsholder(s) in respect of the original recording has not been obtained.

2. What factors are relevant when applying the "audible difference" test?

There must be an audible difference between the original recording and the remastered recording. PPL's view is that the following factors should be considered:

- (1) Mere removal of sounds is unlikely to lead to a new sound recording copyright (especially if the sounds were not actually recorded in the original recording process but instead appear on the recording due to other aspects of the recording process).
 - For example, it is very unlikely that there is a new sound recording copyright where the remaster is merely a “cleaned remaster” (that is, the only audible difference is that the “pops” and “clicks” caused by imperfections in the recording medium, or “hiss” and “hum” caused by electrical interference, have been removed). This type of audible difference is insufficient because the remaining sounds are merely a copy of the previous sound recording and there is no “new” element.
 - Similarly, mere removal of sounds actually captured in the original recording process is unlikely to lead to a new copyright, as the sounds that remain are the same as (and therefore a copy of) the original recording.
- (2) In contrast, sounds that are “treated” in some way during the remastering process, such as by altering tone or volume, would be likely to lead to a new copyright in the remaster.
- (3) Whilst the exercise of skill, labour and judgment, or whether the work is “the author’s own intellectual creation”, are not the relevant legal tests for the existence of copyright in sound recordings, they may help to evidence an audible difference (e.g. by explaining how the audible difference has come about).
- (4) Even where there is an audible difference, a new sound recording copyright will only protect those parts of a remaster that actually are “new”. This is again because of the legal principle that copyright does not protect a sound recording to the extent that it is a copy of a previous sound recording. So for example, if the sole audible difference is in the chorus, due to the application of a multiband equalizer or multiband compressor to that part of the recording only, it is only that part of the recording that is protected by the new copyright.

Note: Due to the nature of the remastering process, it is unlikely that there will be many instances of audible differences being present only in one part of a recording. Under PPL’s Distribution Rules, PPL applies a presumption that any use of a remaster under a PPL licence involves the use of the “new” part of that recording, for the purpose of attributing PPL’s licensing revenue (including payments to performers). However, this is only a presumption and can be reviewed by PPL upon actual notice that the position is different or upon a challenge from a member.

3. Which technical steps commonly forming part of the remastering process are likely to give rise to a new sound recording copyright in the remaster?

Whether there is a sufficient “audible difference” will ultimately be a question of fact in each case, as there will be all sorts of permutations of the remastering processes undertaken in respect of different recordings. However, by way of general guidance, PPL’s view is as follows:

(1) *Steps which are merely part of the “copying” process*

The following steps are unlikely to attract a new sound recording copyright as they can be characterised as being steps in the process of making a “copy” (which, as a matter of law, cannot in itself attract a new copyright):

- Selecting the source material;
- Calibrating the playback machine (and aligning the playback head to the recording head);
- Transfer from analogue tape to digital using the playback machine.

(2) **Steps which are merely the removal of sound**

The following steps are unlikely to attract a new sound recording copyright as they remove rather than alter the sound present in the sound recording:

- Removing e.g. pops, crackles and clicks (from the original recording medium);
- Removing e.g. “hum” or “hiss” which may be caused by electrical interference; □
Correcting errors where the original recording head was out of alignment;
- Removing excessive prominence of sibilant consonants such as “s” “z” and “sh” which could be present for technical reasons or because of a singer’s own voice (unless this involves altering the quality of the sound, rather than merely removing sound).

These steps are very unlikely to attract a new copyright when the sounds removed are not part of the sounds actually recorded in the original recording process.

The same analysis applies whether these steps are undertaken using an automated process or carried out in a targeted manner.

(3) **Steps involving the treatment of sound**

The following steps are likely to attract a new sound recording copyright:

- Adding “ambience” between movements;
- Altering the left/right balance;
- Converting from mono to stereo (or *vice versa*);
- Equalizing to change the volume of different instruments by changing the mix of different original tracks;
- Equalizing to change the volume of different instruments by manipulating the volume of specific frequencies of sound;
- Compression (or similar techniques) to alter the dynamic range (by bringing up the volume of quieter parts and bringing down the volume of louder parts).

4. As a PPL recording rightsholder member, what should I do if I have remastered my recording and consider that it is protected by a new sound recording copyright?

It is for each rightsholder to determine (having considered the relevant test) whether or not they consider that their remaster attracts a new copyright and, as such, is a recording which they should register with PPL. If you think this applies to your remaster, you should register this recording with PPL in the usual way:

- If registering your repertoire via RegRep then please tick the “remaster” box to indicate to PPL that the recording is a remaster. Please see page 20 of the Register Repertoire user guide, available via myPPL.
- If registering your repertoire via a bulk upload format, please complete the relevant fields of the submission file.

Note: As with any other recording, when a PPL recording rightsholder member registers a remastered recording with PPL with that member listed as rightsholder, the member is asserting that copyright exists in that recording and that they own or control it. As with all registrations of repertoire, PPL will presume such assertion is correct. However, this is only a presumption and can be reviewed by PPL upon actual notice that the position is different or upon a challenge from a member.

5. As a PPL performer member, do I have a right to receive royalties from PPL in respect of remasters?

PPL considers that, where a remaster acquires new copyright protection, performers who have given qualifying performances on that remaster will have a right to receive equitable remuneration (under s.182D CDPA) when such remasters are broadcast or played in public.

This right applies in respect of the copyright period for the remaster (rather than being limited to the period of copyright protection for the original sound recording).

As a performer, you should therefore claim for your performance on the remaster in the usual way, which you can read about in the “How do I make a claim against a recording on which I performed” FAQ on the PPL website.

Note: In practice, if a performer can provide evidence that their performance was incorporated in an original recording, and that a particular other recording is a remaster of that original recording, PPL will apply a presumption that the performance on the original sound recording is also on the remaster of that recording. As noted above, PPL also applies a presumption that any use of a remaster under a PPL licence involves the use of the “new” part of that recording, for the purpose of attributing PPL’s licensing revenue (including payments to performers). However, these are only presumptions and can be reviewed by PPL upon actual notice that the position is different or upon a challenge from a member.