In a ruling requested by the Recording Industry Association of American ("RIAA"), the Copyright Office has held that the delivery and use of ringtones on mobile telephones is subject to the compulsory licensing requirements established by Section 115 of the Copyright Act.

Congress originally enacted the compulsory license provisions of the Copyright Act in 1909 in an effort to avoid monopolistic behavior by copyright owners. Specifically, Section 115 of the Copyright Act allows any person to make and distribute a mechanical reproduction of a musical composition for private use without the consent of the copyright owner provided that the person files an appropriate notice and pays the statutorily mandated royalty.

Opposing the RIAA’s application, the copyright owners asserted that ringtones qualified as derivative works – that their creation involves substantial creativity and significant changes to the underlying work. As such, the copyright owners argued that they have the ability to license the creation of such works apart from the compulsory license provisions of Section 115. The Copyright Office rejected this argument with regard to “[r]ingtones that are merely excerpts of a preexisting sound recording,” and held that such ringtones “fall squarely within the scope of the statutory license.” With regard to those ringtones that “contain additional authorship,” however, the Copyright Office recognized that the ringtone might involve enough originality and creativity to qualify
as a derivative work. The Copyright Office did not provide much guidance as to how much originality would take the ringtone out of the compulsory license provision, but left this matter to be decided on a case-by-case basis.

If a ringtone falls outside the scope of Section 115 (because the ringtone at issue is a derivative work due to its originality and creativity beyond the preexisting recording), the right to copy and distribute can only be acquired through voluntary license from the copyright owner. For ringtones that are covered by Section 115 (that is, ringtones that are merely a portion of a preexisting recording), all of the rights, conditions and requirements in the Copyright Act apply. Specifically, under Section 115, the exclusive rights to make and to distribute phonorecords of nondramatic musical works are subject to compulsory licensing where the phonorecords of the work have been distributed to the public with the copyright owner’s permission. In such a case, any other person can obtain a compulsory license to make and distribute phonorecords of the work by complying with Section 115 if that person’s primary purpose in making the phonorecords is to distribute them to the public for private use and if that person complies with other specific requirements of Section 115, including the payment of a royalty as established in Section 115.