



ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559

NOTICE OF INQUIRY

COMPUTER PROGRAM RENTAL BY LIBRARIES: REPORT OF THE REGISTER OF COPYRIGHTS ON THE EFFECTS OF 17 U.S.C. 109(b)(2).

The following excerpt is taken from Volume 58, Number 132 of the Federal Register for Tuesday, July 13, 1993 (pp.37757-37758)

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 93-7]

Computer Program Rental by Libraries: Report of the Register of Copyrights on the Effects of 17 U.S.C. 109(b)(2).

AGENCY: Copyright Office; Library
of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office of the Library of Congress is preparing a report for Congress on the extent to which the Computer Software Rental Amendments Act of 1990 has achieved its intended purpose with respect to lending by nonprofit libraries. This Act permits lending of a computer program for nonprofit purposes by a nonprofit library, if each copy lent by such library has affixed to the packaging containing the program a warning of copyright in accordance with regulations prescribed by the Register of Copyrights. The Act also requires the Office to report to Congress by December 1, 1993, on whether 17 U.S.C. 109(b)(2) has achieved its intended purpose of maintaining the integrity of the copyright system while providing nonprofit libraries the capability to fulfill their function. This report shall also advise Congress as to any information or recommendations that the Register considers necessary to carry out Congress's intent.

The Office seeks public comments on and information about lending of computer programs for nonprofit purposes by nonprofit libraries, for the purpose of evaluating how the nonprofit lending

provision is working. The Office invites comment from all interested parties including software proprietors, librarians, and library patrons.

EFFECTIVE DATE: Comments should be received on or before October 12, 1993.

ADDRESSES: Interested persons should submit ten copies of their written comments as follows: If sent by mail: Dorothy Schrader, General Counsel, United States Copyright Office, Library of Congress, Department 17, Washington, D.C. 20540.

If delivered by hand: Office of the Register of Copyrights, Copyright Office, James Madison Memorial Building, room 407, First Street and Independence Avenue, S.E., Washington, D.C. 20559.

FOR ADDITIONAL INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Department 17, Washington, D.C. 20540. Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

Section 109 of the Copyright Act contains an important limitation on the exclusive rights of copyright owners; this limitation is known as the first-sale doctrine. Under this doctrine, the owner of a lawfully made copy of a work, or any person authorized by such owner, is entitled without authority of the copyright owner to sell or otherwise dispose of the possession of that copy. On December 1, 1990, President Bush signed into law, Pub. L. 101-650, 104 Stat. 5059 containing the "Computer Software Rental Amendments Act." Section 109(b)(1)(A) of that Act prevents the commercial rental, lease, or lending of computer programs without the authorization of the copyright owner. Congress enacted this limitation on the first sale doctrine because it recognized that the commercial

lending of computer software could encourage unauthorized copying and deprive copyright owners of a return on their investment.¹

Congress had already amended the first sale doctrine in 1984 to give owners of copyright in sound recordings control over commercial rental of phonorecords by prohibiting the commercial rental of these works without the authorization of the copyright owner. In 1988, the Record Rental Amendment Act was renewed, with expiration set for October 1, 1997.

The Computer Software Rental Amendments Act does not accord a rental right with respect to computer programs embodied in a machine or product (such as automobiles or calculators) that cannot be copied during the ordinary operation or use of the machine or product; or computer programs embodied in video games. 17 U.S.C. 109(b)(1)(B). The Act also provides that the transfer of possession of a lawfully made copy of a computer program by a nonprofit educational institution to another nonprofit educational institution or to faculty, staff, and students does not constitute rental, lease, or lending for direct or indirect commercial purposes. 17 U.S.C. 109(b)(1)(A).

Congress also did not wish to prohibit the nonprofit lending of computer programs by nonprofit libraries and nonprofit educational institutions. These institutions serve a valuable public purpose by making computer software available to students and others who would not otherwise have access to it. At the same time, Congress recognized that library patrons could engage in the same type of unauthorized copying that occurs in a commercial context.² The Computer

1 H. Rep. No. 735, 101st Cong., 2d Sess. 8 (1990).

2 *Id.*

Software Rental Amendments Act therefore permits nonprofit lending of computer programs by nonprofit libraries, if each copy lent by such library has affixed to the packaging containing the program a warning of copyright in accordance with regulations prescribed by the Register. 17 U.S.C. 109(b)(2)(A).

The regulations governing warning of copyright for software lending by nonprofit libraries are contained in 37 CFR 201.24. Under that section, the "Warning of Copyright for Software Rental" to be affixed to the packaging containing the computer program lent by the nonprofit library shall consist of a verbatim reproduction of the following notice:

Notice: Warning of Copyright Restrictions

The copyright law of the United States (Title 17, United States Code) governs the reproduction, distribution, adaptation, public performance, and public display of copyrighted material.

Under certain conditions specified in law, nonprofit libraries are authorized to lend, lease, or rent copies of computer programs to patrons on a nonprofit basis and for nonprofit purposes. Any person who makes an unauthorized copy or adaptation of the computer program, or redistributes the loan copy, or publicly performs or displays the computer program, except as permitted by title 17 of the United States Code, may be liable for copyright infringement.

This institution reserves the right to refuse to fulfill a loan request if, in its judgment, fulfillment of the request would lead to violation of the copyright law.

This warning shall be affixed to the packaging that contains the copy of the computer program which is the subject of a library loan to patrons, by means of a label cemented, gummed, or otherwise durably attached to the copies or to a box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copy of the computer program. The notice shall be printed in such a manner as to be clearly legible, comprehensible, and readily apparent to a casual user of the computer program. See 37 CFR 201.24 (1992).

2. Reporting Requirement

Section 109(b)(2)(B) of title 17, United States Code, established under the Computer Software Rental Amendments Act, requires the Register of Copyrights, not later than three years from the date of enactment, and such times thereafter as the Register considers appropriate, to submit to Congress a report stating whether the library lending provisions of the Act have served their intended purpose of maintaining the integrity of the copyright system, while still providing nonprofit libraries the capacity to fulfill their function. The report shall also advise the Congress as to any information or recommendations that the Register considers necessary to carry out the purposes of the subsection. The report is due on December 1, 1993, that is, not later than three years after the date of the enactment of the Computer Software Rental Amendments Act of 1990.

In order to assist the Copyright Office in preparing this report, public comment on the subject of nonprofit lending of computer programs is invited. The Office is interested in surveying the practices of libraries with regard to computer software. We also seek advisory comments on whether and how the purposes of § 109(b)(2) could be better carried out.

3. Specific Questions

The Copyright Office is interested in receiving comments about any issues relevant to § 109(b)(2) which concern copyright owners, librarians, and library patrons. Of particular interest are the following questions.

(1) If you are a nonprofit library or educational institution, do you feel you are meeting the needs of your patrons with regard to computer software? Does § 109(b)(2)(A) facilitate or impede fulfillment of your function as a nonprofit library or educational institution?

(2) How often do you lend copies of computer programs to other nonprofit libraries, or nonprofit educational institutions? How often do you lend computer programs to staff or users of your own institution?

(3) Do the regulations in 37 CFR 201.24 pertaining to warning of copyright for software rental represent an onerous burden?

(4) Do you have reason to believe that unauthorized copying, adaptation, redistribution, public performance or display of computer programs is occurring as a result of the nonprofit lending permitted by § 109(b)?

(5) Do you feel the § 109(b) exemption for nonprofit libraries and educational institutions is harmful to the interests of copyright owners? Has there been any change in authors' income as a result of nonprofit lending of software?

(6) Are you aware of any evidence that unauthorized copying, adaptation, redistribution, public performance or display results from nonprofit lending of computer software?

(7) Do you feel that new legislation is needed either to clarify existing legislation or to rectify any imbalance between the rights of owners and the needs of users? If so, please specify as precisely as possible what provisions such legislation should contain.

Copies of all comments received will be available for public inspection and copying between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, in Room 401, James Madison Memorial Building, Library of Congress, First Street and Independence Avenue, S.E., Washington, D.C.

Dated: July 6, 1993

Ralph Oman,
Register of Copyrights.

BILLING CODE: 1410-07

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