

Announcement

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

COPYRIGHT OFFICE TO HOLD HEARING ON COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

The following excerpt is taken from Vol. 42, No. 61 of the Federal Register for Wednesday, March 30, 1977 (p. 16837).

Please note that written requests to present testimony are due before April 11th; that written statements of testimony are requested by April 18th; and that the hearing is scheduled for April 26th and 27th.

LIBRARY OF CONGRESS

Copyright Office

[37 CFR Part 201]

[Docket RM 77-3]

COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

Advance Notice of Proposed Rulemaking

AGENCY: Library of Congress, Copyright Office.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This advance notice of proposed rulemaking is issued to advise the public that the Copyright Office of the Library of Congress is considering adoption of new regulations designed to implement a section of Pub. L. 94-553 (90 Stat. 2541), the Act for General Revision of the Copyright Law, pertaining to the making and distribution of phonorecords of nondramatic musical works under a compulsory license. This notice announces and invites participation in a public hearing intended to elicit views, comment and information from interested members of the public which will assist the Copyright Office in considering alternatives and formulating tentative regulations to be later issued as proposed rules for additional comment.

DATES: The hearing will be held on April 26 and 27, 1977, commencing at 9:30 a.m. on April 26.

Members of the public desiring to testify should submit written requests to present testimony before April 11, 1977 to address set forth below. The request should clearly identify the individual or group requesting to testify and the amount of time desired.

ADDRESS: The hearing will be held in Room 910, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia. Requests to present testimony should be addressed to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559.

FOR FURTHER INFORMATION, CONTACT:

Jon Baumgarten, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559. (703-557-8731).

SUPPLEMENTARY INFORMATION: Section 115 of the first section of Pub. L. 94-553 provides that "[w]hen phonorecords of a nondramatic musical work have been distributed to the public in the United States under authority of the copyright owner, any other person may, by complying with the provisions of this section, obtain a compulsory license to make and distribute phonorecords of the work" for certain purposes. A compulsory license permits the use of a copyrighted work without the consent of the copyright owner if certain conditions are met and royalties paid.

Paragraph (b) (1) of section 115 provides that a condition of the compulsory license for making and distributing phonorecords is the service or filing of a notice of intention:

(b) *Notice of intention to obtain compulsory license.*—(1) Any person who wishes to obtain a compulsory license under this section shall, before or within thirty days after making, and before distributing any phonorecords of the work, serve notice of intention to do so on the copyright owner. If the registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which notice can be served, it shall be sufficient to file the

notice of intention in the Copyright Office. The notice shall comply, in form, content and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

Paragraph (c) of section 115 deals with the statutory royalties to be paid to copyright owners by persons exercising the compulsory license; it provides in relevant part:

(2) * * * the royalty under a compulsory license shall be payable for every phonorecord made and distributed in accordance with the license. For this purpose, a phonorecord is considered "distributed" if the person exercising the compulsory license has voluntarily and permanently parted with its possession. With respect to each work embodied in the phonorecord, the royalty shall be either two and three-fourths cents, or one-half of one cent per minute of playing time or fraction thereof, whichever amount is larger.

(3) Royalty payments shall be made on or before the twentieth day of each month and shall include all royalties for the month next preceding. Each monthly payment shall be made under oath and shall comply with requirements that the Register of Copyrights shall prescribe by regulation. The Register shall also prescribe regulations under which detailed cumulative annual statements of account, certified by a certified public accountant, shall be filed for every compulsory license under this section. The regulations covering both the monthly and the annual statements of account shall prescribe the form, content, and manner of certification with respect to the number of records made and the number of records distributed.

Paragraph (c) (2) of section 115 states that statutory royalties are payable for every phonorecord made and distributed under the license; it defines distribution as occurring when "the person exercising the compulsory license has voluntarily and permanently parted" with possession of the phonorecord. In dis-

WRITTEN STATEMENTS

All witnesses are requested to provide 10 copies of a written statement of their testimony to the Office of the General Counsel by April 18, 1977.

The record of the proceedings will be kept open until May 13, 1977 for receipt of written supplemental statements.

(17 U.S.C. 207; and under the following sections of Title 17 of the United States Code as amended by Pub. L. 94-553; sections 115, 702.)

Dated: March 23, 1977.

BARBARA A. RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

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Discussing the issue of "permanent" disposal for these purposes, the relevant Report of the Judiciary Committee of the House of Representatives states (H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. at 110-111):

Under existing practices in the record industry, phonorecords are distributed to wholesalers and retailers with the privilege of returning unsold copies for credit or exchange. As a result, the number of recordings that have been "permanently" distributed will not usually be known until some time—six or seven months on the average—after the initial distribution. In recognition of this problem, it has become a well-established industry practice, under negotiated licenses, for record companies to maintain reasonable reserves of the mechanical royalties due the copyright owners, against which royalties on the returns can be offset. The Committee recognizes that this practice may be consistent with the statutory requirements for monthly compulsory license accounting reports, but recognizes the possibility that, without proper safeguards, the maintenance of such reserves could be manipulated to avoid making payments of the full amounts owing to copyright owners. Under these circumstances, the regulations prescribed by the Register of Copyrights should contain detailed provisions ensuring that the ultimate disposition of every phonorecord made under a compulsory license is accounted for, and that payment is made for every phonorecord "voluntarily and permanently" distributed. In particular, the Register should prescribe a point in time when, for accounting purposes under section 115, a phonorecord will be considered "permanently distributed," and should prescribe the situations in which a compulsory licensee is barred from maintaining reserves (e.g., situations in which the compulsory licensee has frequently failed to make payments in the past.)

After considering these regulatory responsibilities, the Copyright Office has determined that it would be desirable to secure information, data, and public comment before adopting proposed regulations, and that public hearing is the appropriate forum.

The Office is interested in receiving testimony on all substantive considerations relevant to:

1. The formulation of regulations prescribing the form, content and manner of service of notices of intention to obtain a compulsory license under section 115(b) (1);

2. The formulation of regulations prescribing the form, content and manner of certification of monthly and annual statements of account under section 115(c) (3); and

3. The determination of a point in time when phonorecords distributed under section 115 shall be considered "permanently distributed", and of circumstances calling for special variations or conditions barring the maintenance of reserves against statutory royalties. Testimony pertaining to practices and problems which have arisen with respect to reserves, payments, and accountings under negotiated and compulsory licenses for phonorecords is specifically requested.