

Announcement

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

PROPOSED RULEMAKING

NOTICE OF OBJECTION TO NONCOMMERCIAL PERFORMANCES OF NONDRAMATIC LITERARY OR MUSICAL WORKS

The following excerpt is taken from Volume 42, No. 171 of the Federal Register for Friday, September 2, 1977 (pp. 44247-49).

LIBRARY OF CONGRESS

[37 CFR Part 201]

[Docket RM77-7]

NONDRAMATIC LITERARY OR MUSICAL WORKS

Objection to Noncommercial Performances

AGENCY: Library of Congress, Copyright Office.

ACTION: Proposed rule.

SUMMARY: The purpose of this notice of proposed rulemaking is to inform the public that the Copyright Office of the Library of Congress is considering the adoption of a new regulation designed to implement clause (4) of section 110 of the Copyright Law. This clause provides for the service of notices of objection for the purpose of preventing certain noncommercial performances of nondramatic literary and musical works. The proposed regulation would establish requirements governing the content and manner of service of the notices.

We invite interested persons to participate in the making of the new regulation by submitting relevant written views, arguments, or other comments.

DATES: Initial comments should be received on or before September 23, 1977. Reply comments should be received on or before October 3, 1977.

ADDRESS: Five copies of all written comments should be submitted, if by mail, to: Office of the General Counsel, Copyright Office, Library of Congress, Caller Number 2999, Arlington, Va. 22202; or, if by hand, to: Office of the General Counsel, Copyright Office, Room 519, Crystal Mall, Bldg. No. 2, 1921 Jefferson Davis Highway, Arlington, Va.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Section 110(4) of the first section of Pub. L. 94-553 (90 Stat. 2541) deals with the performance of nondramatic literary or musical works otherwise than in transmissions to the public. It provides generally that such a performance, even if carried out before an audience, is exempt from copyright liability if two basic conditions are both met: (1) The performance must be "without any purpose of direct or indirect commercial advantage"; and (2) there must not be "payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers."

Assuming these conditions are met, the exemption applies if there is "no direct or indirect admission charge" or, alternatively, if "the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes. . . ." In cases where proceeds are to be derived from an admission charge, the statute also provides a procedure under which a copyright owner can prevent the performance by serving an advance notice of objection.

Under the statute, this notice must be in writing and signed by the copyright owner or the owner's authorized agent. It must be served on the person responsible for the performance at least seven days before the date of the performance, and it must state the reasons for the objection. The Act also provides that notices of objection must "comply in form, content, and manner of service with requirements that the Register of Copyrights shall prescribe by regulation."

We propose that these matters be covered by the addition of a new § 201.13 to the regulations of the Copyright Office. Proposed § 201.13 assumes that, at the time when he or she serves the notice, the copyright owner has already acquired some advance knowledge or report of a planned performance. Since the proposed regulation does not of itself impose any obligation on the person responsible for the performance to give the copyright owner advance notice of it, the chances are that, at the time the copyright owner serves a notice of ob-

jection, some information about the performance will be lacking. For example, the copyright owner may not know the precise time when the performance is to be given, or its exact place, or the particular works to be performed, or whether or not an admission fee is to be charged. For these reasons, we are proposing certain alternatives concerning the information to be included in a notice. Also, since a notice of objection can be effective only if there is an admission charge, we are proposing to require the copyright owner to make clear that, if no admission fee is charged, the notice will have no legal effect and can be disregarded.

In setting forth alternatives concerning the contents of the notice, we have tried not only to take into account the difficulties faced by copyright owners lacking specific information, but also to judge these difficulties in the light of the legislative history of section 110(4). This history suggests that notices of objection were not intended to consist of general or blanket prohibitions, but were intended to be the result of individual copyright owners' decisions based on personal objections to having their works used without permission for "educational, religious, or charitable" fund-raising activities with which they were not in sympathy.¹ The proposed regulation attempts to strike a reasonable balance between the statute's intention to tie the objection to the circumstances of a particular performance and the practical problems facing a copyright owner if information required in the notice is too detailed.

¹ In dealing only with the notice of objection to be served by the copyright owner, we have followed the literal text of the Act. It has been argued that "it appears to have been Congress' intention that those responsible for the performance would notify the copyright owner or his duly authorized agent of the details of the planned performance. . . ." Korman, *Performance Rights in Music Under Sections 110 and 118 of the 1976 Copyright Act*, 23 N.Y.L.S.L. Rev. 521, 527, (1977). The proposed regulation is not intended in any way to prejudice or affect the validity or invalidity of this argument.

² See, e.g., H.R. Rep. No. 94-1476, 94th Cong., 2d Sess., Sept. 3, 1976, at 86.

Accordingly, proposed § 201.13(c) (1) (ii) does not require that the notice include the exact date or place of performance where either fact is not known to the copyright owner. However, the notice must be directed to a specific performance, and not merely to any future performance for which the recipient might be responsible. The proposed rule would require the copyright owner, as an alternative to identifying a particular time and place, to state all of the information available to the owner about the plans for the performance, and the source of that information. This alternative is not intended to waive or otherwise affect the seven-day requirement for advance service imposed by the Act.

Proposed § 201.13(c) (1) (iii) requires, as a general rule, that the notice of objection specify the title and at least one author of each work covered by the copyright owner's notice of objection. However, since the owner may not know precisely which works are planned to be included in the performance, no limit is placed on the number of works that can be covered by a particular owner's notice. Moreover, recognizing that some copyright owners may object to a particular performance of any and all of their works, and that the total number of works involved may be too large to permit separate identification, § 201.13 (c) (2) proposes to permit the serving of a notice of objection covering a group of works without separate identification under certain carefully defined conditions.

In addition to comments on the foregoing and the proposed regulation general, we invite specific comments on the following:

(1) Section 102 of the Transitional and Supplementary Provisions of Pub. L. 94-553 states: "This Act becomes effective on January 1, 1978, except as otherwise expressly provided by this Act. * * * Since section 110(4) requires the service of notice "at least seven days before the date of the performance," and performances may take place during the first seven days of 1978, what should be the effective date of the regulation?

(2) In view of the short time period provided for notice, should the regulation provide for service by telegram, or similar means of communication, as alternatives to personal service or service by first-class mail?

Copies of all comments will be available for inspection and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, in the Public Information Office of the Copyright Office, Room No. 101, Crystal Mall, Building 2, 1921 Jefferson Davis Highway, Arlington, Va.

Proposed Regulation. We propose to amend Part 201 of 37 CFR Chapter II by adding a new § 201.13 to read as follows:

§ 201.13 Notices of objection to certain noncommercial performances of nondramatic literary or musical works.

(a) *Definitions.* (1) A "Notice of Objection" is a notice, as required by section 110(4) of title 17 of the United States Code as amended by Pub. L. 94-553, to be served as a condition of preventing the noncommercial performance of a nondramatic literary or musical work under certain circumstances.

(2) A "performing rights society" is an organization coming within the definition provided by section 116(e) (3) of title 17 of the United States Code as amended by Pub. L. 94-553.

(b) *Form.* The Copyright Office does not provide printed forms for the use of persons serving Notices of Objection.

(c) *Contents.* (1) A Notice of Objection must clearly state that the copyright owner objects to the performance, and must include all of the following:

(i) Reference to 17 U.S.C. § 110(4) as the statutory authority on which the Notice of Objection is based;

(ii) The date and place of the performance to which an objection is being made; however, if the exact date or place of a particular performance, or both, are not known to the copyright owner, it is sufficient if the Notice describes all of the information the copyright owner has about the plans for a particular performance and the source of that information.

(iii) Clear identification, by title and at least one author, of the particular nondramatic literary or musical work or works, to the performance of which the copyright owner thereof is lodging objection. A Notice may cover any number of separately identified copyrighted works owned by the copyright owner serving the objection. A blanket notice without separate identification of copyrighted works and purporting to cover all or a part of the works written by, owned by, or capable of being licensed by a particular individual or organization, shall have no legal effect except under the conditions specified in clause (2) of this paragraph (c).

(iv) A concise statement of the reasons for the objection.

(2) A blanket notice lacking separate identification of the particular copyrighted works covered by the objection shall be valid only if all of the following conditions are met and the Notice so states:

(i) Among the owners of copyrights in the works covered by the Notice, there shall be at least one owner who is common to all such copyrights, and the Notice shall clearly identify that owner and shall be served by or with the authority of such owner.

(ii) The copyright owner serving or authorizing service of the Notice: (A) lacks complete knowledge of the particular works to be performed; and (B) wishes to lodge objection to a particular performance of any or all works of which he or she is copyright owner.

(iii) The total number of nondramatic literary or musical works covered by the Notice must be more than one hundred, making it impracticable to identify them separately.

(iv) If the Notice is served on behalf of the copyright owner by an agent or performing rights society, such owner must have expressly authorized the agent or society to object to the particular performance and to include within the scope of the objection all of the works covered by the Notice.

(v) The Notice shall identify, by name, address, and telephone number, a particular individual whom the person responsible for the performance can contact to determine whether a particular work planned for performance is in fact covered by the Notice.

(3) A Notice of Objection must also include clear and prominent statements explaining that:

(i) A failure to exclude the works identified in the Notice from the performance in question may subject the person responsible for the performance to liability for copyright infringement, and

(ii) The objection is without legal effect if there is no direct or indirect admission charge for the performance, and if the other conditions of 17 U.S.C. § 110(4) are met.

(d) *Signature and Identification.* A Notice of Objection shall bear the actual handwritten signature of the copyright owner or the owner's duly authorized agent, accompanied by the full name, address, and telephone number of that person, typewritten or printed legibly by hand. A Notice signed on behalf of a copyright owner by an agent or performing rights society shall clearly identify the copyright owner whom the agent or society represents.

(e) *Service.* A Notice of Objection shall be served on the person responsible for the performance by personal service, or by first-class mail.

(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; §§ 110(4); 702.)

Dated: August 26, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved by:

DANIEL J. BOORSTIN,
Librarian of Congress.

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