

Announcement

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

COPYRIGHT OFFICE TO HOLD HEARING ON RECORDATION AND CERTIFICATION OF COIN-OPERATED PHONORECORD PLAYERS

The following excerpt is taken from Vol. 42, No. 196 of the Federal Register of Tuesday, October 11, 1977 (pp. 54840-42).

Please note that written requests to present testimony are due before October 14th; that written statements of testimony are requested by October 19th; and that the hearing is scheduled for October 25, 1977.

[1410-03]

LIBRARY OF CONGRESS

Copyright Office

[37 CFR Part 201]

[Docket RM 77-4]

RECORDATION AND CERTIFICATION OF COIN-OPERATED PHONORECORD PLAYERS

Proposed Rulemaking

AGENCY: Library of Congress, Copyright Office.

ACTION: Proposed Regulation.

SUMMARY: The purpose of this notice is to inform the public that the Copyright Office of the Library of Congress is considering the adoption of a new regulation to implement section 116 of the Act for General Revision of the Copyright Law. This section prescribes conditions under which operators of coin-operated phonorecord players may obtain a compulsory license for the public performance of non-dramatic musical works. The proposed regulation establishes requirements governing applications for the compulsory license. This notice announces and invites participation in a public hearing intended to elicit comment, views, and information to assist the Copyright Office in formulating a final regulation.

DATES: The hearing will be held on October 25, 1977, commencing at 9:30 a.m. Members of the public desiring to testify should submit written requests to present testimony before October 14, 1977, to the address given below. The request should clearly identify the individual or group requesting to testify and the amount of time desired.

All witnesses are requested to provide copies of a written statement of their testimony to the Office of the General Counsel at the address given below by October 19, 1977.

The record of the proceedings will be kept open until November 9, 1977, for receipt of written supplemental statements.

ADDRESSES: The hearing will be held in Room 910, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va.

Requests to present testimony and written statements should be addressed to:

Office of the General Counsel, Copyright Office, Library of Congress, Caller No. 2999, Arlington, Va. 22202.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Section 116 of the first section of Pub. L. 94-553 (90 Stat. 2541) establishes conditions under which operators of coin-operated phonorecord players—commonly referred to as “jukeboxes”—may obtain a compulsory license for the public performance of nondramatic musical works.

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. Conditions of the compulsory license for coin-operated phonorecord players are set forth in section 116(b)(1) as follows:

(A) Before or within one month after such performances are made available on a particular phonorecord player, and during the month of January in each succeeding year that such performances are made available on that particular phonorecord player, the operator shall file in the Copyright Office, in accordance with requirements that the Register of Copyrights, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), shall prescribe by regulation, an application

containing the name and address of the operator of the phonorecord player and the manufacturer and serial number or other explicit identification of the phonorecord player, and deposit with the Register of Copyrights a royalty fee for the current calendar year of \$8 for that particular phonorecord player. If such performances are made available on a particular phonorecord player for the first time after July 1 of any year, the royalty fee to be deposited for the remainder of that year shall be \$4.

(B) Within twenty days of receipt of an application and a royalty fee pursuant to subclause (A), the Register of Copyrights shall issue to the applicant a certificate for the phonorecord player.

(C) On or before March 1 of the year in which the certificate prescribed by subclause (B) of this clause is issued, or within ten days after the date of issue of the certificate, the operator shall affix to the particular phonorecord player, in a position where it can be readily examined by the public, the certificate, issued by the Register of Copyrights under subclause (B), of the latest application made by such operator under subclause (A) of this clause with respect to that phonorecord player.

Section 116(b)(1) thus requires the Register of Copyrights to prescribe regulations governing the compulsory license application and to develop a form of certificate to be affixed to licensed phonorecord players.

To assist the Copyright Office in formulating proposed regulations, on March 30, 1977, the Office published in the FEDERAL REGISTER (42 FR 16838) an Advance Notice of Proposed Rulemaking. In response to the advance notice twelve comments and replies were received.

A discussion of the major comments follows. In addition to these matters, and the proposed regulation in general, testimony is specifically invited on the following issue: What special provisions, if any, should the Copyright Office make in its regulations covering applications to be submitted and certificates to be issued for systems embodying multiple “wall

boxes" operating from a remote master unit?

1. WHAT INFORMATION SHOULD BE IN THE APPLICATION?

Section 116(b)(1)(A) of the Act requires that the application include the name and address of the operator, and the manufacturer and serial number or other explicit identification of the coin-operated phonorecord player.

Comments suggested that the application also include a list of the selections available on the player, charge per play, capacity of the player and the location of establishments in which the players are located. Each of these elements had been required in earlier versions of copyright revision bills, but none are maintained in the Act. Accordingly these elements are not generally required by the proposed regulation (However, we do propose to require the capacity and charge per play for players having no serial number.)

Other comments suggested that the application include the address of the manufacturer, the name of the record distributor, and the name and address of phonorecord player lessee. These suggestions have not been adopted in the proposed regulation. The address of the manufacturer will generally be readily available. The need for identification of the record distributor is not apparent. The need for including the name and address of the phonorecord player lessee, if different from the operator, is also doubtful since the lessor would probably be making the required payment.

We have proposed that the application include the legal name of the operator, together with any relevant fictitious or assumed name, the full address of the operator's place of business, the manufacturer's name, and the serial number or certain explicit identification of players having no serial number. As suggested in one comment, we have proposed that the "address" of the operator include the number and street name or rural route of the operator's place of business. The use of a post office box will not be sufficient.

One comment suggested that we assign a unique number to each player instead of the manufacturer and serial number; however, since the latter information is required by the statute, we have not adopted this suggestion. Another comment urged the Copyright Office to assign a unique license number in order to set up a renewal system similar to state automobile licenses. The Copyright Office does plan to establish a reminder system for renewals of licenses. This system would not require use of an assigned unique number, and if we were to assign such a number when it is not required for the reminder system it would only add to our operating costs and diminish the royalties payable to copyright owners.

¹ Of course, the reminder system will not relieve operators of their statutory obligation to make annual applications for compulsory license.

For players having no serial number the proposed regulation sets out certain other elements of identification. These pertain to the model designation and capacity of the player, the type of sound system employed, and the charge per play.

One comment suggested that the application should be sworn to in compliance with federal law. However, consistent with our plans with respect to other applications to be filed in the Copyright Office, we plan to reproduce section 116(d) of the Act on the application. This section prescribes criminal penalties for false representations in the application and may be sufficient for the purpose.

2. MAY A SINGLE APPLICATION COVER MULTIPLE PLAYERS OWNED OR CONTROLLED BY A PARTICULAR OPERATOR?

In response to a question raised in the Advance Notice of Proposed Rulemaking, one comment suggested that a separate application be filed for each player owned or controlled by a particular operator. However, other comments agreed that a single application could be used for multiple players. In order to minimize paperwork for both the Copyright Office and the operators and to gain efficiency in our administration of the regulation, we have proposed to accept single applications for multiple players owned or controlled by a particular operator, assuming that all identifying information for each player is given and that the appropriate aggregate fee is paid.

3. SHOULD REPLACEMENT CERTIFICATES BE PROVIDED, AND IF SO, AT WHAT CHARGE?

In accordance with a general consensus among the comments, we have proposed that replacement certificates will be supplied upon receipt of specified affidavits attesting to the loss or destruction of the original certificate and payment of an appropriate fee. There was disagreement among the comments as to the fee to be charged. We do not believe we can impose an additional \$8 license fee for replacement certificates under section 116. Instead, our proposal establishes a \$4 fee under section 708(11) of the Act for the service of providing replacements.

4. WHAT PROVISIONS, IF ANY, SHOULD BE MADE FOR THE SALE OR TRANSFER OF A LICENSED PHONORECORD PLAYER DURING THE LICENSE PERIOD?

One comment suggested that every sale or transfer of ownership of a player should require a new application and issuance of a certificate. Another comment argued that the compulsory license should be freely transferable, subject only to due notice to the Copyright Office of changes in ownership. A third suggestion was that transfers should be handled like assignments of copyrights and made subject of recordation. Our proposed regulation does not adopt any of these proposals. The compulsory license under section 116 of the Act attaches to "particular phonorecord players" section 116(b)(1)(A) and (C).*

Also, section 116(e)(2) of the statute indicates that the "operator" who obtains the license may be a person other than the owner of the player. Since sale or transfers affect the ownership of the player, and not the player itself, our proposal does not require any action to be taken upon the sale or transfer of a player during the license period.

5. MISCELLANEOUS COMMENTS

The following matters pertain to internal Office practices and questions of format which will no be prescribed by regulation.

(a) Our plans call for the certificate issued by the Copyright Office to be a colored adhesive label, and the application to be computer codable. Since the purpose of the certificate is to show that a particular phonorecord player has been licensed, the certificate will contain all of the identifying information given on the application for the particular player.

(b) Comments suggested that the Copyright Office compile a catalog of all the information on the applications and make applications and certificates available for public inspection. Completed applications will be available for public inspection after processing. Since the certificates will be printed from punch cards or tapes, copies of the certificates will not be available. We are considering the possibility of providing, for a fee, cataloged information compiled from applications.

We propose to amend Part 201 of 37 CFR Chapter II by adding a new § 201.16 to read as follows:

§ 201.16 Recordation and Certification of Coin-Operated Phonorecord Players.

(a) *General.* This regulation prescribes the procedures to be followed by operators of coin-operated phonorecord players who wish to obtain a compulsory license for the public performance of nondramatic musical works, and by the Copyright Office in issuing certificates, under section 116 of title 17 of the United States Code as amended by Pub. L. 94-553. The terms "operator" and "coin-operated phonorecord player" have the meanings given to them by paragraph (e) of that section.

(b) *Form and content of applications.*
(1) Each application for a compulsory license under this section shall be on a form prescribed by the Copyright Office and shall contain the following information:

(i) The legal name of the operator, together with any fictitious or assumed name used by the operator for the purpose of conducting the business relating to the coin-operated phonorecord player for which the application is made.

(ii) The full address of the operator's place of business, including a specific number and street name or rural route. A post office box number or similar designation will not be accepted.

(iii) The name or a specified designation of the manufacturer of the coin-

*Error; line should read: "revision bills, but none are mentioned".

**Error; line should read: "ers" (section 116(b)(1)(A) and (C))".

***Error; line should read: "format which will not be prescribed by".

operated phonorecord player for which the application is made.

(iv) The serial number of the coin-operated phonorecord player for which the application is made. If a serial number does not appear on that player, all the information required by paragraph (b) (2) of this section shall be given.

(v) The name, address and telephone number of an individual who may be contacted by the Copyright Office for further information about the application.

(vi) The signature of the operator or the duly authorized agent of the operator. If a business entity is identified as the operator, the signature should be that of an officer if the entity is a corporation or of a partner if the entity is a partnership.

(2) If a serial number is not present on the coin-operated phonorecord player for which the application is made, the application shall also contain the following information for that player:

(i) Its model number;

(ii) Its model year and name, if known;

(iii) Whether the sound system employed in the player is monaural, stereophonic, quadraphonic, or other;

(iv) The maximum number of phonorecords it is capable of holding; and

(v) The charge to the public for each play.

(3) Each application shall be accompanied by the fee prescribed by statute in the form of a certified check, cashier's check or money order.

(4) A single application may be submitted for multiple players owned or controlled by a particular operator if all the identifying information is given for each player and the proper aggregate fee is submitted for all players covered by the application.

(c) *Certificate.* (1) After receipt of the prescribed form and fee, the Copyright Office will issue a certificate containing the information set forth in paragraphs (b) (1) (i) through (iv) and (b) (2) of this section, together with the date of issuance of the certificate and the date of expiration of the license.

(2) In the case of the loss or destruction of a certificate issued for a particular coin-operated phonorecord player, a replacement certificate may be obtained upon submission of a fee of \$4, in the form of a certified check, cashier's check or money order, and an affidavit under the official seal of any officer authorized to administer oaths within the United States, or a statement in accordance with section 1746 of title 28 of the United States Code, made and signed by an operator or agent in accordance with paragraph (b) (1) (vi) of this section. The affidavit or statement shall describe the circumstances of the loss or destruction and give all the information required by paragraphs (b) (1) (i) through (v) and (b) (2) of this section pertaining to the player for which a replacement certificate is desired.

(d) *Sale or transfers.* The sale or transfer of a coin-operated phonorecord player during a period for which the cer-

tificate has been issued will not require a new application.

(17 U.S.C. 107; and under the following sections of Title 17 of the U.S. Code as amended by Pub. L. 94-553: 116; 702; 708(11).)

Dated: September 30, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN
Librarian of Congress.

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