



ANNOUNCEMENT

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

PROPOSED REGULATION

RECORDATION AND CERTIFICATION OF COIN OPERATED PHONORECORD PLAYERS

The following excerpt is taken from Volume 50, Number 205 of the Federal Register for Wednesday, October 23, 1985 (pp. 42965-42966)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket RM 85-6]

Recordation and Certification of Coin-Operated Phonorecord Players

AGENCY: Copyright Office, Library of Congress.

ACTION: Proposed regulations.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is considering the deletion of certain information from the jukebox certificate. The proposed change would facilitate the private administration of an agreement reached between the performing rights societies and the Amusement & Music Operators Association regarding civil enforcement of the jukebox compulsory license of 17 U.S.C. 116.

DATE: All comments should be received on or before November 22, 1985.

ADDRESSES: Interested persons should submit ten copies of their written comments to: Office of the General Counsel, Copyright Office, Library of Congress, Department D.S., Washington, D.C. 20540, or if by hand, to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and Independence

Avenue SE., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559, Telephone (202) 287-8380.

SUPPLEMENTARY INFORMATION: The Copyright Act, title 17 U.S.C. 116 establishes conditions under which operators of coin-operated phonorecord players—commonly referred to as "jukeboxes"—may obtain a compulsory license for the 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. Section 116 establishes general rules governing the conditions of the compulsory license for coin-operated phonorecord players, and requires the Register of Copyrights to prescribe regulations governing compulsory license applications and certificates to be affixed to licensed phonorecord players.

The administration and civil enforcement of the compulsory licensing system has caused friction between copyright owners and jukebox operators.¹ The royalty fee initially established in the 1976 Copyright Act was a yearly \$8 per coin-operated phonorecord player. In 1981, the Copyright Royalty Tribunal, under its statutory authority, raised the royalty fee. 46 FR 884 (1981). In 1982 and 1983 the fee became \$25 per jukebox and, thereafter, \$50 per jukebox, subject to a

cost of living adjustment on January 1, 1987. Jukebox operators argued this increase was too high, but the rate adjustment was upheld by the courts. *Amusement and Music Operator's Ass'n. v. Copyright Royalty Tribunal* 676 F.2d 144 (7th Cir. 1982), cert. denied, 459 U.S. 907 (1982). The Copyright Office implemented the rate adjustment by publishing final regulations at 47 FR 25004 (June 9, 1982).

The AMOA then sought legislative reform of the jukebox compulsory license, particularly with respect to the copyright royalties payable. Several bills were introduced in the 98th Congress (e.g., S. 1734, H.R. 3858, and H.R. 4010), which would have established a one-time royalty fee per jukebox for its entire useful life, in lieu of the current annual licensing fee.

The performing rights societies opposed these bills on the ground of fairness and argued that voluntary compliance with the compulsory licensing scheme by operators was low. While significant penalties in the copyright law existed for performance by coin-operated phonorecord players of musical compositions without a license,

¹ In general, the licensing of performance rights of musical compositions are handled by the performing rights societies. Section 116(e) of the copyright law identifies the performing rights societies as the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music Inc. (BMI), and SESAC, Inc. In copyright matters, jukebox operators have been represented by their trade association, Amusement & Music Operators Assn (AMOA).

¹ Error; line should read:
"Ass'n v. Copyright Royalty Tribunal, 676"

enforcement of those remedies was expensive. As a result of perceived noncompliance with the licensing scheme, copyright owners lost a significant portion of the royalties to which they were entitled under the existing law.

In order to reach a mutually acceptable solution, Congressional leaders urged the interested parties to enter into private negotiations.² Following this advice, the performing rights societies and AMOA succeeded in reaching an agreement to be in effect until 1990, which resolves several points of controversy.

One part of the agreement would allow jukebox operators to transfer certificates from jukeboxes not in service to those which are publicly performing musical compositions. The parties to the agreement believe such a policy is both equitable and consistent with the statute.

In order to facilitate the private administration of this agreement two minor changes in Copyright Office regulations are requested. Presently, § 201.16(c)(1) requires the certificate to contain the name of the manufacturer of the coin-operated phonorecord player and the player's serial number. Under the proposed regulation, this information would be deleted from the certificate. In addition, § 201.16(c)(2) would be modified to reflect the fact that the certificate no longer consists of two parts.

Under section 116 of the copyright law, the Copyright Office is authorized to determine the content of the certificate. The resolution of disputes through private negotiation is clearly a laudable goal. Since all interested parties appear to agree that the change would facilitate a more equitable administration of the compulsory license, the Copyright Office proposes to

¹ Billboard, May 25, 1985, at 1.

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make the necessary changes in its regulations.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to the Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.³

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined that this proposed regulation will have no significant impact on small businesses because the proposed regulation does not change the application process by merely modifies³ the certificates issued by the Copyright Office.

List of Subjects in 37 CFR Part 201

Copyright, jukeboxes.

Proposed Regulations

³The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act [i.e. "all actions taken by the Register of Copyrights under this title [17], except with respect to the making of copies of copyright deposits] [17 U.S.C. 709(b)] The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

²Error; line should read:
"Neither the Library of Congress nor the"

³Error; line should read:
"application process but merely modifies"

PART 201—[AMENDED]

In consideration of the foregoing, the Copyright Office proposes to amend Part 201 of 37 CFR, Chapter II.

1. The authority citation for Part 201 is revised to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; § 201.16 is also issued under 17 U.S.C. 116.

2. Section 201.16(c)(1) and (c)(2) is revised to read as follows:

§ 201.16 Recordation and certification of coin-operated phonorecord players.

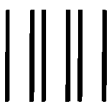
* * * * *
(c) Certificate. (1)(a) After receipt of the prescribed form and fee, the Copyright Office will issue a certificate containing the information set forth in paragraphs (b)(1)(i) and (ii) of this section, together with a unique licensing number, the date of issuance of the certificate and the date of expiration of the license. The date of expiration of the license will be December 31st of the year in which the certificate is issued. Certificates issued upon payment of a half-year fee will be valid only after July 1 of the year in which they are issued and will be so identified.

(2) The certificate may be affixed in the record selection (title strip) panel of a player or in another position on the player where it can be readily examined by the public, but in any case it must be clearly visible.

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Dated: October 16, 1985.

Ralph Oman,
Register of Copyrights.
Daniel J. Boorstlin,
The Librarian of Congress.
[FR Doc. 85-25273 Filed 10-22-85; 8:45 am]
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