



# ANNOUNCEMENT

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

## FINAL REGULATION

### RECORDATION AND CERTIFICATION OF COIN-OPERATED PHONORECORD PLAYERS

The following excerpt is taken from Volume 50, Number 247 of the Federal Register for Tuesday, December 24, 1985 (pp. 52458-52459)

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#### Copyright Office

#### 37 CFR Part 201

[Docket No. RM 85-6]

#### Recordation and Certification of Coin-Operated Phonorecord Players

**AGENCY:** Library of Congress, Copyright Office.

**ACTION:** Final Regulations.

**SUMMARY:** The Copyright Office of the Library of Congress is issuing final regulations amending portions of 37 CFR 201.16 concerning deletion of certain information from the jukebox certificate. The change facilitates 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.

**EFFECTIVE DATE:** December 24, 1985.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559 (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.<sup>1</sup> The royalty fee initially established in the 1976 Copyright Act was \$8 annually 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 Operators Ass'n v. Copyright Royalty Tribunal*, 676 F.2d 1144 (7th Cir. 1982), *cert. denied*, 459 U.S. 907 (1982). The Copyright Office

<sup>1</sup> 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 Ass'n. (AMOA).

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, 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.<sup>2</sup> 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

<sup>2</sup> *Billboard*, May 25, 1985, at 1.

certificates from jukeboxes not in service to those which are publicly performing musical compositions. The parties to the agreement believes such a policy is both equitable and consistent with the statute.

In order to facilitate the private administration of this agreement the Copyright Office issued a proposed regulation on October 23, 1985, making two minor changes. 50 FR 42965. Under the existing regulation, the certificate was required to contain the name of the manufacturer of the coin-operated phonorecord player and the player's serial number. In addition, subsection 201.16(c)(2) provided that the certificate consisted of two parts. Under the proposed regulation, information relating specifically to the coin-operated phonorecord player would be deleted from the certificate and subsection 201.16(c)(2) would be modified to reflect the fact that the certificate would no longer consist of two parts.

The Copyright Office received two comments on the proposed regulation,—one from the AMOA, and another from a jukebox operator. Both comments urged adoption of the proposed regulation.

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. All interested parties appear to agree that the change would facilitate a more equitable administration of the compulsory license. The Copyright Office received no comments opposing the modification. For these reasons the Copyright Office has decided to adopt the proposed

regulation as final, without change.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to 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.<sup>3</sup>

#### List of Subjects in 37 CFR Part 201

Copyrights Copyrights Office  
Jukeboxes.

#### PART 201—[AMENDED]

In consideration of the foregoing, Part 201 of 37 CFR, Chapter II is amended as follows:

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

<sup>3</sup> The 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. 706(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.

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) 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.

Dated: December 13, 1985.

Ralph Oman,  
Register of Copyrights.

Approved:  
Daniel J. Boorstin,  
The Librarian of Congress.  
[FR Doc. 85-30369 Filed 12-23-85; 8:45 am]  
BILLING CODE 1410-01-M