[1410–03]  

PART 201—GENERAL PROVISIONS  
Recoridan and Certification of Coin-Operated Phonorecord Players  
AGENCY: Library of Congress, Copyright Office.  
ACTION: Final Regulation.  

SUMMARY: This regulation is issued in accordance with section 116 of the Copyright Act of 1976, Pub. L. 94–553 (90 Stat. 2541) as 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 $0 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 $6.*  

(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.  

On March 30, 1977 the Office published in the Federal Register (42 FR 16838) an Advance Notice of Proposed Rulemaking in this matter. After considering the comments received in response to the Advance Notice, on October 11, 1977 we published a proposed regulation (42 FR 54840) and, on October 25, 1977, we held a public hearing on the proposal. After considering the comments made at the hearing and in supplemental filings, we have decided to make several changes in the proposed regulation. A discussion of the major issues raised at the hearing follows:  

1. DATE OF EXPIRATION  

At the October 25 hearing, we raised the possibility of including a February 28 expiration date on the certificate to be issued for licensed players. However, all comments urged the Copyright Office to
adopt December 31st of the year of issuance of the certificate as the expiration date. As this time-period is most consistent with the statute, the comments have been accepted and the regulation (§ 201.16(c)(1)) has been revised accordingly.

2. ELEMENTS OF IDENTIFICATION

Section 201.16(b)(2) of the proposed regulation required that, if a serial number is not present on a player, the following additional information be given in the application for that player: (1) its model number; (ii) its model year and name, if known; (iii) type of sound system; (iv) its record capacity; and (v) the charge per play.

Representatives of jukebox operators and manufacturers argued that we should require only the model number and name (if any) and record capacity of players which lack serial numbers. In order to avoid any question as to the validity of a license where the charge per play and type of sound system is changed during the period of license, we have modiﬁed the proposed regulation to specify that this information shall be given as of “the time the application is signed”.

The suggestion that the elements of § 201.16(b)(2) be required for all players has not been adopted. The statutory requirements of manufacturer and serial number appear to provide sufﬁcient identiﬁcation. To require supplementary informa- tion would not be consistent with the language of the Act, place an undue burden on operators, and result in additional operating costs to be deducted from royalties available to copyright owners.

3. LOCATION

Representatives of performing rights societies urged that operators be required by regulation to record a list of places where licensed players are located, and the number of players at any location with a month long list and a serial number number, not being updated monthly to show any additions or deletions of locations, or variations in the number of players. It was asserted that such a list would be necessary to enforce the compulsory licenses. Representatives of jukebox operators and manufacturers argued that such a requirement could not be justified under the Act, would be unduly burdensome since players are moved frequently, and would prejudice the conﬁdentiality of business locations.

Upon further consideration of this issue, we do not believe that a location list requirement can be imposed by the Copyright Office under its limited authority to license particular phonorecord players. This conclusion is not in any way intended to affect any arguments as to whether the Copyright Royalty Tribunal may or may not have such authority under section 116(c)(5) of the Act.

4. FORMAT OF CERTIFICATE

Much of the discussion at the hearing related to the size of the certiﬁcate to be issued by the Copyright Ofﬁce. We adhere to the position we have earlier expressed: the size and format of the certiﬁcate must necessarily be a matter of administrative discretion, to be determined principally by the nature of the information it must include and the practical considerations of data input and processing and paperwork handling. After full consideration of various possibilities, we have decided to adopt a certiﬁcate consisting of two parts. Each part will be 1 3/4 x 2 in size so that the entire certiﬁcate may be placed on the record selection (title strip panel) of a licensed player. Section 201.16(c)(2) speciﬁes that both parts of the certiﬁcate must be clearly visible for examination by the public.

5. “WALL BOXES”

Our Notice of Proposed Rulemaking invited comment on the possible adoption of special provisions for coin-operated phonorecord systems employing multiple “wall boxes” operating from a remote master unit. All parties appearing at the hearing agreed that these systems constitute one player under the Act, requiring only one royalty payment. We agree with the view that these systems consist of two parts. Each part will be issued for such a system since separate certiﬁcates for each box would be costly and are not required by statute. A new paragraph (c)(3) has been added to the proposed regulation to specify that:

(c)(3) A certiﬁcate issued for a player with auxiliary selectors (wall boxes) shall be afﬁxed to the master control player if the certiﬁcate, when so afﬁxed, can be readily examined by the public. If a certiﬁcate afﬁxed to the master control player cannot be readily examined by the public, it shall be afﬁxed to one of the auxiliary selectors in a position where it can be so examined.

6. MISCELLANEOUS CHANGES

For the purpose of clarity, a number of other changes have been made in the proposed regulation. These include requirements that, where the operator is a partnership, the name of at least one individual partner shall be given in the application, that certain information accompany the signature on an application, and that separate applications must be submitted for players covered by half-year ($4) fees.

§ 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 application. (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 it; (ii) the purpose of conducting the business relating to the coin-operated phonorecord player for which the application is made; (iii) the name or a specified designation of the manufacturer of the coin-operated phonorecord player for which the application is made; (iv) the serial number on 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 handwritten 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. The signature shall be accompanied by: (A) a certiﬁcation that the statements made in the application are correct to the best of the signing person’s knowledge; (B) the typed or printed name (and title if the operator is a corporation or of a partner) of that person; and (C) the date of signature.

(2) If a serial number is not present on the coin-operated phonorecord player for which the application is made, the application shall 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 at the time the application was submitted for recordation is in any respect different from the one in place in the player at the time the operator was informed that the serial number had been entered in the phonorecord player; and

(iv) A statement that the serial number in the phonorecord player has been entered in conformity with the rules of the Copyright Ofﬁce.
application is signed 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 at the time the application is signed.

(3) Each application shall be accompanied by a fee of $8 or $4, as 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. However, separate applications must be filed for players covered by $8 fees and players covered by $4 fees.

(5) The form prescribed by the Copyright Office for the foregoing purposes is designated "Application for Recordation of Coin-Operated Phonorecord Players (Form JB) ". Copies of the form are available free upon request to the Licensing Division, United States Copyright Office, Library of Congress, Washington, D.C. 20557.

(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. 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 $4 fee will be valid only after July 1 of the year in which they are issued and will be so identified.

(2) Each certificate will consist of two parts. 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 both parts must be clearly visible.

(3) A certificate issued for a player with auxiliary selectors (wall boxes) shall be affixed to the master control player if the certificate, when so affixed, can be readily examined by the public. If a certificate affixed to the master control player cannot be readily examined by the public, it shall be affixed to one of the auxiliary selectors in a position where it can be so examined.

(d) Replacement Certificates. 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 or title 28 of the United States Code, 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. A replacement certificate will be identified by an asterisk following the name of the manufacturer.

(e) Sale or transfers. The sale or transfer of a coin-operated phonorecord player during a period for which the certificate 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(1)).


BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.