

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 42, No. 244 of the Federal Register for Tuesday, December 20, 1977 (pp.63779-81).

[1410-03]

[Docket RM 77-4]

PART 201—GENERAL PROVISIONS

Recordation and Certification of Coin-Operated Phonorecord Players

AGENCY: Library of Congress, Copyright Office.

ACTION: Final Regulation.

SUMMARY: This regulation is issued to implement section 116(b) of the Act for General Revision of the Copyright Law. Section 116(b) prescribes conditions under which operators of coin-operated phonorecord players may obtain a compulsory license for the public performance of nondramatic musical works. The effect of the regulation is to establish requirements governing the application for a compulsory license and to prescribe certain matters pertaining to the certificate to be affixed to licensed players.

EFFECTIVE DATE: January 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Susan Aramayo, Chief, Licensing Division, U.S. Copyright Office, Library of Congress, Washington, D.C. 20557, 703-557-8730.

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—com-

monly 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.

On March 30, 1977 the Office published in the FEDERAL REGISTER (42 FR 16838) an Advance Notice of Proposed Rule-making 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: (i) 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. These parties asserted that as the charge per play and type of sound system could be changed, they would not uniquely identify a licensed player. Representatives of performing rights societies endorsed the elements required by proposed § 201.16(b)(2), but suggested that they be supplied for all players.

After further consideration, we have decided to adopt this section of the regulation essentially as proposed. We believe that the charge per play and type of sound system will assist in the identification of players having no serial numbers. In order to avoid any question as to the validity of a license where the charge or 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 information for all players would be inconsistent 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 more than one. This list would be updated monthly to show any additions or deletions of locations, or variations in the number of players. It was asserted that such lists are 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' x 3' in size so that the entire certificate may be placed in 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 constitute only one player for the purpose of the statute. Only one certificate 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:

(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.

FINAL REGULATION

Part 201 of 37 CFR Chapter II is amended 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 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 the operator for the purpose of conducting the business relating to the coin-operated phonorecord player for which the application is made. If the operator is a partnership, the name of at least one individual partner shall also be given;

(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-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; and

(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 partnership) 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 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 at the time the ap-

plication 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(11).)

Dated: December 14, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

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