



# ANNOUNCEMENT

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

## INTERIM REGULATIONS

### PART 201-GENERAL PROVISIONS

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

The following excerpt is taken from Volume 43, no. 164 of the Federal Register for Wednesday, August 23, 1978 (pp. 37451-37454).

The interim regulations are effective on August 23, 1978. Initial comments should be received on or before September 25, 1978; reply comments by October 11, 1978.

[1410-03]

#### Title 37—Patents, Trademarks, and Copyrights

#### CHAPTER II—COPYRIGHT OFFICE, LIBRARY OF CONGRESS

[Docket RM 77-4A]

#### PART 201—GENERAL PROVISIONS

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

AGENCY: Library of Congress, Copyright Office.

ACTION: Interim regulations.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is adopting interim amendments to § 201.16 of our regulations. The effects of the amendments are: To establish requirements governing the correction of errors in applications for recordation of coin-operated phonorecord players and in related certificates; to clarify our examination of applications and our treatment of certain time limits imposed by the Copyright Act in connection with the recordation of coin-operated phonorecord players; to modify the requirement for the "full address" of an operator of coin-operated phonorecord players to include post office boxes in certain cases; and to make other technical amendments. The amendments are issued on an interim basis in order to permit their immediate application while allowing full public comment.

ML-210

DATES: The interim regulations are effective on August 23, 1978. Initial comments should be received on or before September 25, 1978; reply comments by October 11, 1978.

ADDRESSES: Five copies of all written comments should be provided, if by hand, to Office of the General Counsel, U.S. Copyright Office, Library of Congress, Crystal Mall, Building No. 2, Room 519, Arlington, Va., or if by mail to Office of the General Counsel, U.S. Copyright Office, Library of Congress, Caller No. 2999, Arlington, Va. 22202.

Copies of all written comments will be available for public inspection and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, in the Public Information Office of the Copyright Office, Room 101, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va.

#### FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: 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. After establishing general rules

governing the conditions of the compulsory license for coin-operated phonorecord players, section 116(b)(1) requires the Register of Copyrights to prescribe regulations governing compulsory license applications and the certificates to be affixed to licensed phonorecord players.

On March 30, 1977, we 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, on December 20, 1977, we published (42 FR 63779) final regulations implementing section 116. In the light of our experience during the last seven months, we have concluded that certain changes and additions to the regulations are desirable. In accordance with our obligations under section 116(b)(1)(A), we have consulted with the Copyright Royalty Tribunal concerning these changes and additions. The Tribunal has advised us by letter that it has no objection to any of these interim amendments.

1. *Application requirements.* The regulations as issued did not permit a jukebox operator to use a post office box or similar designation in applying for recordation. We have found that, in some areas of the country, a post office box is the only realistic address that can be given. We have therefore amended § 201.16(b)(1)(ii) to provide

\* Error; line should read:

"tion (42 FR 54840) and, on October 25,"

that, after consultation with postal officials, we will accept a post office box or similar address in special cases where no better address is possible. In keeping with our original purpose of assuring copyright owners adequate means of identifying compulsory licensees, we have retained the requirement ruling out post office box addresses in all other cases.

The regulations also required that, where a player does not have a serial number, certain additional information including the "model number" be given. This requirement proved unnecessarily burdensome. Consistent with our treatment of model years and names in the same paragraph, we have therefore amended § 201.16(b)(2)(i) to require identification of the "model number" only "if known."

2. *Examination.* We have added a new paragraph (4) to § 201.16(c) to state our general principle in examining applications for recordation of jukeboxes: We will require the correction of errors appearing on the face of the document, but will generally not go beyond the information in the application itself. Our treatment of certain time limitations imposed by the Act is dealt with below.

3. *Time limitations.* Section 116 of the law sets forth certain time limitations in connection with applications for recordation of jukeboxes: For jukeboxes already in use on January 1, 1978, the application was to be submitted between January 1, 1978, and January 31, 1978; for jukeboxes put into use after January 1, 1978, the application must be submitted before or within 1 month after the date performances are first made available on that player; and for jukeboxes previously recorded in the Copyright Office the application must be submitted between January 1 and January 31 of each succeeding year that the machine is in use. In addition, as an exception to the requirement that applications are to be accompanied by a royalty fee of \$8 per player, the statute provides that, if 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" is \$4.

We have added a new paragraph (f) to § 201.16 to clarify the relationship of these statutory provisions to our handling of applications and fees. The first part of this paragraph states the general rule that we will not inquire into the timeliness of applications filed and that we will accept a late filing where a proper fee is paid, but that our action in issuing a certificate in cases of this sort will not relieve an operator of its statutory obligations and will only have whatever effect a court may determine.

The second part of this paragraph deals with the situation in which applications for phonorecord players that the operator plans to put into operation after July 1 of any year, and thus requiring payment of only \$4, are

filed much earlier in the calendar year. Situations of this sort will arise and need to be provided for, but if handled routinely they could lead to unjustified losses to copyright owners and the danger of substantial liability for jukebox operators. Accordingly, we have concluded that an operator should expressly state in writing that any players covered by a \$4 fee will not be put into operation until after July 1 of the year covered by the application, where the application is filed more than one month before July 1 of that year.

The third part of paragraph (f) deals with another special case: Applications submitted after July 1 of a year accompanied by \$8 per box fees. Consistent with our general practice, mentioned above, we will assume without further inquiry that the applications are for players put into operation before July 1.

4. *Corrections and refunds.* Where, before a certificate has been issued, the Copyright Office notes a mistake in the application or fee, it will notify the applicant and seek to get the error corrected. We have also found that, after the normal examining process has been completed and the certificate has been issued, there are cases in which the operator discovers its own error and requests corrections or refunds of amounts paid. Although the Act does not expressly deal with these situations, we have concluded that it would be reasonable to jukebox operators and beneficial to the accuracy of our records to allow corrections and refunds to be made after the issuance of certificates in limited cases and under certain conditions.

We have added a new paragraph (g) to § 201.16 to deal with cases of this sort. Paragraph (g)(1) specifies the four situations in which we believe that corrections and refunds should be made: The duplicate listing of players; the entry of certain erroneous information in the application; Copyright Office error in issuing a certificate; and overpayment of an \$8 fee where only a \$4 fee is required.

New paragraph (g)(2) makes clear that corrections or refunds will not be made in any other case, including cases in which changes have taken place after the application was signed. For example, when the application was correct at the time it was filed but a player listed on it was later sold or destroyed, or where the name of the operator has changed, there could be no "correction" since the information was correct, and no refund since a valid license had been issued.

Paragraph (g)(2) also provides that a refund will not be made where a player was listed in the application but it later turns out that, at the time the application was signed, the player was not owned by the operator, or had already been destroyed, or was in a condition that made it incapable of being repaired. There are several reasons behind our decision not to permit refunds in these cases: To permit the

Copyright Office to fulfill its statutory obligation promptly to transfer royalty payments to the Treasury for investment in interest-bearing securities and to provide detailed accountings to the Copyright Royalty Tribunal; to assure that copyright owners will derive the intended benefits of prompt transfers and investments; to prevent the Copyright Royalty Tribunal from being hampered in distributing the accumulated fees and interest to copyright owners; and to avoid burdening the Office and Tribunal with unnecessary administrative expenses that would have to be deducted from the funds available to copyright owners.

The cases where refunds will not be made are distinguishable from the situations mentioned in paragraph (g)(1). The errors in these cases are not apparent from the application itself and are not attributable to the fault of the Copyright Office; the relevant facts are not verifiable from the face of the application and do not affect identification of the licensed players. Taking into account the substantial obstacles that refunds pose to the statutory objective of adequate compensation to copyright owners, we believe that the operator must bear the burden of its own errors in these cases.

New paragraph (g)(3) establishes the conditions under which refunds and corrections will be made in those cases where they are appropriate. These conditions are designed to give jukebox operators enough time to discover and advise the Copyright Office of errors, while also—like the limitations in paragraph (g)(2)—providing safeguards for the interests of copyright owners in accurate information and adequate compensation for the use of their works by compulsory licensees.

#### INTERIM AMENDMENTS

Part 201 of 37 CFR Chapter II is amended, on an interim basis:

#### § 201.16 [Amended]

1. By revising § 201.16(b)(1)(ii) (as adopted on January 1, 1978) to read as follows:

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(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 generally be accepted. The Copyright Office will accept a post office box number or similar designation in special cases if, after consulting with officials of the United States Postal Service, the Office concludes that no better address for the operator's place of business is possible.

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2. By adding the words "if known;" following the phrase "Its model number" in § 201.16(b)(2)(i).

\* Error; line should read:  
"Copyright Office to fulfill its statuto-"

3. By correcting the phrase "a statement in accordance with section 1746 or Title 28 of the United States Code, and signed . . ." in § 201.16(d) to read a statement in accordance with section 1746 of Title 28 of the United States Code, made and signed . . ."

4. By adding a new paragraph (4) to § 201.16(c) to read as follows:

(c) *Certificate.* . . .

(4) The Copyright Office will advise jukebox operators of errors or omissions appearing on the face of forms submitted to it, and will require that any such obvious errors or omissions (including errors in the calculation of fees) be corrected before certificates will be issued. However, the issuance of a certificate by the Copyright Office shall establish only the fact, date of issuance, and date of expiration of the certificate; it shall in no case be considered a determination that the application form was properly prepared or that all of the requirements to qualify for a compulsory license have been satisfied.

5. By adding new paragraphs (f) and (g) to § 201.16 to read as follows:

(f) *Time limitations.* (1) The Copyright Office may, when it considers it reasonable and appropriate, advise applicants of the time limitations governing the filing of applications and amount of royalty fees as set forth in 17 U.S.C. 116. However, except as set forth in paragraph (f)(2) of this section, the Office will normally not inquire into the date on which performances were actually made available on particular phonorecord players identified in the application or whether such players were previously recorded in the Copyright Office. In the following cases, the Office's acceptance of the application and issuance of a certificate is not to be considered as relieving the operator from any legal consequences arising from the late filing, and shall have only such effect as may be attributed to it by a court of competent jurisdiction: (i) Where, on the date the application covering a particular phonorecord player was received in the Copyright Office, performances had been first made available on that player more than 1 month earlier; and (ii) where, in 1979 and thereafter, a particular phonorecord player had been recorded in the Copyright Office during the previous calendar year, but the application is received after January 31 of the year in question.

(2) In the case of an application that received in the Copyright Office before June 1 of a particular year, and that is accompanied by a fee of \$4 for each player identified in the applica-

tion, the Copyright Office will not issue certificates unless the application is accompanied or supplemented by a statement that performances will not be made available on such players until after July 1 of that year. The statement shall be in the form of a letter addressed to the Licensing Division of the Copyright Office, and shall be signed by the operator named in the application or the duly authorized agent of that operator. If a business entity is the operator, the signature or name shall be that of an officer if the entity is a corporation, or a partner if the entity is a partnership, and shall be accompanied by the organizational title of that person. The statement shall, for all purposes including section 116(b)(1)(B) of Title 17 of the United States Code, be considered a part of the application. The statement described in this paragraph shall not be required in the case of applications covering a particular year received in the Copyright Office after June 1 of that year. In any case, if performances are actually made available for the first time on any players covered by \$4 fees on or before July 1 of that year, the Office's acceptance of the application and issuance of a certificate is not to be considered as relieving the operator from any legal consequences arising from the failure to pay the correct fee, and shall have only such effect as may be attributed to it by a court of competent jurisdiction.

(3) If an application received in the Copyright Office after July 1 of any year is accompanied by a royalty fee of \$8 for each player identified, the Copyright Office will assume without further inquiry that the application pertains to players on which performances were made available for the first time on or before July 1 of that year.

(g) *Corrections and refunds.* (1) Upon compliance with the procedures, and within the time limits, set forth in paragraph (g)(3) of this section, corrections to applications for recordation of coin-operated phonorecord players will be made, and corrected certificates and refunds will be issued, in the following cases:

(i) Where the same player, identified by the same serial number or other identifying information, is listed more than once in the same application, or in two or more applications filed during the same year by or on behalf of the same operator. In these cases the operator named in the application shall be entitled to a refund of any duplicate fee paid;

(ii) Where any of the following information was incorrect at the time the application was signed: (A) The operator's name or address; (B) the serial number or name of the manufacturer of a player; or (C) the identifying information required by paragraph (b)(2) of this section. In any such case the Copyright Office will issue a new certificate containing the correct information. Each corrected certificate will be identified by a

double asterisk following the name of the manufacturer.

(iii) Where an application contains information that was correct at the time the application was signed but, as the result of Copyright Office error, the certificate contains incorrect information. In this case the Copyright Office will issue a new certificate containing the correct information; and

(iv) Where an application was accompanied by payment of an \$8 fee for each phonorecord player listed but, with respect to one or more such players, performances were actually made available for the first time after July 1 of the year in which the application was filed. In this case the operator named in the application shall be entitled to a refund of any excess fee paid and the Copyright Office will issue a new certificate for each player subject to the \$4 fee.

(2) Corrected certificates or refunds will not be issued after the issuance of original certificates in the following cases:

(i) Where the application was correct on the date on which the application was signed, but changes (for example, a change in the operator's name or address, or the sale or destruction of a player) took place later;

(ii) Where the application identified one or more players that the operator named in the application never owned or operated, or did not own or operate at the time the application was signed, or where, before the application was signed, an identified player had been destroyed or otherwise rendered permanently incapable of being repaired; or

(iii) In any other case not specifically mentioned in paragraph (g)(1) of this section.

(3) Requests for corrections and refunds in the cases mentioned in paragraph (g)(1) of this section shall be made to the Licensing Division of the Copyright Office, and shall meet the following conditions:

(i) The request must be in writing, must be clearly identifiable as a request for a correction or refund, and, except in the cases described in paragraph (g)(1)(iii) of this section, must be received in the Copyright Office with the appropriate fee, certificate or certificates, and affidavit (where required) before the expiration of 30 days from the date on which the original certificate was issued by the Copyright Office. A request made by telephone, or by telegraphic or similar unsigned communication, will be considered to meet this requirement if it clearly identifies the basis of the request, if it is received in the Copyright Office within the required 30-day period, and if a written request meeting all the conditions of this paragraph (g)(3) of this section is also received in the Copyright Office within 14 days after the end of such 30-day period.

(ii) The original application pertaining to each correction must be suffi-

ciently identified in the request so that it can be readily located in the records of the Copyright Office;

(iii) The original certificate pertaining to each correction or refund must be returned to the Copyright Office within the time period prescribed by paragraph (g)(3)(i) of this section. No request will be processed until the applicable certificate is returned; and

(iv) The request must contain a clear statement of the facts on which it is based, in accordance with the following requirements:

(A) In the case of duplicate listings (paragraph (g)(1)(i)) a precise and accurate identification of the particular player or players must be given.

(B) In the case of incorrect information given in the application (paragraph (g)(1)(ii) of this section) the request must clearly identify the erroneous information and provide the correct information.

(C) In the case of a certificate that contains erroneous information resulting from Copyright Office error (paragraph (g)(1)(iii) of this section) the error must be clearly indicated.

(D) In the case of overpayment within the meaning of paragraph (g)(1)(iv) of this section, the request must be accompanied by 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 the operator named in the application or the duly authorized agent of that operator in accordance with paragraph (b)(1)(vi) of this section. The affidavit or statement shall: aver that performances of nondramatic musical works were actually made available on the particular phonorecord player(s) for the first time after July 1 of the year covered by the application; Give the exact date, including month, day, and year on which such performances were first made available and the location where that event took place; specifically identify the particular phonorecord player(s) involved by the same identifying information as given in the application; and include a brief explanation of the reason for the original submission of a \$8 fee for those players.

(v) In those cases where corrections or refunds are to be made under paragraph (g)(1) of this section, the request must be accompanied by a certified check, cashier's check, or money order in the following amount: (A) In the case of a duplicate listing (paragraph (g)(1)(i) of this section): \$4 for each application involved; (B) in the case of an error in the operator's name or address (paragraph (g)(1)(ii)(A)) or overpayment within the meaning of paragraph (g)(1)(iv) of this section: \$4 for each separate original application pertaining to the certificates to be cor-

rected; and (C) in the case of an error in the serial number or name of the manufacturer of the player, or other identifying information (paragraph (g)(1)(ii) (B) and (C) of this section) \$4 for each separate certificate to be corrected. No request will be processed until the appropriate fee is received; and

(vi) The request must be signed by the operator named in the application, or the duly authorized agent of the operator, in accordance with paragraph (b)(1)(vi) of this section.

(4) Each request for correction or refund will be made part of the original application in the records of the Copyright Office. Nothing contained in this paragraph (g) shall be considered to relieve the operator from its full obligations under title 17 of the United States Code, including penalties for affixing a certificate to a player other than the one it covers.

(17 U.S.C. 116, 702, 708.)

Dated: August 16, 1978.

BARBARA RINGER,  
*Register of Copyrights.*

Approved:

WILLIAM J. WELSH,  
*The Acting Librarian  
of Congress.*

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