



ANNOUNCEMENT

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

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REGISTER FOR
SPECIAL PROGRAMS
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FINAL REGULATION

37 CFR Part 201

RECORDATION AND CERTIFICATION OF COIN-OPERATED PHONORECORD PLAYERS

The following excerpt is taken from Volume 47, Number 111 of the Federal Register for Wednesday, June 9, 1982 (pp. 25004-6)

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket RM 82-2]

Recordation and Certification of Coin-Operated Phonorecord Players

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is adopting amendments to § 201.16 of its regulations to reflect the new fees for recordation and certification of coin-operated phonorecord players in accordance with the final ruling of the Copyright Royalty Tribunal, January 5, 1981, is upheld by the U.S. Court of Appeals for the Seventh Circuit on April 16, 1982.

DATE: June 9, 1982.

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

SUPPLEMENTARY INFORMATION: Section 116 of title 17 of the United States Code (the Copyright Act) establishes conditions under which operators of coin-operated phonorecord players—

commonly called "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 copyrighted owner, if certain conditions are met and royalties are paid.

Section 116(b)(1)(A) of title 17 U.S.C. initially established the statutory royalty rate of \$8 per jukebox per year (or \$4 for each box on which performances were first made available after July 1). Section 804(a)(1) of the Copyright Act required the Copyright Royalty Tribunal to review the reasonableness of those rates during 1980, and to make adjustments as necessary to achieve the statutory objectives included in section 801(b)(1).

The Copyright Royalty Tribunal conducted rate adjustment proceedings involving all interested parties during 1980, and announced its final ruling on January 5, 1981. Copyright Royalty Tribunal 1980 Adjustment of the Royalty Rate for Coin-Operated Phonorecord Players, 46 FR 884 (1981). After full consideration of the issues and positions of the interested parties, the Tribunal determined that the royalty payable by jukebox operators to owners of copyrighted music should be \$50 per jukebox per year, with the new fee schedule to be adopted in two stages, as follows:

\$25 per jukebox per year in 1982 and 1983;

\$50 per jukebox per year thereafter, with the fees subject to a cost of living adjustment on January 1, 1987.

The per box rate for jukeboxes that first perform works after July 1 of any year is one-half the applicable annual rate for that year.

This determination was appealed to the Seventh Circuit Court of Appeals, which recently upheld the Tribunal's adjusted rate schedule, effective January 1, 1982. *Amusement and Music Operators Ass'n. v. Copyright Royalty Tribunal*, No. 80-2837 (7th Cir. Apr. 16, 1982).

Section 116 of title 17 requires the Register of Copyrights to prescribe regulations governing compulsory license applications and the certificates to be affixed to licensed jukeboxes. Pending the ruling of the Seventh Circuit, the Copyright Office has accepted applications from, and issued jukebox certificates to, jukebox operators at the original \$8 statutory rate. Some jukebox operators tendered payment at the \$25 rate set by the Copyright Royalty Tribunal, and the Copyright Office accepted that fee.

Under the decision of the Seventh Circuit, jukebox operators must pay the \$25 fee for 1982, if the yearly rate applies, or \$12.50 if the half-year rate applies. Consequently, the Copyright

^aError; line should read: "1981, as upheld by the U.S. Court of"

Office is amending § 201.16 of its regulations¹ to reflect the new royalty fees, and to provide that on or before July 15, 1982, all jukebox operators who obtained certificates for jukeboxes in calendar year 1982 at the old rate of \$8 must apply for supplemental certificates and pay the additional \$17 fee for certification in 1982. Those operators who have already paid the \$25 fee for 1982 should contact the Copyright Office and request a supplemental certificate at no cost. The Office will attempt to notify all operators of the need to pay the additional fee and/or obtain a supplemental certificate, as appropriate, but any operators who do not receive actual notice are not relieved of the obligation to obtain supplemental certificates. Supplemental certificates must be affixed to each jukebox within ten calendar days after the certificate is issued. Although the Office will accept late filings for supplemental certificates if a proper fee is paid, the Office takes no position on what effect a court may accord to such filings.

After the date of publication of this notice, the Copyright Office will not issue any more certificates for jukeboxes at the old royalty rates.

All of the amendments to the regulation are interpretive and are intended to reflect the final ruling of the Copyright Royalty Tribunal concerning the royalty rates for jukeboxes under the compulsory license of section 116 of the Copyright Act, as upheld by the Seventh Circuit Court of Appeals. The new royalty rates are effective January 1, 1982. Accordingly, the notice requirements of 5 U.S.C. 553 do not apply; the regulation is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601-612. The amendments are issued as final rules effective immediately and without a period for public comment. However, jukebox operators will have at least 30 days from the date of this notice to pay the additional royalty fee and obtain a supplemental certificate of recordation of a player.

List of Subjects in 37 CFR Part 201

Copyright; jukeboxes.

For the reasons set out in the preamble, Part 201 of Chapter II of Title 37 of the Code of Federal Regulations is amended as set forth below.

¹ Final regulations governing recordation of jukeboxes were first issued with an effective date of January 1, 1978 (42 FR 63779) following publication of a proposed regulation (42 FR 54840); a public hearing was held on October 25, 1977. (The Office adopted interim amendments to the regulations on August 23, 1978 (43 FR 37451) and final amendments on October 31, 1978 (43 FR 50678) and on December 20, 1978 (43 FR 59378).

Final Amendments

Part 201 of 37 CFR, Chapter II, is amended:

§ 201.16 [Amended]

1. By revising § 201.16(b)(3) and (b)(4) (as adopted on January 1, 1978) and (b)(6)(i) (as adopted on December 20, 1978) to read as follows:

(b) * * *

(3) Each application shall be accompanied by a fee in the form of a certified check, cashier's check, or money order, in the following amount:

(i) \$25 per player per year in 1982 and 1983;

(ii) \$50 per player per year in 1984, 1985, and 1986;

(iii) \$50 per player per year in 1987 and each year thereafter, subject to a cost of living adjustment as determined by the Copyright Royalty Tribunal;

(iv) One-half the applicable annual rate for each player on which performances of nondramatic musical works were made available for the first time after July 1 of any year.

(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 the full-year fee and players covered by the half-year fee.

(5) * * *

(6)(i) Where an operator has recorded one or more players in the Copyright Office during a particular year, the Copyright Office will, during the month of December of that year, send to the operator, at the operator's last address shown in the records of the Licensing Division, a "Renewal Application for Recordation of Coin-Operated Phonorecord Players (Form JB/R)". The renewal application will be accompanied by a list of the players recorded by the operator in the Copyright Office earlier during that year; such list will contain the information provided by the operator in its earlier application or applications, and will be based on the assumption that such players were properly identified in the earlier application or applications. The renewal application may be used during the month of January of the immediately succeeding year, in lieu of an application on Form JB, to apply for a compulsory license to cover: (A) Players recorded during the previous year, and (B) any other players operated by the applicant. A renewal application on Form JB/R shall comply with paragraphs (b)(1) through (b)(4) of this section and the instructions

accompanying the form; however, a renewal application on Form JB/R may not be used for players covered by a half-year fee.

* * * * *

2. By revising § 201.16(c)(1) (as amended on January 1, 1978) to read as follows:

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

* * * * *

3. By revising § 201.16(f)(2) and (3) (as adopted on October 31, 1978) to read as follows:

(f) * * *

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

^b Error; line should read: "not be used for players covered by a half-"

competent jurisdiction.

(3) If an application received in the Copyright Office after July 1 of any year is accompanied by the prescribed full-year royalty fee 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.

4. By revising § 201.16(g)(1)(iv) and (g)(3)(D) (as adopted on October 31,^c 1978) to read as follows:

(g) * * *

(1) * * *

(iv) Where an application was accompanied by payment of the prescribed yearly 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 half-year fee.

(2) * * *

(3) * * *

(i) * * *

(ii) * * *

(iii) * * *

(iv) * * *

(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 full-year fee for those players.

* * * * *

5. By adding a new paragraph (h) to § 201.16 to read as follows:

(h) *Supplemental Certificates for 1982.*

(1) In all cases, new supplemental certificates for 1982 must replace those issued prior to June 15, 1982. The Copyright Office will attempt to notify all jukebox operators who recorded a player in 1982 of the need to obtain supplemental certificates. Jukebox operators who for any reason are not notified are not relieved of their obligation to obtain supplemental certificates.

(i) Jukebox operators who were previously issued certificates for 1982 at

the \$8 rate must apply for supplemental certificates on a form prescribed by the Copyright Office and pay an additional \$17 per player on or before July 15, 1982. The form shall be signed in the manner designated in paragraph (b)(vi) of this § 201.16 for original certificates. Copies of the form are free upon request to the Licensing Division, United States Copyright Office, Library of Congress, Washington, D.C. 20557.

(ii) Jukebox operators who have already submitted \$25 fee should notify the Copyright Office to provide them with a supplemental certificate at no additional cost.

(2) Supplemental certificates must be affixed to each player within 10 days after the certificate is issued.

(3) Acceptance by the Copyright Office of applications for supplemental certificates after July 15, 1982, and issuance of corresponding certificates, 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.

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

Dated: May 28, 1982.

David Ladd,

Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 82-15572 Filed 6-8-82; 8:46 am]

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^cError; line should read:

"(g)(3)(iv)(D) (as adopted on October 31,"

