



ANNOUNCEMENT

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

NOTICE OF PUBLIC HEARING

RECORDATION AND CERTIFICATION OF COIN-OPERATED PHONORECORD PLAYERS

The following excerpt is taken from Volume 53, Number 9 of the Federal Register for Thursday, January 14, 1988 (pp. 965 - 966)

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM87-9]

Recordation and Certification of Coin-Operated Phonorecord Players

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of public hearing.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is reviewing the operation of the jukebox compulsory license of the copyright law (17 U.S.C. 116). In particular, the Copyright Office is interested in learning the extent to which the 1985 voluntary agreement between the performing rights societies and the Amusement and Music Operators Association (AMOA) is working satisfactorily. This notice requests participation in a public hearing intended to elicit comments, views, and information which will assist the Office in this review of the effectiveness of the jukebox compulsory licensing system, and the regulations issued to facilitate the parties' voluntary agreement.

DATES: The public hearing will be held on March 10, 1988 in Washington DC beginning at 10 a.m. in Room LM-621 (yellow quadrant). Anyone desiring to testify should contact the Office of the General Counsel, Copyright Office at (202) 287-8380 by March 3, 1988. Ten copies of written statements should be

submitted to the Copyright Office by 4:00 p.m. on March 7, 1988. Comments are also invited from persons who do not wish to testify by March 7, 1988.

ADDRESSES: Hearing location: The hearing will be held in Room LM-621 of the James Madison Memorial Building, Library of Congress, First and Independence Ave., SE., Washington, DC beginning at 10:00 a.m..

Ten copies of written statements, supplementary statements, or comments should be submitted as follows:

If sent by mail: Library of Congress, Department 100, Washington, DC 20540.

If delivered by hand: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, DC.

All requests to testify should clearly identify the individual or group desiring to testify.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 287-8380.

SUPPLEMENTARY INFORMATION: The Copyright Act of 1976, 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.¹

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.¹ The royalty fee initially established in the 1976 Copyright Act was a yearly \$8 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 Operator's Association v. Copyright Royalty Tribunal*, 876 F.2d 144 (7th Cir. 1982), cert. denied, 459 U.S. 907 (1982). The Copyright Office implemented the rate

¹ In general, the licensing of performing rights in musical compositions is 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 Association (AMOA).

¹ Error; line should read:
"nondramatic musical works."

adjustment by publishing final regulations at 47 FR 25004 (June 9, 1982). The current rate is \$63 per jukebox.

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 the entire useful life of the box, in lieu of the current annual licensing fee.

The performing rights societies opposed these bills on the ground of fairness and countered with arguments that voluntary compliance with the compulsory licensing scheme by operators was low. While the Copyright Act of 1976 contains significant penalties for performing copyrighted musical compositions without a negotiated or compulsory license, enforcement is expensive. As a result of perceived noncompliance with the licensing scheme, copyright owners say they lose a significant portion of the royalties to which they are entitled under the existing law.

In order to reach a mutually acceptable solution without legislation, Congressional leaders in the 98th Congress, including Representative Robert Kastenmeier of Wisconsin, Chairman of the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice, urged the interested parties to enter into private negotiations. Adopting this advice, the performing rights societies and AMOA succeeded in reaching an agreement in 1985, which will be in effect until 1990. Although the agreement itself has not been made public, the main provisions were described in a press release by Mr. Kastenmeier. Under the agreement, the

performing rights societies agreed to provide rebates to operators who obtain a compulsory license. Payment of the rebate, however, is conditional upon an increase in the number of jukeboxes licensed. The AMOA further agreed to encourage its membership to record their jukeboxes with the Copyright Office. In addition, the parties agreed to allow jukebox operators to transfer certificates from jukeboxes not in service to those that were publicly performing musical compositions. The Copyright Office promoted this portion of the agreement by modifying the content of the jukebox certificate, and adjusting its regulations. 50 FR 52458 (1985).

Despite the existence of the special agreement, the number of jukeboxes licensed has continued to decline. In calendar year 1984 the number of machines licensed was 104,391. In 1985 the number dropped to 99,965, in 1986 to 99,069, and in 1987 to 96,204.

On November 16, 1987, Representative Kastenmeier wrote to the Copyright Office in his capacity as Chairman of the House Subcommittee on Courts, Civil Liberties and the Administration of Justice concerning the experience under the special agreement. The Subcommittee expressed interest in assessing the extent to which the voluntary agreement is working, and requested the assistance of the Copyright Office in securing this important information.

Accordingly, the Copyright Office has decided to hold a public hearing on March 10, 1988 to obtain information about the experience under the voluntary agreement between the music performing rights societies and AMOA. The Office, through its representative on the administrative committee established by the parties to oversee the

agreement's implementation, has received regular briefings about developments. Through a public hearing, parties to the agreement (and other members of the public) can give the Office their own assessment of the experience under the special agreement and can perhaps offer constructive suggestions for improving it. The Office seeks all information relevant to the operation of the jukebox compulsory license and the experience under the special voluntary agreement. In particular, the Office would like to receive information on the following points:

(1) Has the change in Copyright Office regulations regarding the content of the jukebox certificate served its purpose of facilitating transfer of certificates from active to inactive boxes? Has this regulatory change led to any abuses of the certificate, such as licensing a smaller number of boxes than are actually active?

(2) Has the number of licensed jukeboxes decline because fewer boxes are in circulation, because of the ² increase in the royalty fees, because of ignorance of the law, because of willful noncompliance, because of a combination of the factors, or because of other factors? How many jukeboxes are in active circulation and operation in the United States?

(3) Can any of the parties to the voluntary agreement suggest ways to improve the agreement, or other ways to ensure compliance with the copyright law?

Dated: January 5, 1988.
Ralph Oman,
Register of Copyrights.
[FR Doc. 88-629 Filed 1-13-88; 8:45 am]
BILLING CODE 1410-07-4

²Error; line should read:
"are in circulation, because of a"