(2) ARBITRATION.—Parties not subject to such a negotiation may determine, by arbitration in accordance with the provisions of chapter 8, the terms and rates and the division of fees described in paragraph (1).

(c) LICENSE AGREEMENTS SUPERIOR TO COPYRIGHT ARBITRATION ROYALTY PANEL DETERMINATIONS.—License agreements between one or more copyright owners and one or more operators of coin-operated phonorecord players, which are negotiated in accordance with subsection (b), shall be given effect in lieu of any otherwise applicable determination by a copyright arbitration royalty panel.

(d) DEFINITIONS.—As used in this section, the following terms mean the following:

(1) A ''coin-operated phonorecord player'' is a machine or device that—

(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by the insertion of coins, currency, tokens, or other monetary units or their equivalent;

(B) is located in an establishment making no direct or indirect charge for admission;

(C) is accompanied by a list which is comprised of the titles of all the musical works available for performance on it, and is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

(D) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

(2) An ''operator'' is any person who, alone or jointly with others—

(A) owns a coin-operated phonorecord player;

(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

(C) has the power to exercise primary control over the selection of the musical works made available for public performance on a coin-operated phonorecord player.

(Added Pub. L. 100–568, §4(a)(4), Oct. 31, 1988, 102 Stat. 2855, §116A; renumbered §116 and amended Pub. L. 103–198, §3(b)(1), Dec. 17, 1993, 107 Stat. 2309; Pub. L. 105–80, §5, Nov. 13, 1997, 111 Stat. 1531.)

PRIOR PROVISIONS

A prior section 116, Pub. L. 94–553, title I, §101, Oct. 19, 1976, 90 Stat. 2562; Pub. L. 100–568, §4(b)(1), Oct. 31, 1988, 102 Stat. 2857, related to scope of exclusive rights in nondramatic musical works and compulsory licenses for public performances by means of coin-operated phonorecord players, prior to repeal by Pub. L. 103–198, §3(a), Dec. 17, 1993, 107 Stat. 2309.

AMENDMENTS

1997—Subsec. (b)(2). Pub. L. 105–80, §5(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(2) ARBITRATION.—Parties to such a negotiation, within such time as may be specified by the Librarian of Congress by regulation, may determine the result of the negotiation by arbitration. Such arbitration shall be governed by the provisions of title 9, to the extent such title is not inconsistent with this section. The parties shall give notice to the Librarian of Congress of any determination reached by arbitration and any such determination shall, as between the parties to the arbitration, be dispositive of the issues to which it relates.''

Subsec. (d). Pub. L. 105–80, §5(2), added subsec. (d).

1993—Pub. L. 103–198, §3(b)(1)(A), renumbered section 116A of this title as this section.

Subsec. (b). Pub. L. 103–198, §3(b)(1)(B), (C), redesignated subsec. (c) as (b), substituted ''Librarian of Congress'' for ''Copyright Royalty Tribunal'' in two places in par. (2), and struck out former subsec. (b) which related to limitation on exclusive right if licenses not negotiated.

Subsec. (c). Pub. L. 103–198, §3(b)(1)(B), (D), redesignated subsec. (d) as (c), in heading substituted ''Arbitration Royalty Panel'' for ''Royalty Tribunal'', and in text substituted ''subsection (b)'' for ''subsection (c)'' and ''a copyright arbitration royalty panel'' for ''the Copyright Royalty Tribunal''.

Subsecs. (d) to (g). Pub. L. 103–198, §3(b)(1)(B), (E), redesignated subsec. (d) as (c) and struck out subsecs. (e) to (g) which provided, in subsec. (e), for a schedule for negotiation of licenses, in subsec. (f), for a suspension of various ratemaking activities by the Copyright Royalty Tribunal, and in subsec. (g), for transition provisions and retention of Copyright Royalty Tribunal jurisdiction.

EFFECTIVE DATE

Section effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions as in effect when cause of action arose, see section 13 of Pub. L. 100–568, set out as an Effective Date of 1988 Amendment note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 501, 511, 801, 802, 803 of this title; title 18 section 2319.

[§ 116A. Renumbered § 116]

§ 117. Limitations on exclusive rights: Computer programs

(a) MAKING OF ADDITIONAL COPY OR ADAPTATION BY OWNER OF COPY.—Notwithstanding the provisions of section 106, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

(1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or

(2) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

(b) LEASE, SALE, OR OTHER TRANSFER OF ADDITIONAL COPY OR ADAPTATION.—Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program. Adaptations so prepared may be transferred only with the authorization of the copyright owner.

(c) MACHINE MAINTENANCE OR REPAIR.—Notwithstanding the provisions of section 106, it is

not an infringement for the owner or lessee of a machine to make or authorize the making of a copy of a computer program if such copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes only of maintenance or repair of that machine, if—

(1) such new copy is used in no other manner and is destroyed immediately after the maintenance or repair is completed; and

(2) with respect to any computer program or part thereof that is not necessary for that machine to be activated, such program or part thereof is not accessed or used other than to make such new copy by virtue of the activation of the machine.

(d) DEFINITIONS.—For purposes of this section—

(1) the ''maintenance'' of a machine is the servicing of the machine in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that machine; and

(2) the ''repair'' of a machine is the restoring of the machine to the state of working in accordance with its original specifications and any changes to those specifications authorized for that machine.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2565; Pub. L. 96–517, § 10(b), Dec. 12, 1980, 94 Stat. 3028; Pub. L. 105–304, title III, § 302, Oct. 28, 1998, 112 Stat. 2887.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

As the program for general revision of the copyright law has evolved, it has become increasingly apparent that in one major area the problems are not sufficiently developed for a definitive legislative solution. This is the area of computer uses of copyrighted works: the use of a work ''in conjunction with automatic systems capable of storing, processing, retrieving, or transferring information.'' The Commission on New Technological Uses is, among other things, now engaged in making a thorough study of the emerging patterns in this field and it will, on the basis of its findings, recommend definitive copyright provisions to deal with the situation.

Since it would be premature to change existing law on computer uses at present, the purpose of section 117 is to preserve the status quo. It is intended neither to cut off any rights that may now exist, nor to create new rights that might be denied under the Act of 1909 or under common law principles currently applicable.

The provision deals only with the exclusive rights of a copyright owner with respect to computer uses, that is, the bundle of rights specified for other types of uses in section 106 and qualified in sections 107 through 116 and 118. With respect to the copyright-ability of computer programs, the ownership of copyrights in them, the term of protection, and the formal requirements of the remainder of the bill, the new statute would apply.

Under section 117, an action for infringement of a copyrighted work by means of a computer would necessarily be a federal action brought under the new title 17. The court, in deciding the scope of exclusive rights in the computer area, would first need to determine the applicable law, whether State statutory or common law or the Act of 1909. Having determined what law was applicable, its decision would depend upon its interpretation of what that law was on the point on the day before the effective date of the new statute.

AMENDMENTS

1998—Pub. L. 105–304 designated existing provisions as subsecs. (a) and (b), inserted headings, and added subsecs. (c) and (d).

1980—Pub. L. 96–517 substituted provision respecting limitations on exclusive rights in connection with computer programs for prior provision enunciating scope of exclusive rights and use of the work in conjunction with computers and similar information systems and declaring owner of copyright in a work without any greater or lesser rights with respect to the use of the work in conjunction with automatic systems capable of storing, processing, retrieving, or transferring information, or in conjunction with any similar device, machine, or process, than those afforded to works under the law, whether this title or the common law or statutes of a State, in effect on Dec. 31, 1977, as held applicable and construed by the court in an action brought under this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 501, 511 of this title; title 18 section 2319.

§ 118. Scope of exclusive rights: Use of certain works in connection with noncommercial broadcasting

(a) The exclusive rights provided by section 106 shall, with respect to the works specified by subsection (b) and the activities specified by subsection (d), be subject to the conditions and limitations prescribed by this section.

(b) Notwithstanding any provision of the antitrust laws, any owners of copyright in published nondramatic musical works and published pictorial, graphic, and sculptural works and any public broadcasting entities, respectively, may negotiate and agree upon the terms and rates of royalty payments and the proportionate division of fees paid among various copyright owners, and may designate common agents to negotiate, agree to, pay, or receive payments.

(1) Any owner of copyright in a work specified in this subsection or any public broadcasting entity may submit to the Librarian of Congress proposed licenses covering such activities with respect to such works. The Librarian of Congress shall proceed on the basis of the proposals submitted to it as well as any other relevant information. The Librarian of Congress shall permit any interested party to submit information relevant to such proceedings.

(2) License agreements, voluntarily negotiated at any time between one or more copyright owners and one or more public broadcasting entities shall be given effect in lieu of any determination by the Librarian of Congress: *Provided*, That copies of such agreements are filed in the Copyright Office within thirty days of execution in accordance with regulations that the Register of Copyrights shall prescribe.

(3) In the absence of license agreements negotiated under paragraph (2), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners