

an increase of the present two-cent royalty to a rate of 2¾ cents (or .6 of one cent per minute or fraction of playing time) is justified. This rate will be subject to review by the Copyright Royalty Commission, as provided by section 801, in 1980 and at 10-year intervals thereafter.

Accounting and Payment of Royalties; Effect of Default. Clause (3) of Section 115(c) provides that royalty payments are to be made on a monthly basis, in accordance with requirements that the Register of Copyrights shall prescribe by regulation. In order to increase the protection of copyright proprietors against economic harm from companies which might refuse or fail to pay their just obligations, compulsory licensees will also be required to make a detailed cumulative annual statement of account, certified by a Certified Public Accountant.

A source of criticism with respect to the compulsory licensing provisions of the present statute has been the rather ineffective sanctions against default by compulsory licensees. Clause (4) of section 115(c) corrects this defect by permitting the copyright owner to serve written notice on a defaulting licensee, and by providing for termination of the compulsory license if the default is not remedied within 30 days after notice is given. Termination under this clause “renders either the making or the distribution, or both, of all phonorecords for which the royalty had not been paid, actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506.”

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (c)(3)(B), are classified generally to chapter 1 (§1 et seq.) of Title 15, Commerce and Trade.

The date of enactment of the Digital Performance Right in Sound Recordings Act of 1995, referred to in subsec. (c)(3)(K), is the date of enactment of Pub. L. 104-39, which was approved Nov. 1, 1995.

AMENDMENTS

1997—Subsec. (c)(3)(D). Pub. L. 105-80, §4, struck out “and publish in the Federal Register” before “a schedule of rates and terms”.

Subsec. (c)(3)(E)(i). Pub. L. 105-80, §12(a)(7)(A), substituted “paragraphs (1) and (3) of section 106” for “sections 106(1) and (3)” in two places.

Subsec. (c)(3)(E)(ii)(II). Pub. L. 105-80, §12(a)(7)(A), substituted “paragraphs (1) and (3) of section 106” for “sections 106(1) and 106(3)”.

Subsec. (d). Pub. L. 105-80, §10, amended directory language of Pub. L. 104-39, §4. See 1995 Amendment note below.

1995—Subsec. (a)(1). Pub. L. 104-39, §4(1), substituted “any other person, including those who make phonorecords or digital phonorecord deliveries,” for “any other person” in first sentence and inserted before period at end of second sentence “, including by means of a digital phonorecord delivery”.

Subsec. (c)(2). Pub. L. 104-39, §4(2), inserted “and other than as provided in paragraph (3),” after “For this purpose,” in second sentence.

Subsec. (c)(3) to (6). Pub. L. 104-39, §4(3), added par. (3) and redesignated former pars. (3) to (5) as (4) to (6), respectively.

Subsec. (d). Pub. L. 104-39, §4(4), as renumbered by Pub. L. 105-80, §10, added subsec. (d).

1984—Subsec. (c)(3) to (5). Pub. L. 98-450 added par. (3) and redesignated existing pars. (3) and (4) as (4) and (5), respectively.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-39 effective 3 months after Nov. 1, 1995, see section 6 of Pub. L. 104-39, set out as a note under section 101 of this title.

PERSONS OPERATING UNDER PREDECESSOR COMPULSORY LICENSING PROVISIONS

Section 106 of Pub. L. 94-553 provided that: “In any case where, before January 1, 1978, a person has law-

fully made parts of instruments serving to reproduce mechanically a copyrighted work under the compulsory license provisions of section 1(e) of title 17 as it existed on December 31, 1977, such person may continue to make and distribute such parts embodying the same mechanical reproduction without obtaining a new compulsory license under the terms of section 115 of title 17 as amended by the first section of this Act [this section]. However, such parts made on or after January 1, 1978, constitute phonorecords and are otherwise subject to the provisions of said section 115 [this section].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 112, 501, 511, 708, 801, 802, 803 of this title; title 18 section 2319.

§ 116. Negotiated licenses for public performances by means of coin-operated phonorecord players

(a) **APPLICABILITY OF SECTION.**—This section applies to any nondramatic musical work embodied in a phonorecord.

(b) **NEGOTIATED LICENSES.**—

(1) **AUTHORITY FOR NEGOTIATIONS.**—Any owners of copyright in works to which this section applies and any operators of coin-operated phonorecord players may negotiate and agree upon the terms and rates of royalty payments for the performance of such works and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

(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 copy-right 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