

Circular 73

Compulsory License for Making and Distributing Phonorecords

THE COMPULSORY LICENSING PROVISIONS

The Copyright Act contains compulsory licensing provisions governing the making and distribution of phonorecords of nondramatic musical works. Section 115 of the law provides that, once phonorecords of a musical work have been publicly distributed in the United States with the copyright owner's consent, anyone else may, under certain circumstances and subject to limited conditions, obtain a "compulsory license" to make and distribute phonorecords of the work without express permission from the copyright owner.

The Copyright Office Regulations set out in detail the procedures that must be followed, while the Copyright Arbitration Royalty Panels determine the royalty fee that must be paid by the user under a compulsory license.

COPYRIGHT ARBITRATION ROYALTY PANELS

The Copyright Royalty Tribunal Reform Act of 1993, Public Law 103-198, eliminated the Copyright Royalty Tribunal and replaced it with a system of ad hoc Copyright Arbitration Royalty Panels (CARPs). The panels, administered by the Librarian of Congress and the Copyright Office, adjust the copyright compulsory license royalty rates (including the mechanical rates for making and distributing phonorecords) and distribute the royalties collected by the Licensing Division to the appropriate copyright owners.

For further information about CARPs, write to:

Copyright Arbitration Royalty Panels (CARPs)
P.O. Box 70977
Southwest Station
Washington, D.C. 20024

Tel: 202-707-8380

Fax: 202-252-3423

Web: www.copyright.gov/carp

DOES THE INTENDED USER HAVE TO USE A COMPULSORY LICENSE?

No. The person wishing to make and distribute phonorecords of a nondramatic musical work may negotiate directly with the copyright owner or his or her agent. But, if the copyright owner is unwilling to negotiate or if the copyright owner cannot be contacted, the person intending to record the work may use the compulsory licensing provisions of the copyright law.

NOTE: The statute defines "phonorecords" as "material objects in which sounds, **other than those accompanying a motion picture or other audiovisual work**, are fixed....Since the compulsory license applies only to the making and distributing of **phonorecords**, and soundtracks are not "phonorecords," the compulsory license is not available to one wishing to record on a soundtrack.

WHEN MAY A COMPULSORY LICENSE BE OBTAINED?

A compulsory license is available to anyone as soon as "phonorecords of a nondramatic musical work have been distributed to the public in the United States under the authority of the copyright owner."

UNDER WHAT CONDITIONS MAY A COMPULSORY LICENSE BE OBTAINED?

It may be obtained only if the primary purpose in making the phonorecords is to **distribute them to the public for private use**. It is not available for phonorecords intended for use in background music systems, jukeboxes, broadcasting, or any other public use.

MAY A NEW ARRANGEMENT OF THE COPYRIGHTED MUSICAL WORK BE MADE FOR THE RECORDING?

Yes. The compulsory license includes the privilege of making a musical arrangement of the work "to the extent necessary to conform it to the style or manner of interpretation of the performance involved." However, section 115 also provides that the arrangement "shall not change the basic melody or fundamental character of the work, and shall not be subject to protection as a derivative work...except with the express consent of the copyright owner."

HOW DOES A PERSON OBTAIN A COMPULSORY LICENSE?

The first step is to identify the copyright owner of the nondramatic musical work to be recorded. This may be done either by personally searching the records of the Copyright Office or by requesting that the Copyright Office conduct the

search. (For further information about searching the files of the Copyright Office, write for Circular 22 "How to Investigate the Copyright Status of a Work," and Circular 75, "The Licensing Division of the Copyright Office.")

If the Name and Address of the Copyright Owner Are Found:

- Before or within 30 days after making, and before distributing any phonorecords of the work, serve a Notice of Intention to Obtain a Compulsory License on the copyright owner by certified or registered mail.

NOTE: A separate Notice of Intention must be filed for each title for which a compulsory license is needed.

A copy of this Notice of Intention does not have to be filed in the Copyright Office.

- Make royalty payments, accompanied by a Monthly Statement of Account, to the copyright owner on or before the 20th day of each month for every phonorecord made and distributed in accordance with the license.

Definition of "distributed." For the purpose of computing royalties, a phonorecord is considered "voluntarily distributed" if the compulsory licensee has voluntarily and permanently parted with possession of the phonorecord.

- File with the copyright owner a detailed Annual Statement of Account, certified by a certified public accountant.

If the Name and Address of the Copyright Owner Are Not Found:

- File a Notice of Intention to Obtain a Compulsory License in the Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, S.E., Washington, D.C. 20557-6400.

NOTE: A separate Notice of Intention must be filed for each title for which a compulsory license is needed.

- Submit the statutory fee with each Notice of Intention.

Upon receipt of such a Notice, the Licensing Division will provide the sender with a written acknowledgment of receipt and filing. Upon request and payment of an additional fee for each Notice of Intention, the Licensing Division will provide a Certificate of Filing.

- Make checks payable to Register of Copyrights.

IMPORTANT: The name and address of the copyright owner may appear in the records of the Copyright Office at a later time. Since royalty payments must be made after the copyright owner is identified in the Copyright Office records, the licensee should periodically search these records to ascertain if the copyright owner has been identified. *If and after* the copyright owner is identified in the Copyright Office records, the licensee should make royalty payments for phonorecords made and distributed *after* the copyright owner is so identified.

The Copyright Office does not provide forms for the Notice of Intention, the Monthly Statement of Account, or the Annual Statement of Account. For detailed instructions concerning the form and content of the Notice of Intention and Statements of Accounts, write for the Copyright Office Regulations on Compulsory License for Making and Distributing Phonorecords, Circulars 96 Section 201.18 and 96 Section 201.19. Address your request to:

Library of Congress
Copyright Office
Licensing Division, LM-458
101 Independence Avenue, S.E.
Washington, D.C. 20557-6400
(202) 707-8150