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transmission, under sections 106(4) and 106(6),

- (ii) except for compulsory licensing under the conditions specified by this section, the exclusive rights to reproduce and distribute the sound recording and the musical work embodied therein under sections 106(1) and 106(3), including by means of a digital phonorecord delivery, or
- (iii) any other rights under any other provision of section 106, or remedies available under this title,

as such rights or remedies exist either before or after the date of enactment of the Digital Performance Right in Sound Recordings Act of 1995.

- (L) The provisions of this section concerning digital phonorecord deliveries shall not apply to any exempt transmissions or retransmissions under section 114(d)(1). The exemptions created in section 114(d)(1) do not expand or reduce the rights of copyright owners under section 106 (1) through (5) with respect to such transmissions and retransmissions.
- (4) A compulsory license under this section includes the right of the maker of a phonorecord of a nondramatic musical work under subsection (a)(1) to distribute or authorize distribution of such phonorecord by rental, lease, or lending (or by acts or practices in the nature of rental, lease, or lending). In addition to any royalty payable under clause (2) and chapter 8 of this title, a royalty shall be payable by the compulsory licensee for every act of distribution of a phonorecord by or in the nature of rental, lease, or lending, by or under the authority of the compulsory licensee. With respect to each nondramatic musical work embodied in the phonorecord, the royalty shall be a proportion of the revenue received by the compulsory licensee from every such act of distribution of the phonorecord under this clause equal to the proportion of the revenue received by the compulsory licensee from distribution of the phonorecord under clause (2) that is payable by a compulsory licensee under that clause and under chapter 8. The Register of Copyrights shall issue regulations to carry out the purpose of this clause.
- (5) Royalty payments shall be made on or before the twentieth day of each month and shall include all royalties for the month next preceding. Each monthly payment shall be made under oath and shall comply with requirements that the Register of Copyrights shall prescribe by regulation. The Register shall also prescribe regulations under which detailed cumulative annual statements of account, certified by a certified public accountant, shall be filed for every compulsory license under this section. The regulations covering both the monthly and the annual statements of account shall prescribe the form, content, and manner of certification with respect to the number of records made and the number of records distributed.
- (6) If the copyright owner does not receive the monthly payment and the monthly and annual statements of account when due, the owner may give written notice to the licensee that, unless the default is remedied within thirty days from the date of the notice, the compulsory license will be automatically terminated. Such termination renders either the making or the distribution, or both, of all phonorecords for which the royalty has not been paid, actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509

(d) Definition- As used in this section, the following term has the following meaning:

A 'digital phonorecord delivery' is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. A digital phonorecord delivery does not result from a real-time, non-interactive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission

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through to its receipt by the transmission recipient in order to make the sound recording audible.'.

(*Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2561; Pub. L. 98-450, Sec. 3, Oct. 4, 1984, 98 Stat. 1727.*)

17 U.S.C. 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 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.

(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.

(*Added Pub. L. 100-568, Sec. 4(a)(4), Oct. 31, 1988, 102 Stat. 2855, Sec. 116A; renumbered Sec. 116 and amended Pub. L. 103-198, Sec. 3(b)(1), Dec. 17, 1993, 107 Stat. 2309.*)(*Sec. 116A. Renumbered Sec. 116*)

17 U.S.C. 117 Limitations on exclusive rights: Computer programs

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.

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.

(*Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2565; Pub. L. 96-517, Sec. 10(b), Dec. 12, 1980, 94 Stat. 3028.*)

17 U.S.C. 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

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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 have submitted proposals to the Librarian of Congress. In establishing such rates and terms the copyright arbitration royalty panel may consider the rates for comparable circumstances under voluntary license agreements negotiated as provided in paragraph (2). The Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept by public broadcasting entities.

(c) The initial procedure specified in subsection (b) shall be repeated and concluded between June 30 and December 31, 1997, and at five-year intervals thereafter, in accordance with regulations that the Librarian of Congress shall prescribe.

(d) Subject to the terms of any voluntary license agreements that have been negotiated as provided by subsection (b)(2), a public broadcasting entity may, upon compliance with the provisions of this section, including the rates and terms established by a copyright arbitration royalty panel under subsection (b)(3), engage in the following activities with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works:

- (1) performance or display of a work by or in the course of a transmission made by a noncommercial educational broadcast station referred to in subsection (g); and
- (2) production of a transmission program, reproduction of copies or phonorecords of such a transmission program, and distribution of such copies or phonorecords, where such production, reproduction, or distribution is made by a nonprofit institution or organization solely for the purpose of transmissions specified in paragraph (1); and
- (3) the making of reproductions by a governmental body or a nonprofit institution of a transmission program simultaneously with its transmission as specified in paragraph (1), and the performance or display of the contents of such program under the conditions specified by paragraph (1) of section 110, but only if the reproductions are used for performances or displays for a period of no more than seven days from the date of the transmission specified in paragraph (1), and are destroyed before or at the end of such period. No person supplying, in accordance with paragraph (2), a reproduction of a transmission program to governmental bodies or nonprofit institutions under this paragraph shall have any liability as a result of failure of such body or institution to destroy such reproduction: Provided, That it shall have notified such body or institution of the requirement for such destruction pursuant to this paragraph: And provided further, That if such body or

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institution itself fails to destroy such reproduction it shall be deemed to have infringed.

(e) Except as expressly provided in this subsection, this section shall have no applicability to works other than those specified in subsection (b).

- (1) Owners of copyright in nondramatic literary works and public broadcasting entities may, during the course of voluntary negotiations, agree among themselves, respectively, as to the terms and rates of royalty payments without liability under the antitrust laws. Any such terms and rates of royalty payments shall be effective upon filing in the Copyright Office, in accordance with regulations that the Register of Copyrights shall prescribe.
- (2) On January 3, 1980, the Register of Copyrights, after consulting with authors and other owners of copyright in nondramatic literary works and their representatives, and with public broadcasting entities and their representatives, shall submit to the Congress a report setting forth the extent to which voluntary licensing arrangements have been reached with respect to the use of nondramatic literary works by such broadcast stations. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.

(f) Nothing in this section shall be construed to permit, beyond the limits of fair use as provided by section 107, the unauthorized dramatization of a nondramatic musical work, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works, or the unauthorized use of any portion of an audiovisual work.

(g) As used in this section, the term "public broadcasting entity" means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in paragraph (2) of subsection (d).

(Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2565; Pub. L. 103-198, Sec. 4, Dec. 17, 1993, 107 Stat. 2309.)

17 U.S.C. 119 Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

(a) Secondary Transmissions by Satellite Carriers. -

- (1) Superstations. - Subject to the provisions of paragraphs (3), (4), and (6) of this subsection and section 114(d), secondary transmissions of a primary transmission made by a superstation and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for each retransmission service to each household receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing.

(2) Network stations. -

- (A) In general. - Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (3), (4), (5), and (6) of this subsection and section 114(d), secondary transmissions of programming contained in a primary transmission made by a network station and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission.
- (B) Secondary transmissions to unserved households. - The statutory license provided for in subparagraph (A) shall be limited to secondary

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transmissions to persons who reside in unserved households.

- (C) Submission of subscriber lists to networks. - A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station a list identifying (by name and street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission. Thereafter, on the 15th of each month, the satellite carrier shall submit to the network a list identifying (by name and street address, including county and zip code) any persons who have been added or dropped as such subscribers since the last submission under this subparagraph. Such subscriber information submitted by a satellite carrier may be used only for purposes of monitoring compliance by the satellite carrier with this subsection. The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.
- (3) Noncompliance with reporting and payment requirements. - Notwithstanding the provisions of paragraphs (1) and (2), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C).
- (4) Willful alterations. - Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.
- (5) Violation of territorial restrictions on statutory license for network stations. -
- (A) Individual violations. - The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who does not reside in an unserved household is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that -
- (i) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and
- (ii) any statutory damages shall not exceed \$5 for such subscriber for each month during which the violation occurred.
- (B) Pattern of violations. - If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to