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Legal Update

The Digital Performance Rights in Sound Recordings Act of 1995: Exclusive Performance Rights for Digital Transmission of Copyrighted Works†

The Digital Performance Rights in Sound Recordings Act of 1995¹ provides sound recording owners with exclusive performance rights in sound recordings that are transmitted digitally. The new Act adds a section to the Copyright Act² that finally fills the gap left open by the Copyright Act's failure to incorporate digital transmission in the scope of its coverage. Interestingly, this new section is tailored so as not to apply to traditional radio and TV broadcasts, background music services such as Muzak, and music transmitted at restaurants, department stores, hotels or amusement parks.³ [1]

In addition, the new law imposes restrictions on the copyright owners of sound recordings in the context of licensing to interactive services.⁴ The licenses and royalties rated for the new performance rights will be determined under newly added section 114(e) through (i).⁵ Furthermore, the Act amends section 115 of the

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1 Pub. L. No. 104-39, 109 Stat. 336 (codified as amended at 17 U.S.C. §§ 114, 115, 116)

2 Copyright Act of 1976, 17 U.S.C. §§ 101-1101 (1988 & Supp. V 1993).

3 17 U.S.C. § 114(d).

4 *Id.* § 114(d)(3).

5 *Id.* §§ 114(e)-(i). The new scheme allocates 2.5% of the royalties to escrow accounts managed by the American Federation of Musicians, 2.5% to the American Federation of Television and Radio Artists, and 45% to the artist. *Id.* § 114(g).

Copyright Act, which governs compulsory licensing schemes, to clearly establish the interaction of compulsory licensing with respect to royalty payments for the production and distribution of phonorecords in the context of digital phonorecord transmissions. [2]

The amendments to the Copyright Act seemingly stemmed from the recent burst of public acceptance and usage of the Internet, where sound, photographic and video images, and other information can be transmitted through existing telephone lines in matters of seconds without much difficulty.⁶ This type of transmission over conventional telephone lines has obviated the need to embody sound recordings in conventional cassette tapes or compact discs. The provision limiting sound recording copyright owners' right to license to interactive services reflects song writers' and music publishers' concerns that the recording industry might restrict opportunities for public performance of the musical works embodied in the sound recordings. [3]

Where, as here, distribution of musical works can be achieved easily and widely without losing the quality of the sound, significant concerns are rightfully raised by owners of these musical works against illegal copying, distribution, and use of their works. As Senator Hatch stated during the November 1 press conference where President Clinton signed the Act into law, "[t]he Digital Performance Right law will ensure that those who produce, play, and sing American music will be compensated for and be able to control the performances of their creation in cyberspace, where music maybe delivered without the need for CDs or tapes."⁷ [4]

- Seongkun Oh

⁶ See Lisa E. Davis & Rhonda Adams Medina, *The Piper Must be Paid: New Law Grants Performance Rights for the Digital Age*, N.Y. L.J., Apr. 8, 1996, at S1.

⁷ *President Clinton Signs Bills on Biotech Patents, Performance Rights, Patent, Trademark & Copyright* L. Daily (BNA) (Nov. 8, 1995).