/* We continue on with Chapter 1 of the Copyright Code. Section 117 is specifically about computers!*/

S 114. Scope of exclusive rights in sound recordings

(a) The exclusive rights of the owner of copyright in a sound recording are limited to the rights specified by clauses (1), (2), and (3) of section 106 [17 USC S 106 (1)-(3)], and do not include any right of performance under section 106(4) [17 USC S 106(4)].

(b) The exclusive right of the owner of copyright in a sound recording under clause (1) of section 106 [17 USC S 106(1)] is limited to the right to duplicate the sound recording in the form of phonorecords, or of copies of motion pictures and other audiovisual works, that directly or indirectly recapture the actual sounds fixed in the recording. The exclusive right of the owner of copyright in a sound recording under clause (2) of section 106 [17 USC S 106(2)] is limited to the right to prepare a derivative work in which the actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality. The exclusive rights of the owner of copyright in sound recording under clauses (1) and (2) of section 106 [17 USC S 106(1) and (2)] do not extend to the making of duplication of another sound recording that consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording. The exclusive rights of the owner of copyright in a sound recording under clause (1), (2), and (3) of section 106 [17 USC S 106(1)-(3)] do not apply to sound recordings included in educational television and radio programs (as defined in section 397 of title 47) [47 USC S 397] distributed or transmitted by or through public broadcasting entities (as defined by section 118(g) [17 USC S 118(g)]), Provided, That copies or phonorecords of said programs are not commercially distributed by or through public broadcasting entities to the general public.

(c) This section does not limit or impair the exclusive right to perform publicly, by means of a phonorecord, any of the works specified by section 106(4) [17 USC S 106(4)].

(d) On January 3, 1978, the Register of Copyrights, after consulting with representatives of owners of copyrighted materials, representatives of the broadcasting, recording, motion picture, entertainment industries, and arts organizations, representatives of organized labor and performers of copyrighted materials, shall submit to the Congress a report setting forth recommendations as to whether this section should be amended to provide for performers and copyright owners of copyrighted material any performance rights in such material. The report should describe the status of such rights in foreign countries, the views of major interested parties, and specific legislative or other recommendations, if any.

S 115. Scope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords

In the case of nondramatic musical works, the exclusive rights provided by clauses (1) and (3) of section 106 [17 USC S 106(1)-(3)], to make and to distribute phonorecords of such works, are subject to compulsory licensing under the conditions specified by this section.

(a) Availability and scope of compulsory license. (1) When phonorecords of a nondramatic musical work have been distributed to the public in the United States under the authority of the copyright owner, any other person may, by complying with the provisions of this section, obtain a compulsory license to make and distribute phonorecords of the work. A person may obtain a compulsory license only if his or her primary purpose in making phonorecords is to distribute them to the public for private use. A person may not obtain a compulsory license for use of the work in the making of phonorecords duplicating a sound recording fixed by another, unless: (i) such sound recording was fixed lawfully; and (ii) the making of the phonorecords was authorized by the owner of copyright in the sound recording, or, if the sound recording was fixed before February 15, 1972, by any person who fixed the sound recording pursuant to an express license from the owner of the copyright in the musical work or pursuant to a valid compulsory license for use of such work in a sound recording.

(2) A 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, but 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 under this title [17 USC SS 101 et seq.], except with the express consent of the copyright owner.

(b) Notice of intention to obtain compulsory license. (1) Any person who wishes to obtain a compulsory license under this section shall, before or within thirty days after making, and before distributing any phonorecords of the work, serve notice of intention to do so on the copyright owner. If the registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which notice can be served, it shall be sufficient to file the notice of intention in the Copyright Office. The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(2) Failure to serve or file the notice required by clause (1) forecloses the possibility of a compulsory license and, in the absence of a negotiated license, renders the making and distribution of phonorecords actionable as acts of infringement under section 501 [17 USC S 501] and fully subject to the remedies provided by sections 502 through 506 and 509 [17 USC SS 502-506, 509].

(c) Royalty payable under compulsory license. (1) To be entitled

to receive royalties under a compulsory license, the copyright owner must be identified in the registration or other public records of the Copyright Office. The owner is entitled to royalties for phonorecords made and distributed after being so identified, but is not entitled to recover for any phonorecords previously made and distributed.

(2) Except as provided by clause (1), the royalty under a compulsory license shall be payable for every phonorecord made and distributed in accordance with the license. For this purpose, a phonorecord is considered "distributed" if the person exercising the compulsory license has voluntarily and permanently parted with its possession. With respect to each work embodied in the phonorecord, the royalty shall be either two and three-fourth cents, or one-half of one cent per minute of playing time or fraction thereof, whichever amount is larger.

(3) 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. (4) If the copyright owner does not receive the monthly payment and 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 automati- cally 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 [17 USC S 501] and fully subject to the remedies provided by sections 502 through 506 and 509 [17 USC SS 502-506, 509].

S 116. Scope of exclusive rights in nondramatic musical works: Public Performances by means of coin-operated phonorecord players

(a) Limitation on exclusive right. In the case of a nondramatic musical work embodied in a phonorecord, the exclusive right under clause (4) of section 106 [17 USC S 106(4)] to perform the work publicly by means of a coin-operated phonorecord player is limited as follows:

(1) The proprietor of the establishment in which the public performance takes place is not liable for infringement with respect to such public performance unless --

(A) such proprietor is the operator of the phonorecord player; or

(B) such proprietor refuses or fails, within one month after receipt by registered or certified mail of a request, at a time during which the certificate required by clause (1)(C) of subsection (b) is not affixed to the phonorecord player, by the copyright owner, to make full disclosure, by registered or certified mail, of the identity of the operator of the phonorecord player.

(2) The operator of the coin-operated phonorecord player may obtain a compulsory license to perform the work publicly on that phonorecord player by filing the application, affixing the certificate, and paying the royalties provided by subsection (b).

(b) Recordation of coin-operated phonorecord player, affixation of certificate, and royalty payable under compulsory license. (1) Any operator who wishes to obtain a compulsory license for the public performance of works on a coin- operated phonorecord player shall fulfill the following requirements: (A) Before or within one month after such performances are made available on a particular phonorecord player, and during the month of January in each succeeding year that such performances are made available on that particular phonorecord player, the operator shall file in the Copyright Office, in accordance with requirements that the Register of Copyrights, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), shall prescribe by regulation, an application containing the name and address of the operator of the phonorecord player and the manufacturer and serial number or other explicit identification of the phonorecord player, and deposit with the Register of Copyrights a royalty fee for the calendar year of $8 for that particular pho- norecord player. If such performances are made available on a particular phonorecord player for the first time after July 1 of any year, the royalty fee to be deposited for the remainder of that year shall be $4. (B) Within twenty days of receipt of an application and a royalty fee pursuant to subclause (A), the Register of Copyrights shall issue to the applicant a certifi- cate for the phonorecord player. (C) On or before March 1 of the year in which the certificate prescribed by subclause (B) of this clause is issued, or within ten days after the date of issue of the certificate, the operator shall affix to the particular phonorecord player, in a position where it can be readily examined by the public, the certificate, issued by the Register of Copyrights under subclause (B), of the latest application made by such operator under subclause (A) of this clause with respect to that phonorecord player. (2) Failure to file the application, to affix the certifi- cate, or to pay the royalty required by clause (1) of this subsection renders the public performance actionable as an act of infringement under section 501 [17 USC S 501] and fully subject to the remedies provided by sections 520 through 506 and 509 [17 USC SS 502-506, 509].

(c) Distribution of royalties. (1) The Register of Copyrights shall receive all fees deposited under this section and, after

deducting the reasonable costs incurred by the Copyright Office under this section, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest- bearing United States securities for later distribution with interest by the Copyright Royalty Tribunal as provided by this title [17 USC SS 101 et seq.]. The Register shall submit to the Copyright Royalty Tribunal, on an annual basis, a detailed statement of account covering all fees received for the relevant period provided by subsection (b).

(2) During the month of January in each year, every person claiming to be entitled to compulsory license fees under this section shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation. Such claim shall include an agreement to accept as final, except as provided in section 810 of this title [17 USC S 810], the determination of the Copyright Royalty Tribunal in any controversy concerning the distribution of royalty fees deposited under subclause (A) of subsection (b)(1) of this section to which the claimant is a party. Notwithstanding any provisions of the antitrust laws, for purposes of this subsection any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(3) After the first day of October of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees deposited under subclause (A) of subsection (b)(1). If the Tribunal determines that no such controversy exists, it shall, after deducting its reasonable administrative costs under this section, distribute such fees to the copyright owners entitled, or to their designated agents. If it finds that such a controversy exists, it shall, pursuant to chapter 8 of this title [17 USC SS 801 et seq.], conduct a proceeding to determine the distribution of royalty fees. (4) The fees to be distributed shall be divided as follows: (A) to every copyright owner not affiliated with a performing rights society, the pro rata share of the fees to be distributed to which such copyright owner proves entitlement. (B) to performing rights societies, the remainder of the fees to be distributed in such pro rata shares as they shall by agreement stipulate among themselves, or, if they fail to agree, the pro rata share to which such performing rights societies prove entitlement. (C) during the pendency of any proceeding under this section, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy. (5) The Copyright Royalty Tribunal shall promulgate regulations under which persons who can reasonably be expected to have claims may, during the year in which performances take place, without expense to or harassment of operators or proprietors of establishments in which phonorecord

players are located, have such access to such establishments and to the phonorecord players located therein and such opportunity to obtain information with respect thereto as may be reasonably necessary to determine, by sampling procedures or otherwise, the proportion of contribution of the musical works of each such person to the earnings of the phonorecord players for which fees shall have been deposited. Any person who alleges that he or she has been denied the access permitted under the regulations prescribed by the Copyright Royalty Tribunal may bring an action in the United States District Court for the District of Columbia for the cancellation of the compulsory license of the phonorecord player to which such access has been denied, and the court shall have the power to declare the compulsory license thereof invalid from the date of issue thereof.

(d) Criminal penalties. Any person who knowingly makes a false representation of a material fact in an application filed under clause (1)(A) of subsection (b), or who knowingly alters a certificate issued under clause (1)(B) of subsection (b) or knowingly affixes such a certificate to a phonorecord player other than the one it covers, shall be fined not more than $2,500.

(e) Definitions. As used in this section, the following terms and their variant forms 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 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 of the titles of all the musical works available for performance on it, which list 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; or (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.

(3) A "performing rights society" is an association or corporation that licenses the public performance of nondramatic musical works on behalf of the copyright owners, such as the American Society of Composers, Authors and Publishers, Broadcast

Music, Inc., and SESAC, Inc.

/* We begin with the original wording of this section; on Dec. 2, 1980, the Congress changed this section. The present wording of this section follows second.*/

S 117. Scope of exclusive rights: Use in conjunction with computers and similar information systems [ORIGINAL TEXT, changed on 12/12/80]

Notwithstanding the provisions of sections 106 through 116 and 118 [17 USC SS 106-116,118], this title [17 USC SS 101 et seq.] does not afford to the owner of copyright in a work 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 title 17 [17 USC SS 101 et seq.] or the common law or statutes of a State, in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title [17 USC SS 101 et seq.].

S 117. Scope of exlusive rights: Use in conjunction with computers and similar information systems [PRESENT TEXT]

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 to 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 a part of the lease, sale, or other transfer of all rights in the program. Adaptaions so prepared may be transferred only with the authorization of the copyright owner.

/* This package contains all of the cases which we could find that mention this section. What this section means is that back-up copies of programs can be made, and that the original purchaser can "adapt" the program, that is alter the object code if needed, if it is needed for "an essential step in the use of the program", whatever that means. (Sorry, little certainty here!) Further, an adapted copy can only be used by the person who created the adaptation. The section states a general rule

that computer programs may be sold in their entirety by an owner to another. Of course this section refers to "owners" and on its face it would seem that true leases of computer software would not be covered. Much more problematic is "shrink wrap" "licensing of computer programs." Cases that construe this section are: Apple v. Formula, The Various Vault Software Cases, GCA v. Chance, Micro-Sparc, Rand McNally. The Copyright tutorial discusses this at length. */

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

(a) The exclusive rights provided by section 106 [17 USC S 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) Not later than thirty days after the Copyright Royalty Tribunal has been constituted in accordance with section 802 [17 USC S 802], the Chairman of the Tribunal shall cause notice to be published in the Federal Register of the initiation of proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by subsection (d) with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works during a period beginning as provided in clause (3) of this subsection and ending on December 31, 1982. Copyright owners and public broadcasting entities shall negotiate in good faith and cooperate fully with the Tribunal in an effort to reach reasonable and expeditious results. Notwithstanding any provision of the antitrust laws, any owners of copyright in works specified by this subsection 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, within one hundred and twenty days after publication of the notice specified in this subsection, submit to the Copyright Royalty Tribunal proposed licenses covering such activities with respect to such works. The Copyright Royalty Tribunal shall proceed on the basis of the proposals submitted to it as well as any other relevant information. The Copyright Royalty Tribunal 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 Tribunal: 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) Within six months, but not earlier than one hundred and twenty days, from the date of publication of the notice specified in this subsection the Copyright Royalty Tribunal shall make a determination and publish in the Federal Register a schedule of rates and terms which, subject to clause (2) of this subsection, shall be binding on all owners of copyright in works specified in this subsection and public broadcasting entities, regardless of whether or not such copyright owners and public broadcasting entities have submitted proposals to the Tribunal. In establishing such rates and terms the Copyright Royalty Tribunal may consider the rates for comparable circumstances under voluntary license agreements negotiated as provided in clause (2) of this subsection. The Copyright Royalty Tribunal 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.

(4) With respect to the period beginning on the effective date of this title [17 USC SS 101 et seq.] and ending on the date of publication of such rates and terms, this title [17 USC SS 101 et seq.] shall not afford to owners of copyright or public broadcasting entities any greater or lesser rights with respect to the activities specified in subsection (d) as applied to works specified in this subsection than those afforded under the law in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title [17 USC SS 101 et seq.].

(c) The initial procedure specified in subsection (b) shall be repeated and concluded between June 30 and December 31, 1982, and at five-year intervals thereafter, in accordance with regulations that the Copyright Royalty Tribunal shall prescribe.

(d) Subject to the transitional provisions of subsection (b)(4), and 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 the Copyright Royalty Tribunal 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 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 clause (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 clause (1), and the performance or display of the contents of such program under the conditions specified by clause (1) of section 110 [17 USC S 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 clause (1), and are destroyed before or at the end of such period. No person supplying, in accordance with clause (2), a reproduction of a transmission program to governmental bodies or nonprofit institutions under this clause 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 clause: And provided further, That if such body or 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 [17 USC S 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 [47 USC S 397] and any nonprofit institution or organization engaged in the activities

Section 120. Scope of exclusive rights in architectural works

(a) Pictorial representations permitted.-- The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display or pircutres, paintings, photographs, or other pictorial representations of the work, if the building in which the work is emboided is located in or ordinarily visible from a public place.

(b) Alterations to and destruction of buildings.--

Notwithstanding the provisions of section 106(2), the owners of a building embodying an archetectural work may, without the consent of the autor or copyright owner of the architectural work, make or authorize themaking of alterations to such building, and destroy or authorize the destruction of such building.