COMMENTS

PERFORMANCES AT SCHOOLS AND COLLEGES UNDER THE 1976 COPYRIGHT ACT

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On January 1, 1978, a new federal copyright act went into effect.[1] The new statute provides for many significant and comprehensive changes in the copyright law of the United States.[2] One major area of revision is in the protection given to authors of musical compositions when their works are performed by others. This Faculty Comment describes the effect of section 110(4) of the 1976 Copyright Revision Act[3] on performances of copyrighted material at schools and colleges.[4] To understand section 110(4) of the new law, it will be necessary to have some background knowledge of the old law, the Copyright of 1909,[5] as well as of other sections of the new Act.

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[1] *See* 17 U.S.C.A. § 301 (West Cum. Supp. 1977).

[2] Some of these changes include statutory recognition of the fair use standard as a limit on the rights of copyright owners, 17 U.S.C.A. § 107 (West Cum. Supp. 1977), establishment of compulsory licensing for cable television, *id.* § 111, abrogation of the common law copyright system by placing all copyright under Title 17, *id.* § 301, increase in the maximum duration of copyrights from 56 years to the author's life plus 50 years, *id.* §§ 302–305, and establishment of a Copyright Royalty Tribunal, *id.* §§ 801–810.

[3] 17 U.S.C.A. § 110(4) (West Cum. Supp. 1977). In pertinent part, the statute precludes the following from being "infringement of copyright:"

> (4) performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if—
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> (A) there is no direct or indirect admission charge; or
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> (B) the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain . . . .

Id. § 110(4)(A), (B).

[4] *Id.* Although the remarks made herein relate particularly to musical works, they are also applicable to "nondramatic literary" works as provided in the statute.

[5] Copyright Act of 1909, Act of Mar. 4, 1909, ch. 320, 35 Stat. 1075.

Performances Under the 1909 Copyright Act

The 1909 Copyright Act granted to an author the exclusive right "[t]o perform the copyrighted work publicly for profit if it be a musical composition."[6] This meant that the performance of music by someone other than the copyright title holder could not constitute an infringement unless (1) there was in fact a performance (2) the performance was "public" and (3) "for profit."[7]

In construing these statutory requirements, the courts attempted to determine which interest was paramount: fostering the cultural life of the nation through the broad dissemination of musical compositions, or protecting authors' rights to control the use of their works.[8] The practical result of the necessary adjustment between the public interest and private rights was that judges were forced to decide whether a narrow or broad interpretation of the statute was desirable in light of the particular facts before them.[9] Since the statutory limitation was on performances "for profit," if a court held a use to be nonprofit, no infringement was possible. The judicial task of differentiating between profit and nonprofit uses became difficult.[10]

Another problem created by the rigid profit/nonprofit bifurcation, as noted in the final House Report on Copyright Revision, was that many "non-profit" organizations had, and continue to have, sufficient funding to pay royalties.[11] In addition, there was a growing "exploitation of copyrighted works by public broadcasters and other noncommercial organizations."[12] The House Report opined that if a blanket nonprofit exception were reenacted, it might have a chilling effect on future writings by authors.[13]

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[6] *Id.* § 1(e).

[7] *Id.*

[8] H.R. REP. NO. 94-1476, 94th Cong., 2d Sess. 62 (1976) [hereinafter cited as HOUSE REPORT].

[9] *See, e.g.*, Herbert v. The Shanley Co., 242 U.S. 591 (1917) (held, that where restaurant owner caused copyrighted music to be played during dinner, this performance was for profit and not for an "eleemosynary" purpose); Associated Music Publishers, Inc. v. Debs Memorial Radio Fund, Inc., 141 F.2d 852, 855 (2d Cir. 1944) (statement that "[i]t is unimportant whether a profit went to [charitable or educational causes] . . . [t]he performance was for profit"); Jerome H. Remick & Co. v. American Automobile Accessories Co., 5 F.2d 411, 412 (6th Cir. 1925) (indication that "a public performance may be for profit, though no admission fee is exacted or no profit actually made"). *See also* Ernest Turner Electrical Instruments Ltd. v. Performing Rights Society, [1943] 1 Ch. 167, 1 All E.R. 413.

[10] *See* HOUSE REPORT, *supra* note 8, at 62.

[11] *Id.*

[12] *Id.* at 63.

[13] *Id.* Another problem noted in the Report was that the demand "for printed copies" is diminished by the allowable frequency of public performances. *See id.*

Performances Under the 1976 Act

Thus, Congress had many problems and choices to face in drafting the performing rights provisions of the new 1976 Copyright Act. What Congress actually did was to create, in section 106(4), an exclusive right in an author to license public performances of his compositions, regardless of any profit motive.[14] This broad general right, designed to protect the author against any public performances without his consent, is qualified by the provision of limited and particular nonprofit exemptions, such as educational uses.[15] In other words, the public performance of a copyrighted work without the author's consent is an infringement unless there is a specific exemption in the statute.

There are other significant changes in the new law in the area of performance rights. First, the 1976 Act legitimates performing rights organizations by defining them.[16] Second, the Act defines the word "publicly"[17] in a manner which effectively overturns a number of judicial decisions which had established that certain " 'semipublic' " performances were excluded from the copyright laws.[18] Thus, as the

[14] *See* 17 U.S.C.A. § 106(4) (West Cum. Supp. 1977). The section reads in pertinent part:

> [T]he owner of copyright under this title has the exclusive rights to do and to authorize any of the following:
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> . . . .
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> (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly . . . .

[15] *Id.* § 110; HOUSE REPORT, *supra* note 8, at 62.

[16] *See* 17 U.S.C.A. § 116(e)(3) (West Cum. Supp. 1977). The section defines such an organization as "an association or corporation that licenses the public performance of nondramatic musical works on behalf of the copyright owners." *Id.* Examples of existing performing rights organizations are given in the statute: Broadcast Music, Inc. (BMI), the American Society of Composers, Authors and Publishers (ASCAP), and the Society of European Singers, Artists and Composers, Inc. (SESAC). *Id.*

[17] *See* 17 U.S.C.A. § 101 (West Cum. Supp. 1977). The section reads in pertinent part:

> To perform or display a work "publicly" means—
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> (1) to perform or display it at an open place to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or
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> (2) to transmit or otherwise communicate a performance or display of the work to . . . the public, by means of any device or process whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or different times.

[18] *See, e.g.*, Metro-Goldwyn-Mayer Distributing Corp. v. Wyatt, 21 Copyright O. Bull. 203, 204 (D. Md. 1932) (showing of copyrighted motion picture before members of a yacht club held not to be a public showing such as would render the defendants liable for copyright infringement under the 1909 Act). For a related discussion concerning the effect of the new law in this area, see text at page 676 *infra*.

House Report notes, "performances [delivered] in . . . places such as clubs, lodges, factories, summer camps and schools are [now] 'public performances' subject to copyright control."[19] The second part of the definition makes clear that re-transmissions of an initial performance, such as to occupants of hotel rooms or to subscribers of a cable television service, are public performances.[20]

Third, section 106(4) of the new Act grants to authors and their assigns,[21] in the case of musical works, the exclusive right "to perform the copyright work publicly" and without any "for profit" limitation.[22] As we have seen, the scope of the "public" limitation on performing rights is set forth in the definitional section of the new Act: the concept of "public" is narrowly defined. The specific exemptions of certain performances, which otherwise must be considered "public," are set forth in section 110 of the new Act.[23] The public performance of music without the author's consent is an infringement unless the use conforms to one of the limited exceptions. If the use does not, the author's consent is required, and the author is entitled to royalties.[24]

Section 110 of the 1976 Copyright Act: Exemption of Certain Performances

There are seven exemptions in section 110 of the 1976 Act pertaining to public performances of music: (1) "face-to-face teaching activities,"[25] (2) instructional broadcasting, (3) performances during religious services, (4) special nonprofit "performances given directly in the presence of an audience,"[26] (5) mere reception in public of a transmitted performance, (6) performances at agricultural fairs, and (7) retail sales of records and tapes.[27] The first four exemptions relate to performances which were encompassed in the broad exceptions "under the 'for profit' limitation or other provisions of the" 1909 Copyright Act.[28]

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[19] HOUSE REPORT, *supra* note 8, at 64.

[20] *Id.* at 64–65.

[21] The provisions governing "transfers of copyright ownership" are contained in 17 U.S.C.A. §§ 204–205 (West Cum. Supp. 1977).

[22] 17 U.S.C.A. § 106(4) (West Cum. Supp. 1977).

[23] *Id.* § 110(1) to (9).

[24] *See id.* § 501.

[25] *Id.* § 110(1).

[26] HOUSE REPORT, *supra* note 8, at 85.

[27] 17 U.S.C.A. § 110(1) to (7) (West Cum. Supp. 1977).

[28] HOUSE REPORT, *supra* note 8, at 81.

The face-to-face teaching exemption requires the following elements: (a) a " 'performance' by instructors or pupils," (b) "face-to-face teaching activities," (c) "a nonprofit educational institution," and (d) "a classroom or similar place devoted to instruction."[29] It was intended by congressional draftsmen that the requirement of a performance by the instructor be narrowly construed. Thus, the House Report indicated that although "guest lecturers" functioning in a classroom atmosphere may be included in the term "instructors," performances by musicians brought into the classroom from outside the teaching institution are not within the scope of section 110(1).[30]

Instructional broadcasting, the second exemption, also has various statutory elements: (a) there must be a "transmission" of a "performance of a nondramatic musical work," (b) the performance must be "a regular part of the systematic instruction" at "a nonprofit educational institution," (c) the performance must be "directly related . . . to . . . teaching content," and (d) the transmission must be made for specified purposes, including in-school broadcasting.[31] Permission of the copyright owner would be necessary "for the performance on educational television or radio of a dramatic work or a dramatico-musical work, such as an opera, musical comedy, or of a motion picture."[32]

These first two clauses of section 110, face-to-face teaching and instructional broadcasting, were meant to have broad coverage so as to reach all of the methods that might utilize performances as part of a "systematic" instructional program.[33] Systematic instruction has been defined as the teaching of material which is integral to the curriculum; it does not include performances, regardless of their educational worth, which are given for the purpose of entertaining.[34]

Religious services are the third exemption. In order for the exemption to apply, the following elements must be present: (a) "performance of a non-dramatic . . . musical work or of a dramatico-musical work of a religious nature," (b) "in the course of services," and (c) "at a place of worship or other religious assembly."[35]

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[29] 17 U.S.C.A. § 110(1) (West Cum. Supp. 1977).

[30] HOUSE REPORT, *supra* note 8, at 82.

[31] 17 U.S.C.A. § 110(2) (West Cum. Supp. 1977).

[32] HOUSE REPORT, *supra* note 8, at 83.

[33] *Id.* at 81.

[34] *Id.*

[35] 17 U.S.C.A. § 110(3) (West Cum. Supp. 1977). If a dramatico-musical work of a secular nature is performed, or if a performance occurs during the course of a nonreligious function, such as a fund-raising event, the exemption does not apply. HOUSE REPORT, *supra* note 8, at 84.

The exemption in the fifth clause, mere reception of broadcasting in a public place, is not to any extent a counterpart of the "for profit" limitation of the 1909 Act. Its purpose is to protect persons from liability for copyright infringement who may simply turn on a radio or television set in a public place so as to provide background music or casual diversion.[36] This exemption would not apply if a direct charge were imposed to see or hear the transmission.[37]

Section 110(4)

It is clause four of section 110 which particularly concerns schools and colleges.[38] This catch-all clause exempts (a) "direct performances before an audience, whether by live performance, the playing of records, or the operation of a receiving apparatus,"[39] of a non-dramatic literary or musical work, (b) for which no profit or other "commercial advantage" is gained,[40] and for which (c) the performers are not paid.[41] The requirement of a non-dramatic use is meant to exclude performances of opera, musical comedy and the like from this exemption.[42] Determination of whether the use of a single musical

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[36] HOUSE REPORT, *supra* note 8, at 86; *see* Twentieth Century Music Corp. v. Aiken, 422 U.S. 151 (1975). In that case, the proprietor of a fast-food shop had an ordinary radio attached to ceiling speakers which received commercial broadcasts during working hours. 422 U.S. at 152-53. The copyright owner of a song broadcast over the radio, and received by the defendant, sued the shop's proprietor for copyright infringement. *Id.* at 153. The essence of the plaintiff's argument was that defendant's business profits were enhanced due to the "performance" of broadcast music and that royalties were therefore due to the plaintiff. *See id.* at 153-54. The Court held, however, that mere reception of commercial broadcasting, in this situation, did not amount to a "performance" of the music so broadcast. *Id.* at 155. With no "performance" as such having occurred, the defendant was innocent of any infringement under the 1909 Act. *Id.* Drafters of the new law recognized that although the definition of a "performance" has been expanded by that law, the *Twentieth Century Music* case remains valid as applied to its facts. HOUSE REPORT, *supra* note 8, at 86–87.

[37] HOUSE REPORT, *supra* note 8, at 86. The sixth and seventh exemptions, agricultural fairs and retail sale of records and tapes, are also limited in their application, but do not generally affect schools and colleges. *See* 17 U.S.C.A. § 110(7) (West Cum. Supp. 1977); HOUSE REPORT, *supra* at 87–88.

[38] *See* note 3 *supra*.

[39] HOUSE REPORT, *supra* note 8, at 85.

[40] *See id.*

[41] 17 U.S.C.A. § 110(4) (West Cum. Supp. 1977).

[42] When is the use of a musical composition a dramatic use, so that section 110(4) does not apply? There is scant judicial authority. In April Productions v. Strand Enterprises, 221 F.2d 292 (2d Cir. 1955), the court held that the singing of a medley of songs from *The Student Prince* in only a small part of one scene of a 10-scene show was not a dramatic performance. In Rice v. American Program Bureau, *modified*, 446 F.2d 685 (2d Cir. 1971), the court held that the mere singing of songs from *Jesus Christ Superstar*, along with an entire program of other works, was not a dramatic use. In Robert Stig-

composition is a dramatic use must be made on a case-by-case basis. Several elements of the performance must be evaluated, including whether the performance aids in telling a story. With reference to a series of individual musical compositions excerpted from a musical play, dramatic use of a musical composition has been defined as a performance (even without the use of scenery or costumes) in which the performers (a) evoke the original work by performing more than a few songs in the sequence of the original work, and (b) maintain specific roles from the original work so that the story line is preserved.[43]

If the public performances are given or sponsored in connection with any commercial or profit-making enterprise, such performances are subject to the exclusive rights of the copyright owner, even though the public is not charged for hearing or seeing the performance.[44]

Assuming that a non-dramatic performance of a musical work involves no profit motive and that no one responsible for its presentation receives a fee, the performance must still meet one of two alternative conditions to be exempt: (1) there must be "no direct or indi-

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wood Group, Ltd. v. Sperber, 457 F.2d 50 (2d Cir. 1972), the court held that with reference to a series of individual musical compositions excerpted from a musical play, it is a dramatic use when the performers (a) evoke the original work by performing more than a few songs in the sequence of the original work and (b) maintain specific roles from the original work so that the story line is preserved. It is a dramatic use if the story line of any individual musical composition is interpreted in a dramatic fashion, such as when scenery, props or character action are used to depict the lyrics of a song. *See* S. SHEMEL & M. KRASILOVSKY, THIS BUSINESS OF MUSIC 149 (rev. ed. 1971). Neither the existing copyright law nor the new Copyright Act of 1976 provides a statutory definition of what constitutes a non-dramatic or dramatic use of a musical composition.

The commentators distinguish between musical works which carry the plot forward and those which do not. Perron, in *Small and Grand Performing Rights? (Who Cared Before Jesus Christ Superstar?)*, 20 BULL. COPYRIGHT SOC'Y 19, 39 (1972), submits that:

> If the musical compositions are performed in such a way as to develop any story, their use must be licensed through a grand rights grant. Perhaps this provides occasion for applying the "ordinary observer" test. If to an audience a story is being depicted by the use of the musical compositions, such use would result in a dramatic performance.

In 2 NIMMER ON COPYRIGHT § 125.6, at 551 (1976), Nimmer states that a performance of a musical composition is dramatic if it aids in telling a story; otherwise it is not. Herman Finkelstein, former general counsel of ASCAP, in discussing television use, defines a dramatic performance as

> a performance of the musical composition on a television program in which there is a definite plot depicted by action and where the performance of the musical composition is woven into and carries forward the plot and its accompanying action.

Finkelstein, *Public Performance Rights in Music and Performance Right Societies*, 7 COPYRIGHT PROB. ANALYZED 69, 75 (CCH 1952).

[43] *See* Robert Stigwood Group, Ltd. v. Sperber, 457 F.2d 50, 55 (2d Cir. 1972).

[44] HOUSE REPORT, *supra* note 8, at 85.

rect admission charge,"[45] or (2) if there is an admission charge, the net proceeds must be "used exclusively for educational, religious or charitable purposes and not for private financial gain."[46] Finally, if there is an admission charge for the performance, the copyright owner of the work to be performed must be given an opportunity to object to such use of his work.[47] The copyright owner has been afforded this opportunity to object based on the rationale that, since the particular charity's purpose will be furthered by the money collected as admission fees, the copyright owner should not be compelled to support a cause in which he does not believe.[48] The notice of objection must be served at least seven days before the date of the performance,[49] and must comply in content and manner of service with requirements that the Register of Copyrights has mandated by regulation.[50] It is uncertain how the copyright owner will be advised

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[45] 17 U.S.C.A. § 110(4)(A) (West Cum. Supp. 1977).

[46] *Id.* § 110(4)(B).

[47] *See* 17 U.S.C.A. § 110(4)(B) (West Cum. Supp. 1977).

[48] HOUSE REPORT, *supra* note 8, at 86.

[49] 17 U.S.C.A. § 110(4)(B)(ii) (West Cum. Supp. 1977).

[50] The new regulation, effective since January 1, 1978, provides:

(c) Contents. (1) A Notice of Objection must clearly state that the copyright owner objects to the performance, and must include all of the following:

(i) Reference to the statutory authority on which the Notice of Objection is based, either by citation of 17 U.S.C. § 110(4) or by a more general characterization or description of that statutory provision;

(ii) The date and place of the performance to which an objection is being made; however, if the exact date or place of a particular performance or both are not known to the copyright owner, it is sufficient if the Notice describes whatever information the copyright owner has about the date and place of a particular performance, and the source of that information unless the source was considered private or confidential;

(iii) Clear identification, by title and at least one author, of the particular nondramatic literary or musical work or works, the performance of which the copyright owner thereof is lodging objection; a Notice may cover any number of separately identified copyrighted works owned by the copyright owner or owners serving the objection. Alternatively, a blanket notice with or without separate identification of certain copyrighted works, and purporting to cover one or more groups of copyrighted works not separately identified by title and author, shall have effect if the conditions specified in paragraph (c)(2) of this section are met; and

(iv) A concise statement of the reasons for the objection.

(2) A blanket notice purporting to cover one or more groups of copyrighted works not separately identified by title and author shall be valid only if all of the following conditions are met:

(i) The Notice shall identify each group of works covered by the blanket notice by a description of any common characteristics distinguishing them from other copyrighted works, such as common author, common copyright owner, common publisher, or common licensing agent;

of the planned performance.[51] Nevertheless, should the owner learn

(ii) The Notice shall identify a particular individual whom the person responsible for the performance can contact for more detailed information about the works covered by the blanket notice and to determine whether a particular work planned for performance is in fact covered by the Notice. Such identification shall include the full name and business and residence addresses of the individual, telephone numbers at which the individual can be reached throughout the period between service of the notice and the performance, and name, addresses, and telephone numbers of another individual to contact during that period in case the first cannot be reached.

(iii) If the copyright owner or owners of all works covered by the blanket notice is not identified in the Notice, the Notice shall include an offer to identify, by name and last known address, the owner or owners of any and all such works, upon request made to the individual referred to in paragraph (c)(2)(ii) of this section.

(3) A Notice of Objection must also include clear and prominent statements explaining that:

(i) A failure to exclude the works identified in the Notice from the performance in question may subject the person responsible for the performance to liability for copyright infringement; and

(ii) The objection is without legal effect if there is no direct or indirect admission charge for the performance, and if the other conditions of 17 U.S.C. § 110(4) are met.

(d) Signature and Identification. (i) A Notice of Objection shall be in writing and signed by each copyright owner, or such owner's duly authorized agent, as required by 17 U.S.C. § 110(4)(B)(i).

(ii) The signature of each owner or agent shall be an actual handwritten signature of an individual, accompanied by the date of signature and the full name, address, and telephone number of that person, typewritten or printed legibly by hand.

(iii) If a Notice of Objection is initially served in the form of a telegram or similar communication, as provided by paragraph (e) of this section, the requirement for an individual's handwritten signature shall be considered waived if the further conditions of said paragraph (e) are met.

(e) Service. (1) A Notice of Objection shall be served on the person responsible for the performance at least seven days before the date of the performance, as provided by 17 U.S.C. § 110(4)(B)(ii).

(2) Service of the Notice may be effected by any of the following methods:

(i) personal service;

(ii) first-class mail;

(iii) telegram, cablegram, or similar form of communication, if: (A) the Notice meets all of the other conditions provided by this section; and (B) before the performance takes place, the person responsible for the performance receives written confirmation of the Notice, bearing the actual handwritten signature of each copyright owner or duly authorized agent.

(3) The date of service is the date the Notice of Objection is received by the person responsible for the performance or any agent or employee of that person.

42 Fed. Reg. 64, 684 (1977) (to be codified in 37 C.F.R. § 201).

[51] Drafters of the new regulation dealt with the issue of pre-performance notice to the copyright owner in the following manner:

One comment urged that, under the regulation, users be required to give advance notice to copyright owners; it took the position that, unless the initial

of a proposed performance and file an objection, public performance of the work would be prevented.[52]

Effect of the New Law

The effect of section 110 of the 1976 Copyright Act is to expand the rights of authors. Under the law, the rule of thumb is that in return for the privilege of being able to perform one or more of an author's copyrighted works, the user must pay royalties. The free enjoyment of a performance, especially with regard to music, is now limited to private use and to the limited exemptions included in section 110. Thus, the following uses would clearly require consent of the copyright owner:

(1) Concerts and other performances at schools and colleges in which an admission fee is charged. Even if there is no admission fee and the performance is under nonprofit auspices, the copyright owner must be paid royalties if payment is made to musicians or promoters.

(2) Performances in country clubs and private associations, even if the clubs are not open to the public, where there are commercial motives or the payment of fees to musicians or promoters involved.

In conclusion, music is now treated on a par with other copyrighted material.[53] Archaic and unjustified distinctions between creators of music and creators of other copyrighted works have, in this respect, been abolished. In general, all copyright owners have the right to control the use of their work, including public perfor-

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requirements for serving notice were placed on the user, the purpose of the statute could be served only by placing few if any restrictions on the right of copyright owners to serve blanket notices. Other comments took the opposite view: That there would be no justification for placing the burden of serving advance notice on the user, and that the regulations should not encourage the routine filing of blanket notices that would in practice require the payment of royalties for all nonprofit performances where admission fees are charged. After careful consideration the Copyright Office can see no basis for requiring, by regulation, the user to notify the copyright owner of the performance or the works to be performed. At the same time, we recognize the formidable practical problems facing copyright owners in learning of performance and in giving meaningful notices.

Id. at 64,682–83.

[52] *See* 17 U.S.C.A. § 110(4)(B) (West Cum. Supp. 1977).

[53] Other parts of the 1976 Act pertain to cable television, juke box and public broadcasting performances of musical compositions. *See* 17 U.S.C.A. §§ 111, 116, 118 (West Cum. Supp. 1977). These areas have generally been made subject to a compulsory licensing system, rather than to absolute control by the author. *See id.* §§ 111(C), 116(A)(2), 118(d). Such uses had previously been exempt from copyright control by case law, *e.g.*, Fortnightly Corp. v. United Artists Television, 392 U.S. 390 (1968), or by statute, Copyright Act of 1909, Act of Mar. 4, 1909, ch. 320, § 1(e), 35 Stat. 1075.

mances,[54] unless such performances are exempt by the specific limitations of the 1976 Act as discussed in this Comment. There should be no doubt, however, that performing rights organizations will be cautious in enforcing the new law as it affects schools and colleges.[55]

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[54] For a good general discussion of the concept of public performance under the new law, see Korman, *Public Performance Rights in Music Under Sections 110 and 118 of the 1976 Copyright Act*, 22 N.Y.L.S.L. REV. 521 (1977).

[55] *See* Statement of ASCAP before National Commission on New Technological Uses of Copyrighted Works (CONTU) 28 (Mar. 31, 1977) ("Society is very careful to limit the number of infringement counts upon which it brings suit so that a judgment or settlement will be reasonable").