

1963/84

THE COPYRIGHT (RECORD ROYALTIES) REGULATIONS 1963

BERNARD FERGUSSON, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 5th day of June 1963

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Copyright Act 1962, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

REGULATIONS

Title

1. These regulations may be cited as the Copyright (Record Royalties) Regulations 1963.

Interpretation

2. (1) In these regulations—

“The Act” means the Copyright Act 1962:

“Owner” has the meaning defined in paragraph (a) of subsection (1) of section 22 of the Act.

(2) Other expressions defined in the Act have the meanings so defined.

Notice

3. (1) The notice required by paragraph (b) of subsection (1) and paragraph (c) of subsection (4) of section 22 of the Act shall contain the following particulars:

(a) The name and address of the person who intends to make or import records of the work and gives the notice, in these regulations called “the user”:

(b) The name of the work to which the notice refers, a description sufficient to identify it, and the name of the publisher or of the composer and arranger (if any):

(c) A statement of whether the user wants to make or import records and the address at which he intends to make or to which he intends to import the records:

- (d) Sufficient particulars to identify a record of the work previously made in or imported into New Zealand or Australia for the purposes of retail sale by or with the licence of the owner of the copyright:
- (e) The type or types of record on which it is intended to reproduce the work or which are intended to be imported:
- (f) The ordinary retail selling price (as defined in regulation 6 hereof) of the records, or, where it is intended to make or import more than one type of record, the ordinary retail selling price (as so defined) of each type of record that the user intends to make or import and the total amount of royalty payable on each record:
- (g) The earliest date at which any of the records will be disposed of as aforesaid:
- (h) Whether the recording of any other musical, literary, or dramatic work is to be embodied in the same record with the work and, in relation to any such other work, the particulars specified in paragraph (b) of this subclause.

(2) The said notice shall, not less than 21 days before the date on which any record embodying a sound recording of the work is disposed of as aforesaid, be sent by registered post or published by advertisement as follows:

- (a) If the name and an address within New Zealand of the owner of the copyright, or his agent for the receipt of notice, are known or can by reasonable inquiry be ascertained, the notice shall be sent to that owner or agent at that address:
- (b) If an address within New Zealand is not known and cannot by reasonable inquiry be ascertained, the notice shall be sent to that owner or agent in Australia in cases where that address is known or can by reasonable inquiry be ascertained:
- (c) If the name or any address referred to in paragraph (a) or paragraph (b) of this subclause are not known and cannot by reasonable inquiry be ascertained, an advertisement shall be inserted in the *Gazette* giving the particulars specified in paragraphs (a), (b), (c), and (d) of subclause (1) of this regulation and stating an address from which the particulars specified in paragraphs (e), (f), (g), and (h) of that subclause may be obtained.

Payment of Royalties

4. (1) In the absence of any agreement to the contrary, the following provisions of this regulation shall apply to the manner in which and the time at which royalties shall be paid, and to the steps to be taken to ensure the receipt of royalties by the owner of the copyright.

(2) If within 14 days after the date of the giving of the notice prescribed in regulation 3 hereof the owner of the copyright intimates to the user, by notice in writing sent by registered post, some convenient place within New Zealand from which adhesive labels can be obtained, the user shall by notice in writing specify the number and denomination of the labels he requires and at the same time tender a sum equivalent

to the amount of royalty represented by the labels required. If, within 10 days after the date of the receipt of the notice required by this subclause to be given by the user, the copyright owner supplies the labels required, the user shall not dispose as aforesaid of any records made or imported by him to which the notice prescribed in regulation 3 hereof refers unless there is attached thereto or to the container in which the record is intended to be delivered to a retail purchaser, a label supplied as aforesaid.

(3) If the owner of the copyright does not take the steps specified in subclause (2) of this regulation within the times therein respectively specified, the user may dispose as aforesaid of any record to which the notice specified in regulation 3 hereof refers without complying with the requirement of subclause (2) of this regulation. The user shall keep an account of all records disposed of as aforesaid in accordance with this subclause, and the amount of royalties due to the owner of the copyright in respect thereof shall be transferred to a special account and held in trust for the owner of the copyright.

(4) For the purposes of this regulation the date of the giving of the notice prescribed in regulation 3 hereof means,—

- (a) In cases where the notice is required to be sent by registered post, the date when the notice would in ordinary course of post be delivered;
- (b) In cases where the notice is required to be advertised in the *Gazette*, the date on which it is so advertised.

(5) The adhesive label supplied as aforesaid shall be an adhesive label, square in shape, the design to be entirely enclosed in a circle and the side of the label to be not greater than $\frac{3}{4}$ in. in length. The label shall not be in a form which resembles any postage stamp, nor bear the effigy of the Sovereign or any other person, nor any word, mark, or design such as to suggest that the label is issued by or under the authority of the Government for the purpose of denoting duty payable to the Government.

5. If the user takes in relation to any records the steps specified in subclause (2) or subclause (3) of regulation 4 hereof or complies with any method approved and fulfils any conditions laid down by the Tribunal under the provisions of subsection (12) of section 22 of the Act, as the case may be, the taking of those steps or such compliance and fulfilment of conditions shall constitute the payment of royalties on those records in accordance with paragraph (d) of subsection (1) of section 22 of the Act.

Ordinary Retail Selling Price

6. The ordinary retail selling price shall be calculated at—

- (a) An amount equal to the amount of the marked or catalogued selling price of single records to the public less the amount of any sales tax theretofore paid in respect of the record; or
- (b) If there is no such marked or catalogued selling price, an amount equal to the highest price at which single records are ordinarily sold to the public less the amount of any sales tax theretofore paid in respect of the record.

Inquiries

7. (1) The inquiries mentioned in subsection (7) of section 22 of the Act shall be directed to the owner of the copyright by name or (if his name is not known and cannot by reasonable inquiry be ascertained) in general terms as the owner of the copyright in the work in respect of which inquiries are made and shall contain the following particulars:

- (a) A statement of the name of the musical, literary, or dramatic work in respect of which inquiries are made, a description to identify it, and the name of the author or publisher:
- (b) A statement of the name and address of the user making the inquiries:
- (c) An allegation that a record of the work, or of an adaptation of the work similar to an adaptation intended to be incorporated in the record to be made or imported, has previously been made in or imported into New Zealand or Australia for the purposes of retail sale, with the trade mark (if known) and a description of the record sufficient to identify it:
- (d) An inquiry whether the record so described was made in or imported into New Zealand or Australia for the purposes of retail sale by or with the licence of the owner of the copyright.

(2) The inquiries shall be sent by registered post or published by advertisement as follows:

- (a) If an address within New Zealand of the owner of the copyright or his agent is known or can by reasonable inquiry be ascertained, the inquiries shall be sent to that address:
 - (b) If an address within New Zealand is not known and cannot by reasonable inquiry be ascertained but an address is known or can by reasonable inquiry be ascertained in Australia, the inquiries shall be sent to that address:
 - (c) If any address referred to in paragraph (a) or paragraph (b) of this subclause is not known and cannot by reasonable inquiries be ascertained, the inquiries shall be advertised in the *Gazette* giving the particulars specified in paragraphs (a), (b), (c), and (d) of subclause (1) of this regulation.
- (3) The prescribed time for reply to any such inquiries shall be—
- (a) To an inquiry duly sent by registered post, 14 days after the date when the inquiry would in ordinary course of post be delivered:
 - (b) To an inquiry duly advertised in the *Gazette*, 14 days after the date of the advertisement.

T. J. SHERRARD,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations govern matters which, by section 22 of the Copyright Act 1962, are left to be prescribed in connection with the making or importation of records of musical works in which copyright subsists, particularly the notices to be given, the payment of royalties, the manner of calculating the ordinary retail selling price for the purpose of ascertaining royalties, and the inquiries which may be made as to previous importation.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 6 June 1963.

These regulations are administered in the Department of Justice.