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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 8. SPECIAL BUSINESS REGULATIONS [18400 - 22949.92.2] (*Division 8 added by Stats. 1941, Ch. 44.*)

CHAPTER 11. Copyrighted Performances of Musical Works [21750 - 21758] (*Chapter 11 added by Stats. 1996, Ch. 340, Sec. 2.*)

21750. For purposes of this chapter, the following definitions apply:

- (a) "Copyright owner" means the owner of a copyright of a nondramatic musical work recognized and enforceable under the copyright laws of the United States pursuant to Title 17 of the United States Code, P. L. 94-553 (17 U.S.C. Sec. 101 et seq.). "Copyright owner" does not include the owner of a copyright in a motion picture or audiovisual work, or in part of a motion picture or audiovisual work.
- (b) "Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.
- (c) "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, or any other similar place of business or professional office located in this state in which the public may assemble and in which nondramatic musical works may be performed, broadcast, or otherwise transmitted for the enjoyment of the assembled members of the public.
- (d) "Royalty" or "royalties" means the fees payable to a copyright owner or performing rights society for the public performance of a nondramatic musical work.

(*Added by Stats. 1996, Ch. 340, Sec. 2. Effective January 1, 1997.*)

21751. No copyright owner or performing rights society may enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at least 72 hours prior to the execution of that contract, it provides to the proprietor, in writing, the following:

- (a) A schedule of the rates and terms of royalties under the contract.
- (b) Notice that the proprietor is entitled to the information contained in subdivision (a) and Section 21751.5.

(*Added by Stats. 1996, Ch. 340, Sec. 2. Effective January 1, 1997.*)

21751.5. A performing rights society shall make available electronically to proprietors the most current available list of the members and affiliates represented by the performing rights society and the most current available list of no less than the performed works that the society licenses. A performing rights society may make additional information available to a proprietor at a reasonable cost.

(*Added by Stats. 1996, Ch. 340, Sec. 2. Effective January 1, 1997.*)

21752. A contract for the payment of royalties executed in this state shall:

- (a) Be in writing.
- (b) Be signed by the parties.
- (c) Include at least the following information:
 - (1) The proprietor's name and business address.
 - (2) The name and location of each place of business to which the contract applies.
 - (3) The duration of the contract.

(4) The schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of those rates for the duration of that contract.

(Added by Stats. 1996, Ch. 340, Sec. 2. Effective January 1, 1997.)

21753. (a) No representative or agent of a performing rights society may do any of the following:

(1) Discuss with the proprietor or the proprietor's employee, a contract for payment of royalties by a proprietor or the use of copyrighted works by the proprietor, without first identifying himself or herself to the proprietor or the proprietor's employees.

(2) Engage in any coercive conduct, act, or practice that is substantially disruptive of a proprietor's business, or use or attempt to use a fraudulent act, as defined in Section 1572 of the Civil Code.

(3) Fail to comply with Section 21751, 21751.5, or 21752.

(b) This chapter does not prohibit a copyright owner or performing rights society from conducting investigations to determine the existence of music use by a proprietor or informing a proprietor of the proprietor's obligation under Title 17 of the United States Code.

(Added by Stats. 1996, Ch. 340, Sec. 2. Effective January 1, 1997.)

21754. A person who wilfully violates any of the provisions of this act is liable for a civil penalty of five thousand dollars (\$5,000) per violation.

(Added by Stats. 1996, Ch. 340, Sec. 2. Effective January 1, 1997.)

21755. A proprietor may bring an action or assert a counterclaim against a copyright owner or performing rights society to enjoin any violation of this chapter and to recover any damages sustained by the proprietor as a result of a violation of this chapter. If successful, the proprietor is entitled to recover treble damages, together with filing fees and reasonable costs of suit, in addition to any other legal or equitable relief.

If a proprietor prevails in a cause of action alleging a willful violation of paragraph (2) of subdivision (a) of Section 21753, the prevailing proprietor shall be awarded reasonable attorney's fees.

(Added by Stats. 1996, Ch. 340, Sec. 2. Effective January 1, 1997.)

21756. The rights, remedies, and prohibitions accorded by this chapter are in addition to any other right, remedy, or prohibition accorded by law. Nothing in this chapter shall be construed to deny, abrogate, or impair any right, remedy, or prohibition.

(Added by Stats. 1996, Ch. 340, Sec. 2. Effective January 1, 1997.)

21757. This chapter does not apply to contracts between copyright owners or performing rights societies and broadcasters licensed by the Federal Communications Commission. However, if a copyright owner or performing rights society is licensed by the Federal Communications Commission, this chapter applies to contracts between that copyright owner or performing rights society and a proprietor.

(Added by Stats. 1996, Ch. 340, Sec. 2. Effective January 1, 1997.)

21758. This chapter does not apply to conduct engaged in while enforcing Section 653w of the Penal Code.

(Added by Stats. 1996, Ch. 340, Sec. 2. Effective January 1, 1997.)