STATE OF NEW YORK

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Cal. No. 909

IN SENATE

March 9, 2018

Introduced by Sen. FUNKE -- read twice and ordered printed, and when printed to be committed to the Committee on Cultural Affairs, Tourism, Parks and Recreation -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the arts and cultural affairs law, in relation to music licensing

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 31.04 of the arts and cultural affairs law, as added by chapter 660 of the laws of 1995, is amended to read as follows:

§ 31.04. Copyrights. 1. As used in this section:

(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, Pub. L. 94-553 (17 U.S.C. § 101 et seq.). "Copyright owner" shall 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**, sports or entertainment facility**, 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 **or similar copyrighted works** may be performed, broadcast, or otherwise transmitted **for the enjoyment of members of the public there assembled**.

(d) "Royalty" or "royalties" means the fees payable to a **copyright owner or** performing rights society for **the** public performance rights **of nondramatic musical works or other similar works**.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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2. Each performing rights society shall make available an electronic link to each form agreement providing for the payment of royalties made available from the performing rights society to any proprietor within the state.

3. Each performing rights society shall make available electronically to business proprietors the most current available list of members and affiliates represented by the performing rights society and the most current available list of works that the performing right society licenses.

4. Each performing rights society shall make available to the department of state for posting on the department's website electronic links providing the information required by subdivisions two and three of this section.

5. No performing rights society shall enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at the time of the offer, or any time thereafter, but no later than seventy-two 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) [~~upon the request of the proprietor, the opportunity to review the most current available list of the members or affiliates represented by the society;~~

~~(c) notice that it will make available, upon written request of any proprietor or bona fide trade associations representing groups of proprietors, at the sole expense of the proprietor or bona fide trade associations representing groups of proprietors by electronic means or otherwise, the most current available listing of the copyrighted musical works in such performing rights society's repertory, provided that such notice shall specify the mean by which such information can be secured;~~

~~(d)~~] notice that the proprietor has electronic access to the information made available by the performing rights society pursuant to subdivisions two and three of this section, such notice shall include how to access such information electronically;

(c) notice that the performing rights society has a toll free telephone number which can be used to answer inquiries of a proprietor regarding specific musical works and the copyright owners represented by that performing rights society; and

[~~(e)~~] (d) notice that it complies with federal law and orders of courts having appropriate jurisdiction regarding the rates and terms of royalties and the circumstances under which licenses for rights for public performances are offered to any proprietor.

[~~3.~~] 6. Every contract between a performing rights society and proprietor for the payment of the royalties executed, issued or renewed in this state on or after the effective date of this section shall:

(a) be in writing;

(b) be signed by the parties; and

(c) include at least the following information:

(1) the proprietor's name and business address and the name and location of each place of business to which the contract applies;

(2) the name and address of the performing rights society;

(3) the duration of the contract; and

(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.

[~~4.~~] 7. No performing rights society, or any agent or employee thereof shall:

(a) with respect to contracts executed, issued or renewed on or after the effective date of this section, collect or attempt to collect from a proprietor licensed by that performing rights society a royalty payment except as provided in a contract executed pursuant to the provisions of this section; or

(b) enter onto the premises of a proprietor's business for the purpose of discussing a contract for payment of royalties for the use of copyrighted works by that proprietor without first identifying himself or herself to the proprietor or his or her employees and disclosing that the agent is acting on behalf of such performing rights society and disclosing the purpose of the discussion[~~; and~~

~~(c) fail to provide written notice to a proprietor or his or her employees within seventy-two hours after entering the proprietor's business for the purpose of investigating the possible performance, broadcasting or transmission of non-dramatic musical works, and disclosing that such agent or employee was investigating on behalf of such performing rights society and disclosing:~~

~~(1) the name of the performing rights society;~~

~~(2) the date on which such agent or employee conducted the investigation; and~~

~~(3) the copyrighted works in such performing rights society's repertory performed at the business during the investigation.~~

~~5.~~].

8. A representative or agent of a performing rights society shall not:

(a) use obscene, abusive or profane language when communicating with the proprietor or his or her employees;

(b) communicate by telephone or in-person with a proprietor other than at the proprietor's place of business during the hours when the proprietor's business is open to the public. However, such communications may occur at a location other than the proprietor's place of business or during hours when the proprietor's business is not open to the public if the proprietor or the proprietor's agents, employees, or representatives so authorizes;

(c) engage in any coercive conduct, act, or practice that is substantially disruptive to a proprietor's business;

(d) use or attempt to use any unfair or deceptive act or practice in negotiating with a proprietor; or

(e) communicate with an unlicensed proprietor about licensing performances of musical works at the proprietor's establishment after receiving notification in writing from an attorney representing the proprietor that all further communications related to the licensing of the proprietor's establishment by the performing rights society should be addressed to the attorney. However, the performing rights society may resume communicating directly with the proprietor if the attorney fails to respond to communications from the performing rights society within sixty days, or the attorney becomes nonresponsive for a period of at least sixty days.

9. The department of state shall:

(a) inform proprietors of their rights and responsibilities regarding the public performance of copyrighted music as part of the business of licensing service; and

(b) encourage performing rights societies to conduct outreach campaigns to educate existing proprietors on their rights and responsibilities regarding the public performance of copyrighted music.

10. Anyone who willfully violates any of the provisions of this section may be liable for a civil penalty of not more than one thousand

dollars per violation. Multiple violations on a single day may be considered separate violations. The attorney general may seek recovery of all such penalties in a civil action. The attorney general may issue civil investigative demands for the inspection of documents, interrogatory responses, and oral testimony in the enforcement of this section.

11. Any person who suffers a violation of this section may bring an action to recover actual damages and reasonable attorney's fees and seek an injunction or any other remedy available at law or in equity. This section shall not apply to contracts between performing rights societies and broadcasters licensed by the federal communications commission or to contracts with cable operators, programmers or other transmission services. This section shall also not apply to investigations conducted by law enforcement agencies or other persons with respect to a suspected violation of article two hundred seventy-five of the penal law.

12. Nothing in this section may be construed to prohibit performing rights societies from conducting investigations to determine the existence of music use by a proprietor's business or informing a proprietor of the proprietor's obligations under the copyright laws of the United States pursuant to Title 17 of the United States Code (17 U.S.C. Sec. 101, et seq.).

§ 2. This act shall take effect January 1, 2019.