Chapter 647

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Trademarks and Service Marks; Music Royalties

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TRADEMARKS AND SERVICE MARKS

(Generally)

647.005 Definitions. (1) As used in this chapter:

(a) "Applicant" embraces the person who applies to register a mark under this chapter, and the person's legal representatives, successors or assigns.

(b) "Mark" includes any trademark or service mark entitled to registration under this chapter whether registered or not.

(c) "Person" means any individual, firm, partnership, corporation, association, union or other organization.

(d) "Registrant" embraces the person to whom the registration of a mark is issued under this chapter, and the person's legal representatives, successors or assigns.

(e) "Retail value" means:

(A) For items that bear a counterfeit mark and are components of a finished product, the regular selling price of the finished product in which the component would be utilized.

(B) For all items that bear a counterfeit mark other than those described in subparagraph (A) of this paragraph and for all services that are identified by a counterfeit mark, the regular selling price of the item or service.

(f) "Trademark" means any word, name, symbol, device or any combination thereof adopted and used by a person to identify goods made or sold by the person and to distinguish them from goods made or sold by others.

(g) "Trade name" means a word, name, symbol, device or any combination thereof used by a person to identify the person's business, vocation or occupation and to distinguish it from the business, vocation or occupation of others.

(h) "Service mark" means any word, name, symbol, device or any combination thereof used by a person in the sale or advertising of services to identify the person's services and to distinguish them from the services of others.

(2) For the purposes of this chapter, a mark shall be deemed to be "used" in this state:

(a) On goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in this state; and

(b) On services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

(3) For purposes of this chapter, a mark shall be deemed to be "abandoned" in this state when either of the following occurs:

(a) When its use has been discontinued with intent not to resume. Intent not to resume may be inferred from the circumstances. Nonuse for two consecutive years shall be prima facie evidence of abandonment. "Use" of a mark means the bona fide use of that mark made in the ordinary course of trade and not made merely to reserve a right in a mark; or

(b) When any course of conduct of the registrant, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used, or otherwise to lose its significance as a mark. Purchaser motivation shall not be a test for determining abandonment under this paragraph. [1961 c.497 §1; 1965 c.511 §1; 1981 c.633 §71; 1989 c.931 §1; 1999 c.722 §7]

(Registration)

647.009 Filing, service, copying and certification fees. The Secretary of State shall collect the fees described in ORS 56.140 for each document delivered for filing under this chapter and for process served on the secretary under this chapter. The secretary may collect the fees described in ORS 56.140 for copying any public record under this chapter, certifying the copy or certifying to other facts of record under this chapter. [1991 c.132 §23; 1999 c.652 §17]

647.010 [Repealed by 1961 c.497 §16]

647.015 Application for registration. (1) Subject to the limitations set forth in this chapter, any person who adopts and uses a mark in this state may submit for filing to the Office of the Secretary of State, on a form to be furnished by the Secretary of State, an application for registration of that mark setting forth, but not limited to, the following information:

(a) The name and business address of the person applying for such registration; and, if a corporation, the state of incorporation.

(b) The goods or services in connection with which the mark is used and mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall.

(c) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or the predecessor of the applicant in business.

(d) A statement that the applicant believes the applicant is the owner of the mark and that no other person has the right to use such mark in this state either in the identical form thereof or in such near resemblance

thereto as might be calculated to deceive or to be mistaken therefor.

(e) A mailing address to which the Secretary of State may mail notices.

(f) Any additional identifying information that the Secretary of State by rule may require.

(2) The application for registration shall be:

(a) Signed and verified by the applicant or by a member of the firm or an officer of the corporation or association applying.

(b) Accompanied by a specimen or facsimile of the mark. [1961 c.497 §3; 1965 c.511 §2; 1971 c.318 §2; 1985 c.728 §84; 1991 c.132 §20]

647.020 [Repealed by 1961 c.497 §16]

647.024 Rules for classes of goods and services. The Secretary of State may establish by rule classes of goods and services for convenience in the administration of this chapter. The classes that the Secretary of State establishes shall not enlarge or diminish the rights of an applicant or a registrant. [1985 c.728 §84b (enacted in lieu of 647.025)]

647.025 [1961 c.497 §9; 1965 c.511 §3; repealed by 1985 c.728 §§84a,110 (647.024 enacted in lieu of 647.025)]

647.029 Refusal to register mark; grounds; form of refusal. (1) The Secretary of State shall refuse to register a mark if the Secretary of State finds that the mark so resembles either a mark not registered under this chapter or a trade name that a person other than the applicant previously has used in this state and not abandoned, as to be likely, when applied to the goods or when used in connection with the services of the applicant, to cause confusion or mistake, or to deceive. This subsection shall not be construed to require the Secretary of State to conduct any investigation.

(2) Any finding that the Secretary of State makes under subsection (1) of this section shall be in writing, and each finding shall be supported by evidence of use of the mark or trade name. A refusal to register a mark under this section is a final order for purposes of ORS chapter 183.

(3) A copy of a registration on the Principal Register of the United States Patent and Trademark Office dated prior to the date that the applicant claims as a date of first use under ORS 647.015 is sufficient evidence to support a finding under this section. A document submitted to the Office of the Secretary of State under ORS chapter 60, 65, 70 or 648 is not evidence that a corporate name, limited partnership name or assumed business name stated in the document has been used. [1985 c.728 §85b; 1987 c.94 §104]

647.030 [Repealed by 1961 c.497 §16]

647.035 Marks ineligible for registration. The Secretary of State shall not register as a mark any word, phrase, symbol, device or combination thereof if it:

(1) Consists of or comprises immoral, deceptive or scandalous matter;

(2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons living or dead, institutions, beliefs or national symbols, or bring them into contempt or disrepute;

(3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof;

(4) Consists of or comprises the name, signature or portrait of any living individual except with the individual's written consent;

(5) Consists of or comprises a mark which so resembles a mark registered in this state as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive; or

(6) Consists of a word, phrase, symbol, device or combination thereof which (a) when applied to the goods or services of the applicant is merely descriptive or deceptively misdescriptive of them, or (b) when applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (c) is primarily merely a surname. However, nothing in this subsection shall prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services. The Secretary of State may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for the five years next preceding the date of the filing of the application for registration. [1961 c.497 §2; 1965 c.511 §4; 1971 c.318 §3; 1985 c.728 §85]

647.040 [Amended by 1959 c.261 §1; repealed by 1961 c.497 §16]

647.045 Certificate of registration; evidentiary effect. (1) Upon compliance by the applicant with the requirements of this chapter, the Secretary of State:

(a) Shall file the original application; and

(b) Shall issue and return to the person who submitted the application a certificate of registration.

(2) The Secretary of State may designate the copy of the application marked "filed" to be the certificate of registration.

(3) Any certificate of registration issued by the Secretary of State under this chapter, or a copy thereof duly certified by the Sec-

retary of State, shall be prima facie evidence in any action or judicial proceeding in any court of this state of:

(a) The validity of the registration of the mark.

(b) Registrant's ownership of the mark.

(c) Registrant's exclusive right to use the mark in trade within the state in connection with the goods or services specified in the application. [1961 c.497 §4; 1965 c.511 §5; 1971 c.318 §4; 1985 c.728 §86]

647.050 [Repealed by 1961 c.497 §16]

647.055 Period of registration; renewal; rules; record of registrations. (1) Registration of a mark under this chapter shall be effective for a term of five years from the date of registration and may be renewed for successive five-year terms. The registration shall be renewed if the mark is still in use and the registrant submits a signed and verified application on a form to be furnished by the Secretary of State within 90 days prior to the expiration of the term of registration.

(2) The Secretary of State shall notify each registrant of a mark under this chapter of the necessity of renewal at least 90 days prior to the expiration of the term of registration by writing to the address shown for the registrant in the current records of the Office of the Secretary of State.

(3) Each application for a renewal under this section shall include:

(a) A statement that the mark is still in use in this state;

(b) A mailing address to which the Secretary of State may mail notices; and

(c) Additional information that the Secretary of State by rule may require.

(4) The Secretary of State shall keep for public examination a record of all marks registered or renewed under this chapter. [1961 c.497 §§5,7; 1965 c.511 §6; 1971 c.318 §5; 1981 c.633 §72; 1985 c.728 §86a; 1989 c.931 §2; 1991 c.132 §21]

647.060 [Repealed by 1961 c.497 §16]

647.065 Assignment of mark; procedure. Any mark and its registration under this chapter shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing, signed and may be submitted for filing to the Office of the Secretary of State. The Secretary of State, upon filing the assignment, shall notify the assignee of the filing of the assignment. An assignment of any registration under this chapter shall be void as against any subsequent purchaser for valuable consideration without notice unless it is submitted for filing to the Office of the Secretary of State within three months after the date thereof or prior to such subsequent purchase. [1961 c.497 §6; 1965 c.511 §7; 1971 c.318 §6; 1985 c.351 §25; 1985 c.728 §87a]

647.070 [Repealed by 1961 c.497 §16]

647.075 Cancellation of registrations. (1) The Secretary of State shall cancel a registration of a mark when:

(a) The Secretary of State receives a voluntary request from the registrant or the assignee of record to cancel the registration.

(b) The registration has not been renewed in accordance with the provisions of ORS 647.055.

(c) A court of competent jurisdiction either orders cancellation of the registration or finds that:

(A) The registered mark has been abandoned.

(B) The registrant is not the owner of the mark.

(C) The registration was granted improperly.

(D) The registration was obtained fraudulently.

(2) The Secretary of State may cancel a registration of a mark when, after providing the registrant with an opportunity for a hearing, the Secretary of State makes a written finding that:

(a) The registered mark has been abandoned.

(b) The registrant is not the owner of the mark.

(c) The registration was obtained fraudulently.

(d) The Secretary of State filed the registration in error.

(3) The Secretary of State's cancellation of a registration under this section is a final order within the meaning of ORS 183.480 to 183.497. [1961 c.497 §8; 1965 c.511 §8; 1971 c.318 §7; 1981 c.633 §73; 1985 c.728 §88]

647.080 [Repealed by 1961 c.497 §16]

(Remedies)

647.085 Fraudulent registration prohibited; liability. (1) No person shall procure or maintain on behalf of the person or any other person the filing or registration of any mark in the Office of the Secretary of State under the provisions of this chapter, by knowingly making any false or fraudulent representation or declaration, orally or in writing, or by any other fraudulent means.

(2) A person who violates subsection (1) of this section is liable to pay all damages sustained in consequence of such filing or

registration, to be recovered in any court of competent jurisdiction by or on behalf of the party injured thereby. [1961 c.497 §10; 1965 c.511 §9; 1971 c.318 §8; 1981 c.633 §73a]

647.090 [Repealed by 1961 c.497 §16]

647.095 Civil action for infringement; limitation on recovery. (1) Subject to the provisions of ORS 647.115 and subsection (2) of this section, a person is subject to a civil action by the owner of a registered mark for any or all of the remedies provided in ORS 647.105 and 647.111 if such person:

(a) Uses, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of a mark registered under this chapter in connection with the sale, offering for sale or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or

(b) Reproduces, counterfeits, copies or colorably imitates any such mark and applies such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in conjunction with the sale or other distribution in this state of such goods or services.

(2) The registrant is not entitled to recover profits or damages under subsection (1)(b) of this section unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive. [1961 c.497 §11; 1965 c.511 §10; 1985 c.566 §1]

647.100 [Repealed by 1961 c.497 §16]

647.105 Remedies for infringement. (1) Any owner of a mark registered under this chapter may proceed in a civil action to obtain any remedy or combination of remedies provided in this section against any person who engages in the manufacture, use, display or sale of any counterfeits or imitations of the mark. Any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the court deemed just and reasonable and shall require the defendant to pay to the owner the greater of $10,000 or the sum of:

(a) An amount not to exceed three times the profits derived by the defendant from the wrongful manufacture, use, display or sale; and

(b) An amount not to exceed three times all damages suffered by the owner because of the wrongful manufacture, use, display or sale.

(2) If the court under this section determines that a mark is counterfeit:

(a) The court may order the destruction of all such counterfeit marks, all means of making the marks and all goods, articles or other matter bearing the marks that are in the possession or control of the court or any party to the action; or

(b) Upon consent of the owner of the mark, the court may dispose of the materials after the counterfeit mark is obliterated, if obliteration does not destroy the materials bearing the mark, by ordering their transfer to any governmental entity, the owner of the mark, a charitable organization or any appropriate private person other than the person from whom the materials were obtained.

(3) The court under this section also may order seizure of the counterfeit goods in the manner provided in ORS 647.111. [1961 c.497 §12; 1965 c.511 §11; 1985 c.566 §2]

647.107 Grounds for injunctive relief. Likelihood of injury to business reputation or of dilution of the distinctive quality of a mark registered under ORS 647.015, or a mark valid at common law, or a trade name valid at common law, shall be a ground for injunctive relief notwithstanding the absence of competition between the parties or the absence of confusion as to the source of goods or services. [1971 c.122 §2]

647.110 [Repealed by 1961 c.497 §16]

647.111 Seizure of counterfeit goods in infringement proceeding; liability for wrongful seizure; undertaking. (1) In a civil action under ORS 647.105, upon motion by the plaintiff with or without notice to the defendant, the court may order seizure of the counterfeit goods from any person manufacturing, displaying for sale or selling the goods if the plaintiff shows good cause and a probability of success on the merits and posts an undertaking under subsection (6) of this section.

(2) If the plaintiff makes a motion without notice to the defendant for an order for seizure and the court determines from the motion that there is good reason for proceeding without notice to the defendant, the court may waive the requirement of notice and order seizure of the counterfeit goods.

(3) Any person from whom seizure is effected by order of the court under this section shall be served with the order at the time of the seizure. The order of seizure shall set forth:

(a) The date or dates on which the seizure is ordered to take place;

(b) A description of the counterfeit goods to be seized;

(c) The identity of the person or description of the authority of the person who will seize the counterfeit goods;

(d) A description of the location or locations at which seizure is to occur; and

(e) A hearing date not more than 10 court days after the last date on which seizure is ordered at which any person from whom goods are seized may appear and seek release of the seized goods.

(4) If the plaintiff causes seizure of goods that are not counterfeit, the plaintiff shall be liable for the following damages, costs and expenses:

(a) Any damages proximately caused by the seizure of goods that are not counterfeit to any person having a financial interest in the seized goods.

(b) Costs incurred by any person in defending against seizure of noncounterfeit goods.

(c) Expenses, including reasonable attorney defending against the seizure of any noncounterfeit or noninfringing goods, upon a showing that the plaintiff acted in bad faith in causing the seizure to occur.

(d) Punitive damages, if warranted.

(5) A person seeking a recovery under subsection (4) of this section may join any surety on an undertaking posted under subsection (6) of this section. Any judgment of liability shall bind the person liable under subsection (4) of this section and the surety jointly and severally, but the liability of the surety shall be limited to the amount of the undertaking.

(6) The court shall set the amount of the undertaking required by subsection (1) of this section in accordance with the recovery of damages, costs and expenses under subsection (4) of this section that would be likely if the court ultimately were to determine that the goods seized were not counterfeit.

(7) Any person entitled to recover under subsection (4) of this section, within 30 days after the date of seizure, may object to the undertaking on the ground that the surety or the amount of undertaking is insufficient.

(8) The motion filed pursuant to subsection (1) of this section shall include a statement:

(a) Advising the person from whom the goods are seized that the undertaking has been filed;

(b) Informing the person of the right to object to the undertaking on the ground that the surety or the amount of the undertaking is insufficient; and

(c) Advising the person from whom the goods are seized that the objection to the undertaking must be made within 30 days after the date of seizure. [1985 c.566 §4]

647.115 Effect of chapter on marks or trade names acquired at common law; effect of civil remedies on criminal statutes. (1) Nothing in this chapter shall adversely affect the rights or the enforcement of rights in marks or trade names acquired in good faith at any time at common law.

(2) The enumeration of any right or remedy in this chapter does not affect the right of a registrant to prosecute under any penal law of this state. [1961 c.497 §14; 1965 c.511 §12; 1985 c.566 §5; 1985 c.728 §89]

647.120 [Repealed by 1961 c.497 §16]

647.125 [1985 c.566 §6; repealed by 1999 c.722 §9]

647.130 [Repealed by 1961 c.497 §16]

647.135 Trademark counterfeiting. (1) A person commits trademark counterfeiting if the person knowingly and with the intent to sell or distribute and without the consent of the registrant uses, displays, advertises, distributes, offers for sale, sells or possesses any item that bears a counterfeit of a mark or any service that is identified by a counterfeit of a mark registered under this chapter or registered under this chapter or registered under 15 U.S.C. 1052 with knowledge that the mark is counterfeit.

(2) For purposes of this section, a mark is counterfeit if:

(a) It is a mark that is identical to or substantially indistinguishable from a registered mark; and

(b) It is used on or in connection with the same type of goods or services for which the genuine mark is registered.

(3) A person does not commit trademark counterfeiting if the person has adopted and lawfully used the same or a confusingly similar mark in the rendition of like services or the manufacture of like goods in this state from a date before the effective date of registration of the service mark or trademark and continues to use the mark after the effective date of registration. [1999 c.722 §2]

647.140 Trademark counterfeiting in third degree; penalty. (1) A person commits the crime of trademark counterfeiting in the third degree if the person commits trademark counterfeiting as described in ORS 647.135 and:

(a) The total number of items bearing the counterfeit mark is not more than 100; or

(b) The total retail value of all of the items bearing the counterfeit mark or services that are identified by the counterfeit mark is not more than $1,000.

(2) Trademark counterfeiting in the third degree is a Class A misdemeanor. Notwithstanding ORS 161.655, if the person convicted under this section is a corporation, the maximum fine that may be imposed is $100,000. [1999 c.722 §3]

647.145 Trademark counterfeiting in second degree; penalty. (1) A person commits the crime of trademark counterfeiting in the second degree if the person:

(a) Commits trademark counterfeiting as described in ORS 647.135 and:

(A) Has one prior conviction for trademark counterfeiting in any degree;

(B) The total number of items bearing the counterfeit mark is more than 100 but less than 1,000; or

(C) The total retail value of all of the items bearing the counterfeit mark or services that are identified by the counterfeit mark is more than $1,000 but less than $10,000.

(b) Knowingly manufactures or produces with intent to sell or distribute any item that bears a counterfeit mark or any service that is identified by a counterfeit mark.

(2) Trademark counterfeiting in the second degree is a Class C felony. However, notwithstanding ORS 161.655, if the person is convicted under:

(a) Subsection (1)(a)(A) of this section and is a corporation, the maximum fine that may be imposed is $200,000.

(b) Subsection (1)(b) of this section and the person has one prior conviction for trademark counterfeiting in any degree and is a corporation, the maximum fine that may be imposed is $200,000. [1999 c.722 §4]

647.150 Trademark counterfeiting in first degree; penalty. (1) A person commits the crime of trademark counterfeiting in the first degree if the person commits trademark counterfeiting as described in ORS 647.135 or 647.145 (1)(b) and:

(a) Has two or more prior convictions for trademark counterfeiting in any degree;

(b) The total number of items bearing the counterfeit mark is 1,000 or more; or

(c) The total retail value of all of the items bearing the counterfeit mark or services that are identified by the counterfeit mark is $10,000 or more.

(2) Trademark counterfeiting in the first degree is a Class B felony. [1999 c.722 §5]

647.155 Forfeiture, seizure and disposal. (1) Violation of ORS 647.140, 647.145 or 647.150 is prohibited conduct for the purposes of ORS chapter 475A, and any proceeds or instrumentalities of a violation of ORS 647.140, 647.145 or 647.150 may be seized for civil forfeiture in the manner provided by ORS chapter 475A.

(2) Items bearing a counterfeit mark are subject to seizure and disposition as provided in ORS 133.525 to 133.703. However, if the registrant so requests, the agency holding the seized items shall release the seized items to the registrant or make such other disposition as the registrant directs. If the registrant does not direct disposition of the seized items, the agency shall destroy the items. [1999 c.722 §6; 2001 c.780 §17]

Note: The amendments to 647.155 by section 17a, chapter 780, Oregon Laws 2001, become operative July 31, 2005. See section 17b, chapter 780, Oregon Laws 2001. The text that is operative on and after July 31, 2005, is set forth for the user's convenience.

647.155. (1) The following are subject to seizure and forfeiture in the same manner as the proceeds of prohibited conduct under ORS chapter 475A:

(a) All raw materials and equipment that are used, or intended for use, in providing, manufacturing and delivering items bearing a counterfeit mark or services identified by a counterfeit mark;

(b) All conveyances that are used, or intended for use, to transport items bearing a counterfeit mark;

(c) All books, records, computers and data that are used or intended for use in the production, manufacture, sale or delivery of items bearing a counterfeit mark or services identified by a counterfeit mark; and

(d) All moneys, negotiable instruments, balances in deposit or other accounts, securities or other things of value furnished or intended to be furnished by any person in the course of activity constituting a violation of ORS 647.140, 647.145 or 647.150.

(2) Items bearing a counterfeit mark are subject to seizure and disposition as provided in ORS 133.525 to 133.703. However, if the registrant so requests, the agency holding the seized items shall release the seized items to the registrant or make such other disposition as the registrant directs. If the registrant does not direct disposition of the seized items, the agency shall destroy the items.

ROYALTIES FOR NONDRAMATIC MUSICAL WORKS

647.700 Definitions for ORS 647.700 to 647.730. As used in ORS 647.700 to 647.730, unless the context requires otherwise:

(1) "Copyright owner" means the owner of a copyright of a nondramatic musical or similar 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. 101 et seq.).

(2) "Nondramatic" means the public performance of a recorded, broadcast or live musical work. "Nondramatic" does not include the performance of a dramatic work, including a play.

(3) "Performing rights society" means an association or corporation that licenses the public performances of nondramatic musical works on behalf of copyright owners, including but not limited to:

(a) The American Society of Composers, Authors and Publishers (ASCAP);

(b) Broadcast Music, Inc. (BMI); and

(c) The Society of European Stage Authors and Composers (SESAC).

(4) "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.

(5) "Royalty" or "royalties" means the fees payable to a copyright owner or performing rights society for the public performance of nondramatic musical works or other similar works. [1997 c.236 §1]

Note: 647.700 to 647.730 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 647 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

647.705 Requirements for performing rights societies. A performing rights society shall not enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless the performing rights society agrees to provide to the proprietor upon request at the proprietor's place of business, by electronic means or otherwise:

(1) Information as to whether specific copyrighted musical works are in the repertoire of the performing rights society;

(2) The opportunity to review the most current available list of the performing rights society's members or affiliates; and

(3) 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 the rates for the duration of the contract. [1997 c.236 §2]

Note: See note under 647.700.

647.710 Requirements for contracts for payment of royalties. Every contract for the payment of royalties between a proprietor and a performing rights society executed, issued or renewed in this state shall be:

(1) In writing;

(2) Signed by the parties; and

(3) Written to include, at a minimum, the following information:

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

(b) The name of the performing rights society;

(c) The duration of the contract; and

(d) 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 the rates for the duration of the contract. [1997 c.236 §3]

Note: See note under 647.700.

647.715 Prohibited conduct. (1) A performing rights society or any agent or employee thereof shall not:

(a) Enter onto the premises of a proprietor's business for the purpose of discussing or inquiring about a contract for the payment of royalties with the proprietor or the proprietor's employees, without first providing identification to the proprietor or the proprietor's employees and making known to them the purpose of the discussion or inquiry;

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

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

(d) Fail to comply with or fulfill the obligations imposed by ORS 647.705 and 647.710.

(2) Nothing in ORS 647.700 to 647.730 shall be construed to prohibit a 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 the copyright laws of the United States pursuant to title 17 of the United States Code (P.L. 94-553, 17 U.S.C. 101 et seq.). [1997 c.236 §4]

Note: See note under 647.700.

647.720 Action for damages; injunction. In the event of a violation of ORS 647.705, 647.710 or 647.715, any person may bring an action to recover actual damages and reasonable attorney fees or seek an injunction or any other remedy available at law or in equity. [1997 c.236 §5]

Note: See note under 647.700.

647.725 Relationship to other laws. The rights, remedies and prohibitions contained in ORS 647.700 to 647.730 shall be in addition to and cumulative to any other right, remedy or prohibition accorded by common law, federal law or the statutes of this state, and nothing contained in ORS 647.700 to 647.730 shall be construed to deny, abrogate or impair any common law or statutory right, remedy or prohibition. [1997 c.236 §6]

Note: See note under 647.700.

647.730 Applicability of ORS 647.700 to 647.730. ORS 647.700 to 647.730 do not apply to contracts between copyright owners or performing rights societies and broadcasters licensed by the Federal Communications Commission or to contracts with cable television operators, cable television programmers or other similar transmission services. ORS 647.700 to 647.730 do not apply to musical works performed in synchronization

with an audiovisual film or tape. [1997 c.236 §7]

Note: See note under 647.700.

647.990 [Repealed by 1961 c.497 §16]

647.991 [1985 c.566 §7; repealed by 1999 c.722 §9]