Mr. WELLSTONE. I thank the Senator. I call to my colleagues attention the decision in Minnesota Concerning Baseball's Status under the Antitrust Laws. The Minnesota Twins league players union or the major league players union or the major league clubs in the collective bargaining process provided by the nonstatutory labor antitrust exemption available to all unions and employers. The legislation is a success because it has been carefully crafted to make clear that only major league baseball players, and no other party, can bring suit under this amendment to the Clayton Act. This protection will help to ensure the continued viability of minor league baseball. Minor league baseball owners were concerned that any legislation preserve the antitrust protections for the historic relationship between the major league clubs and the minor league clubs. The minor league owners were particularly concerned about the work rules and terms of employment that impact both major league and minor league baseball players. The language of the bill guarantee that neither major league players nor minor league players can use subsection (a) of new section 27 of the Clayton Act to attack conduct, acts, practices or agreements designed to apply only to minor league employment.

As a longtime proponent of lifting baseball's antitrust exemption, I have sponsored bills in the past to lift this exemption completely as it applies to all aspects of baseball's business. Although the bill we are considering now is more limited in scope, it is an important first step in correcting a seven decade-old mistake.

Federal antitrust laws prohibit businesses from taking actions that "unreasonably" constrain interstate commerce. However, many years ago Major League Baseball was singled out for a complete exemption from America's antitrust laws by the Supreme Court. The Court said baseball was an amateur sport and not a business, exempting it from antitrust laws. This exemption created a monopoly for baseball and established artificial barriers to league expansion. It sent the wrong signal to Americans that baseball did not have to comply with our country's antitrust laws. This exemption created a monopoly for baseball and established artificial barriers to league expansion. It sent the wrong signal to Americans that baseball did not have to comply with our country's antitrust laws.

In 1972, the Supreme Court, in the case of the situation an "anomaly" and an "aberration" which Congress should remedy. A 1976 report by the House Select Committee on Professional Sports concluded that there was no justification for baseball's special exemption. Unfortunately, no action was ever taken.

Mr. Speaker, baseball has seen a resurgence since the dark days of the 1994 strike. Who can forget Cal Ripken's triumphant lap around Camden Yards after breaking Lou Gehrig's Iron Man streak of consecutive games played? Or the incredible home run record set this year by Mark McGwire and Sammy Sosa that culminated in both players smashing the thirty-seven-year home run record held by Roger Maris?

For all the personal glory when I watched my hometown team, the Tampa Bay Devil Rays, take the field for their inaugural season at Tropicana Field. The debut of a major league team in the Tampa-St. Petersburg area was delayed for years because Major League Baseball did not have to abide by our nation's antitrust laws.

I urge my colleagues to support S. 53 because it makes baseball live by the same laws as the fans who sit in the bleachers. It tells baseball fans that competition and fairness in baseball boardrooms is just as important as it is on the field. Let's give America its game back.

Mr. CHABOT. Mr. Speaker, the legislation before us today is the result of a negotiation resulting in a compromise among the union that represents major league players, the owners of major league baseball clubs, and the owners of minor league baseball clubs affiliated with major league clubs. The compromise addresses only the limited area of the labor relations of major league players at the major league level. The bill does not affect any other aspect of baseball's antitrust exemption. Also, the legislation does not change in any way the antitrust exemption for the major league players union or the major league owners and players have recently agreed to bring professional baseball in a manner enjoyed by no other professional sport.

Because concerns have been previously raised that by repealing the antitrust exemption we could somehow be disrupting the operation of other leagues, or professional sports were fully subject to the antitrust laws. There may have been a time when baseball's unique treatment was a source of pride and distinction for the many loyal fans who loved our national pastime. But with baseball suffering more work stoppages over the last 25 years than all of the other professional sports combined—including the 1994–95 strike which ended the possibility of a World Series for the first time in 90 years and deprived our cities of thousands of jobs and millions of dollars in tax revenue, and every fan who afforded to treat professional baseball in a manner enjoyed by no other professional sport.

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the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes.

The Clerk read as follows:

S. 505

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—COPYRIGHT TERM EXTENSION
SEC. 101. SHORT TITLE.

This title may be referred to as the “Sonny Bono Copyright Term Extension Act.”

SEC. 102. DURATION OF COPYRIGHT PROVISIONS.
(a) PREAMBLE WITH RESPECT TO OTHER LAWS.—Section 301(c) of title 17, United States Code, as amended by striking “February 15, 2009” and inserting “February 15, 2067.”

(b) DURATION OF COPYRIGHT: WORKS CREATED ON OR AFTER JANUARY 1, 1978.—Section 302 of title 17, United States Code, is amended—

(1) in subsection (a) by striking “fifty” and inserting “70”;

(2) in subsection (b) by striking “fifty” and inserting “70”;

(3) in subsection (c) in the first sentence—

(A) by striking “seventy-five” and inserting “95”;

(B) by striking “one hundred” and inserting “120”;

and

(4) in subsection (e) in the first sentence—

(A) by striking “seventy-five” and inserting “95”;

(B) by striking “one hundred” and inserting “120”;

and

(C) by striking “fifty” each place it appears and inserting “70.”

(c) DURATION OF COPYRIGHT: WORKS CREATED BUT NOT PUBLISHED OR COPYRIGHTED AT THE TIME OF THE EFFECTIVE DATE OF THE SONNY BONO COPYRIGHT TERM EXTENSION ACT. Any copyright still in its renewal term as provided by the amendments made by the Sonny Bono Copyright Term Extension Act may be renewed for an additional term of 20 years beginning at the end of 75 years from the date copyright was originally secured.

SEC. 103. TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM.
Sections 304(c)(1) and 304(c)(2) of title 17, United States Code, are each amended—

(1) by striking by his widow or her widower and his or her children or grandchildren;

and

(2) by inserting after subparagraph (C) the following:

“(i) an event of the author’s widow or widower, children, and grandchildren are not living, the author’s executor, administrator, personal representative, or trustee shall own the author’s entire termination interest.”

SEC. 104. REPRODUCTION BY LIBRARIES AND ARCHIVES.
Section 110 of title 17, United States Code, as amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following:

“(h)(1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, perform, produce and communicate a digital copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.

(2) No reproduction, distribution, display, performance, or performance of encryption or encryption key, is authorized under this subsection if—

(A) the work is subject to normal commercial exploitation;

(B) a copy or phonorecord of the work can be obtained from the copyright owner for a reasonable price; or

(C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.

(3) The exemption provided in this subsection does not apply to the normal use or display of a work by a library or archives for a digital library, or to any other use by users other than the library or archives.

SEC. 105. VOLUNTARY NEGOTIATION REGARDING DIVISION OF ROYALTIES.
It is the sense of Congress that copyright owners of audiovisual works for which the term of copyright protection is extended by the amendments made by this title, and the screenwriters, directors, and performers of those audiovisual works, should negotiate in good faith in an effort to reach a voluntary agreement concerning any copyright or other right owned by them and any related right owned by those audiovisual works. Any agreement reached shall be deemed to be in accordance with the provisions of title 17, United States Code, governing the division of royalties.

SEC. 106. EFFECTIVE DATE.
This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE II—MUSIC LICENSING EXEMPTION FOR FOOD SERVICE OR DRINKING ESTABLISHMENTS
SEC. 201. SHORT TITLE.
This title may be cited as the “Fairness In Music Licensing Act of 1998.”

SEC. 202. EXEMPTIONS.
(a) EXEMPTIONS FOR CERTAIN ESTABLISHMENTS.—Section 110 of title 17, United States Code is amended—

(1) in paragraph (9)—

(A) by striking “(S)” and inserting “(S)(A)” except as provided in paragraph (B); and

and

(2) by adding at the end the following:

“(B) communication by an establishment of a transmission or retransmission embodying a performance or display of a nonnarrative musical work intended to be received by the general public, originated by a radio or television broadcast station licensed as such by the Federal Communications Commission, or, if an audiovisual transmission, by a cable system or satellite carrier, if—

(i) the communication occurs from an establishment in which the communication occurs has less than 3750 gross square feet of space (excluding space used for customer parking and for no other purpose), or the establishment in which the communication occurs has 2000 or more gross square feet of space (excluding space used for customer parking and for no other purpose) and—

(I) if the performance is by audio means only, the performance is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space; or

(II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which no more than 2 audiovisual devices are located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by a total of not more than 4 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space.

(b) EXEMPTION FOR THE MUSICAL WORKS ALLIANCE FOR THE DISABLED.—In the case of a private or drinking establishment, either the establishment in which the communication occurs has less than 3750 gross square feet of space (excluding space used for customer parking and for no other purpose), or the establishment in which the communication occurs has 3750
gross square feet of space or more (excluding space used for customer parking and for no other purpose) and—

(1) if the performance is by audio means only, of a total of not more than 4 audiovisual devices, of which not more than one audiovisual device is located in any one room, and no such audiovisual device has a diagonal screen size of 55 inches or larger; or

(2) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than one audiovisual device is located in any one room, and no such audiovisual device has a diagonal screen size of 55 inches or larger.

 SEC. 203. LICENSING BY PERFORMING RIGHTS SOCIETIES.

(a) In general.—Chapter 5 of title 17, United States Code, is amended by adding at the end the following:

§ 512. Determination of reasonable license fees for individual proprietors.

"In the case of any performing rights society subject to a consent decree which provides for the determination of reasonable license fees, the fees charged by the performing rights society, notwithstanding the provisions of that consent decree, an individual proprietor who owns or operates fewer than 7 non-publicly traded establishments in which nondramatic musical works are performed publicly and who claims that any license agreement offered by that performing rights society is unreasonable in its license rate or fee as to that individual proprietor, shall be entitled to determination of a reasonable license rate or fee as follows:

(1) The individual proprietor may commence such proceeding for determination of a reasonable license rate or fee by filing an application in the applicable district court under paragraph (2) that a rate disagreement exists and by serving a copy of the application on the performing rights society. Such proceeding shall commence in the applicable district court not more than 90 days after the service of such copy, except that such 90-day requirement shall be subject to the administrative requirements of the court.

(2) Under paragraph (1) shall be held, at the individual proprietor's election, in the judicial district of the district court with jurisdiction over the applicable consent decree or in that place of holding court of a district court that is the seat of the Federal circuit (other than the Court of Appeals for the Federal Circuit) in which the proprietor's establishment is located.

(3) Such proceeding shall be held before the judge of the court with jurisdiction over the consent decree governing the performing rights society. At the discretion of the court, the proceeding shall be held before a special master or magistrate judge appointed by the court or, if the court so orders, the judge shall consent decree provide for the appointment of an advisor or advisors to the court for any purpose, any such advisor shall be the special master so named by the court.

(4) In any such proceeding, the industry rate shall be presumed to have been reasonable at the time it was agreed to or determined by the court. Such presumption shall in no way affect a determination of whether the rate is being correctly applied to the individual proprietor.

(5) Pending the completion of such proceeding, the individual proprietor shall have the right to perform publicly the copyrighted musical compositions in the representation of the performing rights society by paying an interim license rate or fee into an interest bearing escrow account with the clerk of the court, subject to retroactive adjustment with the final license rate or fee determined, in an amount equal to the industry rate, or, in the absence of an industry rate, the amount of the most recent license rate or fee agreed to by the parties.

(6) Any decision rendered in such proceeding by a special master or magistrate judge named under paragraph (3) shall be reviewed by the circuit court with jurisdiction over the consent decree governing the performing rights society. Such proceeding, including such review, shall be concluded within 6 months.

(7) Any such final determination shall be binding only as to the individual proprietor commencing the proceeding, and shall not be applicable to any other proprietor or any other performing rights society, and the performing rights society shall be relieved of any obligation of nondiscrimination among similarly situated uses that may be imposed by the consent decree governing its operations.

(8) An individual proprietor may not bring more than one proceeding provided for in this section for the determination of a reasonable license rate or fee under any license agreement with respect to any one performing rights society, and the performing rights society shall be relieved of any obligation of nondiscrimination among similarly situated uses that may be imposed by the consent decree governing its operations.

(9) For purposes of this section, the term ‘industry rate’ means the license fee a performing rights society has agreed to with, or as it may be issued or agreed to after such proceeding.

(b) Technical and conforming amendments.—The following amendments are made by adding after the item relating to section 511 of title 17, United States Code, the following:

S12. Determination of reasonable license fees for individual proprietors.

SEC. 204. PENALTIES.

Section 504 of title 17, United States Code, is amended by adding at the end the following:

(3) ADDITIONAL DAMAGES IN CERTAIN CASES.—In any case in which the court finds that a defendant proprietor of an establishment who claims as a defense that its activities under section 110(11) did not have reasonable grounds to believe that its use of a copyrighted work was exempt under such section, the plaintiff shall be entitled to, in addition to any award of damages under this section, an additional award of two times the amount of the license fee that the defendant proprietor would have paid if the establishment concerned should have paid the plaintiff for such use during the preceding period of up to 3 years.

SEC. 205. DEFINITIONS.

Section 101 of title 17, United States Code, is amended—

(1) by inserting after the definition of ‘‘display’’ the following:

‘‘An ‘establishment’ is a store, shop, or any other place of business open to the public for the primary purpose of selling food or drink, in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.’’

‘‘A ‘food service or drinking establishment’ is a restaurant, inn, bar, tavern, or any other place of business in which the public or patrons assemble for the primary purpose of being served food or drink, in which the majority of the gross square feet of space is nonresidential and in which nondramatic musical works are performed publicly.’’

‘‘A ‘performing rights society’ is an association of copyright owners that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.’’;

(2) by inserting the following after the definition of ‘‘performing rights society’’:

‘‘A ‘performing rights society’ is an association of copyright owners, that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.’’;

and

(3) by inserting after the definition of ‘‘performing rights society’’ the following:

‘‘A ‘proprietor’ is an individual, corporation, partnership, or other entity, as the case may be, that owns an establishment or a food service or drinking establishment, except that no owner or operator of a radio or television station licensed by the Federal Communications Commission, cable system or satellite carrier, cable or satellite carrier service or programmer, provider of online services or network access or the operator of a system for telecommunication, company, or any other such audio or audiovisual service or programmer now known or as may be developed in the future, commercial subcription music service, or owner or operator of any other transmission service, shall under any circumstances be deemed to be a proprietor.’’

SEC. 206. CONSTRUCTION OF TITLE.

Except as otherwise provided in this title, nothing in this title shall be construed to relieve any performing rights society of any obligation under any statute, ordinance, or law, or consent decree or other court order governing its operation, as such statute, ordinance, law, or order is in effect on the date of the enactment of this Act, or as it may be issued or agreed to after such date.

SEC. 207. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 90 days after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from
Wisconsin (Mr. SENSENBERNER) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBERNER).

Mr. SENSENBERNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill under consideration.

The Speaker raises the objection to the request of the gentleman from Wisconsin.

There was no objection.

Mr. SENSENBERNER. Mr. Speaker, I yield myself such time as I may consume. S. 505 contains two important provisions and is substantially identical to H.R. 4712 which the gentleman from Florida (Mr. MCCOLLUM) and I introduced earlier today. It adopts the Sonny Bono Copyright Term Extension Act identical to the language the House passed by an overwhelming margin in March. This section of the bill is a fitting tribute to our departed colleague Sonny Bono. The second part of the bill adopts an agreement concerning the fair use of music in the public domain. This agreement is the product of grueling and oftentimes contentious negotiations. I am proud of the final product and am pleased that all sides were able to work together to bridge our differences. This bill is a victory for small business and a tribute to the commitment of its supporters. In March, the House overwhelmingly passed the Sensenbrenner amendment to the Copyright Term Extension bill by a 297-12 vote. That amendment reflected the core principles of my legislation, the Fairness in Music Licensing Act, and has the strong endorsement of groups, including the National Federation of Independent Business and the National Restaurant Association. Since that time, we have been working to strike an agreement with the other body over this language. I am pleased to report we have arrived at a compromise that is supported by the same groups and is acceptable to the opponents of the original Sensenbrenner amendment. In short, passage of this bill today will allow the Sonny Bono Copyright Term Extension Act and the Fairness in Music Licensing Act to become law in very short course.

Under the music licensing compromise, restaurants and bars with 3,750 gross square feet or less will be exempt from paying music licensing fees for playing the radio or television in their establishments. Retail businesses will benefit from a 2,000 gross square foot exemption for radio and television. Importantly, both types of establishments, regardless of size, will be exempt if they have six or fewer external speakers or four television measurements exceeding 5 inches or less. This language, the bill provides a "circuit rider" provision that will provide small businesses an alternative to the existing system of dispute resolution which requires businesses to challenge ASCAP and BMI in a New York court rate court. Under the provision in this bill, the existing New York court rate court maintains jurisdiction over those cases but will hear them at the circuit court level. Lastly, the bill provides an exemption from licensing fees for television and stereo equipment retailers so that these businesses are not required to pay a fee simply to demonstrate to a potential customer that a product works. At this point in my statement, I would like to engage in a conversation with the gentleman from Florida (Mr. MCCOLLUM).

Mr. Speaker, I want to make certain that the critically important provision concerning the burden of proof is clearly understood in the license fee determination provision. Section 512(4). Nothing in Section 512(4) shall change the burden of proof with respect to the rates or fees under the consent decrees, which places the burden of showing a reasonable rate or fee on the performing society. Does the preceding statement reflect the gentleman's understanding of the provisions stated above?

I yield to the gentleman from Florida.

Mr. MCCOLLUM. Madam Speaker, yes, it does. I thank the gentleman for asking that question. I most certainly agree that is correct.

Mr. SENSENBERNER. I thank the gentleman for his answer.

Madam Speaker, the legislation before us today demonstrates that the system works. Title I of the legislation satisfies a top priority for the entertainment industry and ensures that one of America's most valuable assets will continue to dominate in global markets. Title II of the bill brings to a close a 4-year effort to bring common sense, fairness and clarity to the copyright music licensing system. This victory for our constituents makes me, as your Congressman proud. I urge a unanimous vote in favor of this agreement and this bill.

Madam Speaker, I include in this part of the Record an exchange of correspondence between the gentleman from North Carolina (Mr. COBLE) who is the chairman of the Subcommittee on Courts and Intellectual Property and myself.

The correspondence referred to is as follows:

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

Hon. HOWARD COBLE,
Chairman, Subcommittee on Courts and Intellectual Property.

Dear Mr. Chairman: I am writing to you regarding the upcoming floor action on S. 505, a bill to amend title 17, United States Code, to extend the term of copyright, to provide for a music licensing exemption, and for other purposes.

Among the negotiated portions included in the final version was a provision concerning the burden of proof in determining reasonableness the burden of proof in determining reasonableness the burden of proof in determining reasonableness the burden of proof in determining reasonableness the burden of proof in determining reasonableness the burden of proof in determining reasonableness the burden of proof in determining reasonableness.

Sincerely,

F. JAMES SENSENBERNER, J.R.,
Member of Congress.
struggles bring about the fairest resolutions, and I think we may have achieved such a result tonight.

I appreciate the work of the gentleman from North Carolina (Mr. Coble) and certainly the gentleman from Wisconsin (Mr. Sensenbrenner) and the gentleman from Michigan (Mr. Conyers) who have worked on this issue as well. I know that there has been some disagreement and may still continue to be. But I think we have come to a point in this legislation that we have recognized the importance of our small businesses like restaurants, like various other centers who need to have the ability to create and improve their enjoyment. Again I commend all those who have been working on this matter for their hard work and I am very pleased to have seen this come to a good end. I am asking that colleagues to support this legislation.

I rise today in strong support of the Copyright Term Extension Act before us this evening, the passage of which marks an important moment for those of us who support copyright and specifically our domestic copyright and creative industries. The enactment of this legislation will bring United States copyright creators and owners into full citizenship with respect to the international community, and finally permit us to enjoy the full and appropriate term that European copyright owners have enjoyed for some time now.

There is a provision in this legislation which I am especially happy to see, and that is the resolution of the long simmering dispute between copyright owners and restaurants and other small businesses, the latter of whom have sought and argued for a fair exemption from music licensing fees for some time. I am sorry that the dispute was so protracted, and difficult, but I am as I say delighted that we have reached a workable compromise on this difficult legislation. Sometimes the most difficult things bring about the fairest resolutions, and I think we may have achieved such a result tonight.

I commend those in the majority and the minority who worked hard to get to this day. I commend Chairman Coble, ranking member Conyers, and Mr. Sensenbrenner for their hard work and efforts on this important bill, and I am pleased to support it strongly.

Madam Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Madam Speaker, I yield 4 minutes to the gentleman from North Carolina (Mr. Coble).

Mr. COBLE. I thank the gentleman for yielding me this time, Madam Speaker, and I appreciate this extended journey that we have traveled. The gentleman from Wisconsin and I have slugged it out literally as well as figuratively on this matter, but I think tonight we are finally in the position to maybe put it to bed.

I rise to support the bill, S. 505, Madam Speaker. Copyright extension is essential legislation that will ensure that the United States will continue to receive the enormous export revenues that it does today from the sale of its copyrighted works abroad. At the same time, S. 505 resolves the question of music licensing fees for restaurants and small businesses.

I want to applaud the efforts of the parties and Members involved in negotiating the music licensing agreement. This legislation is the result of much hard work and diligent negotiation. I want to express my thanks to the Speaker the gentleman from Georgia for his leadership in bringing the parties together. I also want to express my thanks to the gentleman from Wisconsin (Mr. Sensenbrenner) and the gentleman from Florida (Mr. McCollum) for their work in bringing about a fair resolution. It was no small task. Of course, I would be remiss if I did not mention the late Mr. Bono, the gentleman from California, regarding his work and interest in the copyright extension feature of this.

S. 505, for the United States economy 20 more years of foreign sales revenue from movies, books, records and software products sold abroad. We are by far the world's largest producer of copyrighted works and the copyright protection we give to our most significant trade surpluses. The European Union countries, pursuant to a directive, have adopted domestic laws which would protect their own works for 20 years more than they protect American works. This bill would correct that by granting to the United States works the same amount of protection which under international agreements requires reciprocity.

This bill is also good for consumers, Madam Speaker. When works are protected by copyright, they attract investors who can exploit the work for profit. And in turn brings the work to the consumer who may enjoy it at the movie theater, in a home, in an automobile, or in a retail establishment.

This bill addresses the concern of restaurants and small businesses regarding the payment of licensing fees for the use of music broadcasts over the radio or television. It gives qualifying establishments an exemption from paying music licensing fees and creates a Southern District of New York court to hear music licensing fee cases.

This bill, Madam Speaker, recognizes the importance of the business community, the small business community in particular. That is, the entrepreneurs who operate restaurants across our land but at the same time recognizes the importance and the obvious significance of our maintaining a sound copyright system.

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for whom this is a minute expense, we don't want them to have this expense."

So if government should make this decision, I would make it the other way around and leave the situation as it is, but why should government make this decision? Government should intervene in the free market when there is a real public policy purpose only, when there is a necessity, when the free market is not working right, when there is not an arm's length relationship, when consumers have to be protected, when trust has been eroded, when the market is leading to exploitation of wages, when some real public policy purpose necessities the intervention.

What is the public policy purpose? I have been asking that question for 2 years. I have never heard any answer suggested. So I would hope that this part of this bill, which I otherwise support, would not be adopted.

Mr. SENSENBRNNER. Madam Speaker, 9 minutes to the gentleman from Florida (Mr. MCCOLLUM).

Mr. MCCOLLUM. Madam Speaker, I thank the gentleman from Wisconsin for yielding this time to me.

I am pleased to support S. 505 which will extend copyright protection and resolve a long standing issue concerning music licensing. I am also pleased to be joined by my colleague, the gentleman from Wisconsin (Mr. SENSENBRNNER) who has devoted extensive time and energy to reaching the solution on this issue. It is clear to me that today we would not be here if it were not for Mr. SENSENBRNNER's committed effort, and I believe that deserves recognition, and I want to thank him personally for the time he has put in on it. I also wanted to express my gratitude to the gentleman from Illinois (Mr. HYDE) and to Senator HATCH for their dedication to the protection of American music licensing.
also, software. It is said that "it all starts with a song," and these works have defined our culture to audiences worldwide.

Actually, Sonny wanted the term of copyright protection to last forever. I am informed by staff that such a change would violate the Constitution. I invite you to work with us to strengthen our copyright laws in all of the ways available to us. As you know, there is also Jack Valenti's proposal for term to last forever less one day. Perhaps the Committee may look at that next Congress.

In addition, this bill also presents a significant opportunity to expand the idea that the music industry is unique. Everyone must remember that I was a small business woman before I came to Washington. I am sympathetic to the concerns raised by many industries. Unfortunately the generous exemption included in this bill tests my patience because it comes at the expense of songwriters. The current system has worked for decades, and in my view serves the public well.

Yet, we must bring this bill forward today. Our inaction risks a response from the international community. While one of the goals of term extension is to bring our system in line with a strong international standard, I am troubled to learn that with the music licensing section, we risk violating our international treaty obligations. These treaties protect American property overseas, for example under the Berne Convention and the TRIPs Agreement. I ask that the RECORD include the following letters from the U.S. Trade Representative, the Patent and Trademark Office, the Department of Commerce, and the Register of Copyrights concerning the possible serious international consequences of the bill.

I am hopeful that we in the House Judiciary Committee will have the chance to revisit this issue, and pursuant to our oversight powers, review its effect on American songwriters and our multi-lateral trade obligations. Further, this may be an unconstitutional taking of property. The talented men and women who write our music may rest assured that I will continue to be their advocate in the House.

Again, I truly thank all of my colleagues for this tribute to Sonny.


Sincerely,

RICHARD W. FISHER, Acting.


Hon. NEWT GINGRICH, Speaker of the House of Representatives, Washington, DC.

Dear Mr. Speaker: The House may consider H.R. 2599, the "Copyright Term Extension Act," next week. The Administration strongly opposes the provisions passed by the House Judiciary Committee, and urges favorable consideration. I have been informed, however, that there may be an attempt by supporters of H.R. 789, "the Fairness in Musical Licensing Act of 1997," to add the provisions of that bill to H.R. 2599.

The Administration strongly opposes the provisions of H.R. 789 and urges that any such amendment be rejected.

The Administration strongly opposes H.R. 789 and urges that the provisions of the Copyright Act of 1976 in ways that effectively strip music copyright owners of one of their fundamental rights under the Copyright Act—the right of copyright owners of the bill, literary, musical, dramatic, audiovisual and other works to publicly perform their copyrighted work or to authorize the performance by others. For example, the bill replaces the limited "small business" or "home style" exemptions of current law, which provide for minimal public use of a private-type radio or television under section 110(5) of the Copyright Act, with a much broader exemption based on whether an "ad- mission fee" is charged or the transmission is for private entertainment. The Administration would thereby expand the limited "home style" exception to encompass profitable restaurants and bars and would favor these establishments over the copyright owner and his or her Constitutionally guaranteed rights.

If the amendment were adopted, we know that our trading partners will claim that it is an overly broad exception that violates our obligations under the Berne Convention and the WTO Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement).

The Administration also would be concerned that we would be opening the door to similar proposals in the United States that would violate our obligations under the Berne Convention for the Protection of Literary and Artistic Works.

If the amendment were adopted, we would be opening the door to similar proposals in the United States that would violate our obligations under the Berne Convention and the WTO Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement).

The Administration also would be concerned that we would be opening the door to similar proposals in the United States that would violate our obligations under the Berne Convention for the Protection of Literary and Artistic Works.

We are also concerned that we should not sacrifice the interests of U.S. music copyright owners—author, composers and publishers—abroad to satisfy the demands of those domestic interests who would seek to permit uncompensated use of their music.

The American music industry is the most successful in the world, and American popular music is publicly performed worldwide in virtually every country on the planet. Royalties from those foreign performances are an important part of the income of American architects, composers, and performers. Creating in our own copyright law anything more than a de minimus exception to the public performance right will be used against us internationally, when other countries seek to enact similar limitations.

As you have noted in your letter, the current "home style exception" has been applied by the courts to exempt establishments which serve alcoholic beverages. As you have noted in your letter, the current "home style exception" has been applied by the courts to exempt establishments which serve alcoholic beverages.
Communities to investigate the consistency of the "home style exception" with the Berne Convention. We believe that this request is groundless. We believe that the courts' ability to apply the "home style exception" on a case-by-case basis is appropriate and that legislating a specific size exception would be problematic. If there are to be further amendments on the public performance right, such limitations should be the subject of private agreements and not set in legislation.

We express our concern that, if it is determined that there must be specific guidance in the copyright law, an exception tailored to the kind of equipment used might be more appropriate. In this case, we are concerned that it could lead to substantial erosion of the public performance right, and could lead to the erosion of other rights. As we continue to urge other countries to improve their intellectual property protection, we should not be weakening our own laws by the imposition of additional limitations on the rights of copyright owners. As we noted in our earlier testimony, we believe that private negotiations to exempt certain performances of size or scope of establishments are appropriate, consistent with our treaty obligations.

Sincerely,

BRUCE A. LEHMANN,
Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

THE REGISTER OF COPYRIGHTS,
Hon. WILLIAM J. HUGHES,
Chairman, House Subcommittee on Intellectual Property, House Committee on Judical Administration, Washington, DC.

DEAR CHAIRMAN HUGHES: I would like to comment on H.R. 4936, the "Fairness in Music Licensing Act of 1994," which was introduced on August 10, 1994. I have a number of concerns that I would like to share with you.

AMENDMENT TO SECTION 110(5)

My first concern is with the proposed amendments to 17 USC §110(5); that section represents a narrowly crafted exemption to the public performance right law the United States was not a member of the Berne Convention. At the time section 110(5) was enacted into law, the Berne Convention courts had consistently held that the incidental performance of small public audiences (patrons in a bar, customers getting a shower, patients waiting in a doctor's office, etc.) did not constitute a public performance or broadcast the United States reviewed its copy of the Berne Convention (Paris Act 1971) (1978) note 12.

The House Report also suggests some of the factors to consider in particular cases—the size, physical arrangement, and noise level of areas within the establishment where the transmissions are made audible or visible. The Conference Committee Report states that the establishment involved is "of such small size, physical arrangement, and noise level as to be incapable of paying reasonable licensing fees for the performance of music in a commercial establishment," and that the performance of music in such a place, with respect to the licensing of music in that establishment, is a matter of "indirect charge." In my view, with respect to the proposed amendment to section 110(5), this change was suggested in response to complaints that performing rights organizations were attempting to require school groups to pay license fees for performances of noncommercial works, on the theory that the overhead costs built into the price of, for example, make this exception unavailable?

CHORAL GROUP EXEMPTION

This proposal will eliminate liability for public performance of a "non-dramatic musical work by a choral group of a nonprofit educational institution choral group, unless a direct or indirect charge is made to any person for admission to the performance or for the use of the facility where the performance occurs." There is no indication on how this is to be interpreted. Entertainment and background music is frequently part of the overhead cost of an establishment. If an establishment pays license fees for background music, why should the overhead costs be built into the price of, for example, make this exception unavailable?

The Copyright Office also wonders about the interpretation of "a noncommercial work." There is no indication on how this is to be interpreted. Entertainment and background music is frequently part of the overhead cost of an establishment. If an establishment pays license fees for background music, why should the overhead costs be built into the price of, for example, make this exception unavailable?

The Copyright Act of 1976 already covers most situations in which a choral group can be permitted to perform works freely. Section 110(4) contains a noncommercial performance of a non-dramatic musical work by a choral group of a nonprofit educational institution choral group, unless a direct or indirect charge is made to any person for admission to the performance or for the use of the facility where the performance occurs. The proposed amendment to section 110(5) would do further violence to our Berne Convention obligations. Berne allows only narrow exemptions to the public performance right and, only in rare circumstances may third parties use a broadcast without a license and without remuneration. The proposed amendment to section 110(5) establishes the exclusive right of the author to authorize the "public communication by loudspeaker or any other analogous instrument of communication by means of a receiving system connected with a broadcasting of the work." The World Intellectual Property Organization Guide to the Berne Convention (Paris Act 1971) (1978) states:

"Finally, the third case dealt with in this paragraph is that in which the work which is broadcast is an exception to the public performance of nondramatic musical works, e.g., by loudspeaker, or otherwise, to the public. The case is becoming more common. In places where people gather (cafes, restaurants, tea-rooms, bars, night spots, shops, trains, aircraft, etc.) the practice is growing of providing broadcast programs... The question is whether the license given by the performer to the broadcasting company in addition, all the use made of the broadcast which may or may not be for commercial ends." Id. notes 11 and 12 at 68. The Convention's answer is no, id. note 12.

In 1988 Congress decided to adhere to the Berne Convention to increase protection for United States' interests in the international copyright arena. The House Report on the implementing legislation states:... the relationship of Berne adherence to promotion of U.S. trade is clear. American popular culture and consumer products have become precious export commodities of immense economic value. That value is being eroded by low international standards. Berne standards are both high, reasonable and widely accepted internationally. Lending our prestige and power to the international and national credit of American standards will promote development of acceptable copyright regimes in bilateral and multilateral contexts..." H.R. Rep. No. 609, 100th Cong., 2d Sess. 1994, at 132.

Section 110(4) already covers the proposed amendment to section 110(5).

To expand the section 110(5) exemption would send the wrong signal. Moreover, I am not aware of any new or unusual difficulties in the specific situation of a choral group performing music in commercial establishments. I urge you to reconsider this amendment.

With respect to the particular language in the proposed amendment to section 110(5), let me raise some additional questions. The proposed language contains no limitation on the type of equipment, and it could permit businesses to use sophisticated equipment with no limitation on the number of speakers or the size of a television screen.

The Copyright Office also wonders about the interpretation of "a noncommercial work." There is no indication on how this is to be interpreted. Entertainment and background music is frequently part of the overhead cost of an establishment. If an establishment pays license fees for background music, why should the overhead costs be built into the price of... make this exception unavailable?
The proposed legislation allows a defendant in a copyright infringement suit involving a licensed nondramatic musical work to admit liability but contest the amount being charged. Either the defendant or the plaintiff in the suit would be able to request arbitration of the licensing fee under 28 U.S.C. 652(e).

This section would reconfigure the dispute resolution process between the performing rights societies and their licensees. Currently, ASCAP rates may be altered by the federal District Court of the Southern District of New York, although this is far from a daily practice. Neither BMI nor SESAC has such a mechanism; disputes about their rates must be resolved by negotiation. However, BMI has asked the United States Department of Justice for permission to amend its consent decree to provide for a rate court similar to that now in place for ASCAP. The Department of Justice has agreed, and opened a public comment period on this matter. BMI would like to designate the Southern District of New York as its rate court. When the comment period closes, that court may agree to BMI’s requested changes, or may disagree and suggest an alternative. We feel a trend may be developing that would provide more efficient administration of rate disputes and that amendment at this time is premature.

Furthermore, H.R. 4936 would allow any party who disagrees with the licensing organization to demand arbitration proceedings. This proposal may be a more cost effective system for an individual defendant who admits liability, but it could create a tremendous burden on the licensing organization to address each complaint individually. Even arbitration proceedings are time-consuming and expensive, and at the end of the day, may not result in an arrangement for whom is fairer to copyright owners or users than a negotiated licensing agreement would have been. Such a result would make it difficult for renewal performers to get prices for use consistently, as they are required to do now.

I am also tabling the proposed conforming amendment to Title 28 of the United States Code concerning civil actions for copyright infringement. The proposed amendment says that upon a request by either party for arbitration, as set out in section 4 of H.R. 4936, a district court may refer the dispute with respect to that defendant to arbitration. It states that “(each district court shall establish procedures by local rule authorizing the use of arbitration under this subsection.

Should each district court be charged with creating a set of rules and procedures regarding arbitration for public performance of nondramatic musical works? Since courts have extremely busy schedules, it does not appear to be judicially efficient to impose new duties on all district courts. Moreover, permitting each court to set its own rules would likely result in an uneven, patchwork effect that is undesirable as well as unpredictable. In addition, the Southern District Court of New York and the legal representatives of the parties have developed a certain expertise in music licensing matters that other courts would take time to gain.

Mr. SENSENBERGER. Madam Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mrs. WILSON). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBERGER) that the House suspend the rules and pass the Senate bill, S. 505.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

CONFEREES REPORT ON H.R. 3150, BANKRUPTCY REFORM ACT OF 1998

Mr. GEKAS submitted the following conference report and statement on the bill (H.R. 3150) to amend title 11 of the United States Code, and for other purposes:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3150), to amend title 11 of the United States Code, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Bankruptcy Reform Act of 1998.”

(b) Table of Contents.—The table of contents of this Act is as follows:

TITLES I—CONSUMER BANKRUPTCY PROVISIONS

Subtitle A—Needs based bankruptcy

Sec. 11. Conversion.
Sec. 12. Dismissal or conversion.
Sec. 13. Notice of alternative.
Sec. 14. Debtor financial management training test program.

Subtitle B—Consumer Bankruptcy Protections

Sec. 15. Definitions.
Sec. 16. Disclosures.
Sec. 17. Debtor’s bill of rights.
Sec. 18. Enforcement.
Sec. 19. Sense of the congress.
Sec. 20. Discouraging abuse reauthorization.
Sec. 21. Promotion alternative dispute resolution.
Sec. 22. Enhanced disclosure for credit extensions secured by a dwelling.
Sec. 23. Dual use debt card.
Sec. 24. Enhanced disclosures under an open-end credit plan.
Sec. 25. Protection of savings earmarked for the postsecondary education of children.
Sec. 26. Effect of discharge.
Sec. 27. Automatic stay.
Sec. 28. Reinforce the fresh start.
Sec. 29. Discouraging bad faith repeat filings.
Sec. 30. Curbing abusive filings.
Sec. 31. Debtor retention of personal property security.
Sec. 32. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral.
Sec. 33. Giving secured creditors fair treatment in Chapter 12.
Sec. 34. Restraining abusive purchases on secured credit.
Sec. 35. Fair valuation of collateral.
Sec. 36. Exemptions.
Sec. 37. Limitation.
Sec. 38. Rolling stock equipment.
Sec. 39. Discharge under chapter 13.
Sec. 40. Bankruptcy judgeships.
Sec. 41. Additional amendments to title 11, United States code.
Sec. 42. Amendment to section 1325 of title 11, United States code.
Sec. 43. Application of the codebtor stay only when the stay protects the debtor.
Sec. 44. Adequate protection for investors.
Sec. 45. Limitation on priority claims.
Sec. 46. Giving debtors the ability to keep leased personal property by assumption.
Sec. 47. Adequate protection of lessors and purchase money secured creditors.
Sec. 48. Automatic stay.
Sec. 49. Extend period between bankruptcy discharges.
Sec. 50. Definition of domestic support obligations.
Sec. 51. Priorities for claims for domestic support obligations.
Sec. 52. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.
Sec. 53. Exemptions to automatic stay in domestic support obligation proceedings.
Sec. 54. Nondischargeability of certain debts for alimony, maintenance, and support.
Sec. 55. Continued liability of property.
Sec. 56. Protection of domestic support claims against preferential transfer motions.
Sec. 57. Definition of household goods and articles.
Sec. 58. Nondischargeable debts.