Mr. WELLSTONE. I thank the Senator. I call to my colleagues attention the decision in Minnesota Concerning Baseball’s Status under the Antitrust Laws. [45x701] reprinted in 1998-1 Trade Cases (CCH) 72,136.

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 505) to amend the Clayton Act of 1914, as amended by the House Select Committee on Professional Sports, to exempt major league baseball clubs from antitrust laws.

Mr. HYDE, Mr. Speaker. I have no further requests for time, and I yield back the balance of my time. The SPEAKER pro tempore (Mr. GUTENREICH). The question is on the motion offered by the gentleman from Illinois (Mr. HYDE) that the House suspend the rules and pass the Senate bill, S. 53. The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 505) to amend the Clayton Act of 1914, as amended by the House Select Committee on Professional Sports, to exempt major league baseball clubs from antitrust laws.

Mr. HYDE, Mr. Speaker. I have no further requests for time, and I yield back the balance of my time. The SPEAKER pro tempore (Mr. GUTENREICH). The question is on the motion offered by the gentleman from Illinois (Mr. HYDE) that the House suspend the rules and pass the Senate bill, S. 53.

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.

SONNY BONO COPYRIGHT TERM EXTENSION ACT

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 505) to amend...
the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes.

The Clerk reads as follows:

S. 505

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

TITLES 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) PREEMPTION WITH RESPECT TO OTHER LAWS.—Section 301(c) of title 17, United States Code, is amended by striking “February 15, 2056” and inserting “February 15, 2067.”

(b) DURATION OF COPYRIGHT: WORKS CREATED 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”;

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

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

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

(5) in subsection (f) by striking “fifty” and inserting “70”;

(c) DURATION OF COPYRIGHT: WORKS CREATED BUT NOT PUBLISHED OR COPYRIGHTED BEFORE ANNUAL REPORT.—Section 303 of title 17, United States Code, is amended in the second sentence by striking “December 31, 2027” and inserting “December 31, 2047.”

(d) DURATION OF COPYRIGHT: SUBSISTING COPYRIGHTS.—

(I) IN GENERAL.—Section 304 of title 17, United States Code, is amended—

(A) in subsection (a)—

(1) in paragraph (1)—

(ii) in subparagraph (B) by striking “47” and inserting “67”;

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

(ii) by striking “by his widow or her widower, and his or her children or grandchildren”;

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

(f) in the event that 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. 103. TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM.

Sections 202(a)(2) 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”;

(2) by inserting after subparagraph (C) 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, archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, perform, and perform or display in digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if the 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, or performance is authorized under this subsection if—

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

(B) a copy or phonorecord of the work may be obtained at 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 any right under it, executed before January 1, 1991, by any of the persons designated in subsection (a)(1)(C) of this section, other than by will, is subject to termination under the following conditions:

((I) The copyright term specified in subsection (c)(1), (2), (4), (5), and (6) of this section apply to terminations of the last 20 years of copyright term as provided by the amendments made by the Sonny Bono Copyright Term Extension Act.

(2) Termination of the grant may be effected at any time during a period of 5 years beginning at the end of 75 years from the date copyright was originally secured.

(2) COPYRIGHT AMENDMENTS ACT OF 1992.—


(A) in subsection (c)—

(i) by striking “67” and inserting “67”;

(ii) by striking “70”;

(iii) in paragraph (2) by striking “five” each place it appears and inserting “70”;

(B) in subsection (g) in the last sentence by striking “7000” and inserting “9500”;

(C) by striking “95” and inserting “95”;

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

(A) by striking “seventy-five” and inserting “70”;

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

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

(i) for purposes of this section, during the last 20 years of any term of copyright of a published work, a library, archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, perform, and perform or display in digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if the 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.

(ii) No reproduction, distribution, display, or performance is authorized under this subsection if—

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

(B) a copy or phonorecord of the work may be obtained at 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 any right under it, executed before January 1, 1991, by any of the persons designated in subsection (a)(1)(C) of this section, other than by will, is subject to termination under the following conditions:

(I) The copyright term specified in subsection (c)(1), (2), (4), (5), and (6) of this section apply to terminations of the last 20 years of copyright term as provided by the amendments made by the Sonny Bono Copyright Term Extension Act.

(2) Termination of the grant may be effected at any time during a period of 5 years beginning at the end of 75 years from the date copyright was originally secured.

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 (5) by striking “‘(5)” and inserting “‘(5)”;

(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 nondramatic 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) in the case of an establishment other than a food service or drinking establishment, either the establishment in which the communication occurs has less than 2000 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—

(ii) 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

(iii) if the performance or display is by audiovisual means, and means of a total of not more than 4 audiovisual devices, of which not more than one audiovisual device is 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 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.

(b) EXEMPTIONS FOR FOOD SERVICE OR DRINKING ESTABLISHMENTS.—Section 109 of title 17, United States Code, is amended—

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

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

(h) In the event that the communication occurs has 3750 customers per day, either 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), 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, and means of a total of not more than 4 audiovisual devices, of which not more than one audiovisual device is 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 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.

DIVISION OF ROYALTIES.

It is the sense of the 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 an effort to reach a voluntary agreement or voluntary agreements with respect to the establishment of a fund or other mechanism for the amount of remuneration to be divided among the parties for the exploitation of those audiovisual works.

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.
This title and the amendments made by this title 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 was not paid.

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

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

Mr. SENSENBRENNER. 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.

Mr. SENSENBRENNER. 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 reached in the Senate on the issue of fairness in music licensing. 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 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 297-112 vote. That amendment reflected the core principles of my legislation, the Fairness in Music Licensing Act, and had the strong endorsement of groups, including the National Federation of Independent Business and the National Restaurant Association. Since that time, we have been working hard 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 component of the Fairness in Music Licensing Act, which places the burden of showing a reasonable rate or fee on the performing rights society, S. 505 contains two important provisions. The first provision, Section 512(4), shall change the burden of proof concerning 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 rights society.

Does the preceding statement reflect the gentleman's understanding of the provisions stated above?

Mr. 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, in the passage of this legislation, makes me 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 that I believe satisfies a top priority for the entertainment industry. The 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 rights society.

Madam Speaker, I yield myself such time as I may consume. The Chair recognizes the gentleman from Florida (Mr. MCCOLLUM).

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

Mr. SENSENBRENNER. 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, in the passage of this legislation, makes me proud. I urge a unanimous vote in favor of this agreement and this bill.

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Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I am delighted to rise in strong support of the Copyright Term Extension Act before us this evening. The passage of this bill is an important moment for those of us who support strong 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 the 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. I have always said, Madam Speaker, that small businesses like restaurants are the backbone of America. They create job opportunities, they provide entertainment and enjoyment. 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 delighted that we have reached a workable compromise on this difficult legislation. Sometimes the most difficult
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) who I know has worked on this issue for a very long time, the ranking minority member the gentleman from Massachusetts (Mr. Frank) and the gentleman from Michigan (Mr. Conyers) who have worked on this issue as well. Now 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 of 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 my 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.

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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. That 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. We need to address 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 forums in addition to the Southern District of New York which the gentleman from Wisconsin previously mentioned in which to challenge the reasonableness of the fees charged. I believe this bill will give small businesses interests which represent a key sector of our society.

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.

I urge Members to vote "yes" on S. 505. Ms. Jackson-Lee of Texas. Madam Speaker, I yield 3 minutes to the distinguished gentleman from New York (Mr. Nadler), a member of the Committee on the Judiciary.

Mr. Nadler. Madam Speaker, I thank the distinguished gentleman for yielding me this time. I want to commend the gentleman from Wisconsin (Mr. Sensenbrenner) for his efforts in bringing about a bill that would interfere between an arm's length relationship between two different business interests.

Now, I do not agree with most of my friends on the other side of the aisle in as great a degree of the sanctity of the free market system as they might. I probably support more government regulation than they would. I probably think the government should intervene in the free market more often. But I do think that before you ever allow government to intervene in the free market you have to have a showing of necessity.

What showing of necessity have we here? Restaurants that pay an average of $400 a year in music licensing fees, a rather small number. I would say minute percentage of the revenues of an average restaurant, do not want to pay the $400 a year to the songwriters. Well, that is interesting. Let them try to negotiate a different deal. Or let them not use the music. But what necessity, what interest is served by the government coming in and making a decision and saying, "Thou shalt not pay the $400; you shall get it free"?

Is there a great housing shortage that necessitates rent control? Is there a great shortage of restaurant musicians or of restaurant radios that necessitate that, my God, if we do not pass this bill, people are not going to be able to eat because they will be so nervous without the radio music as to just not want to go to the restaurant. If the government intervenes in the free market here, to come in and say, "We're not going to let you make this deal, we're going to upset the licensing arrangements"?

I do not see the point. Why is government intervening in the free market here? Point One.

Point Two: Assuming we want the government to intervene in the free market, assuming that we should arrogate to ourselves the power of determining what the deal should be, the deal should be very different. We are saying that the restaurant that pays a license of $400 a year in licensing fees, a minute part of its expenses to the restaurant to which it makes virtually no difference, that is the one interest. The other interest is the song writer to whom this revenue may be a very large part of their income and saying, "You can't get that income because the restaurants..."
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 not 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 against the entity that has led to it. This is when the free 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. SENSENBERNRENNER. Madam Speaker, I would like to give 5 minutes to the gentleman from Florida (Mr. McCOLLUM). Mr. McCOLLUM. Madam Speaker, I thank the gentleman from Wisconsin for yielding this time to me.

Madam Speaker, 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 colleagues, the gentleman from Wisconsin (Mr. SENSENBERNRENNER) 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. SENSENBERNRENNER's committed effort, and I believe that 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 the gentleman from North Carolina (Mr. COBLE) and to Senator HATCH for their dedication and their commitment to copyright protection.

Extending the term of copyright protection by 20 years will ensure that the American public continues to enjoy the music, movies, software, and other products such as movies, software, and information and provides countless materials, widens the dissemination of that brings the restaurants and the other, and commercial users of music on still the other. The compromise provides certain exemptions from copyright infringement for the limited commercial use of radios and televisions. It also provides for some specific or individuals to be heard in court concerning music licensing rates and fees.

This fair and balanced compromise is the result of years of work, and I am pleased to be joined by the gentleman from Wisconsin (Mr. SENSENBERNRENNER) urging my colleagues to support the passage of this resolution and the resolution of this matter by the adoption of S. 505 which I certainly encourage tonight.

Ms. JACKSON-LEE of Texas. Madam Speaker, I yield myself such time as I may consume. Let me conclude by adding again my emphasis on the importance of the compromise and resolution of this bill that brings the restaurants and copyright entities together. It is important that we do recognize that this was a very vital part of the economic structure of these businesses, and it is our responsibility to ensure their viability as well as the development of those in the copyright industry.

With that I would ask my colleagues to support this legislation. Madam Speaker, I yield back the balance of my time.

Mr. SENSENBERNRENNER. Madam Speaker, I yield 2 minutes to the gentleman from Florida (Mr. FOLEY). (Mr. FOLEY asked and was given permission to revise and extend his remarks.)

Mr. FOLEY. Madam Speaker, I want to take a moment to thank the gentleman from Wisconsin (Mr. SENSENBERNRENNER), the gentleman from Florida (Mr. McCOLLUM), the gentleman from North Carolina (Mr. COBLE) and, of course, the House leadership for bringing this important measure to the floor tonight and spend a moment of special tribute to our good friend Sonny Bono who was basically the one that brought this bill to the attention of the floor. Sonny's legislation has been supported by colleagues like himself who had created music and wanted that protection under law as other nations have recognized. The gentleman from Florida (Mr. McCOLLUM) eloquently laid out that European nations protect their copyrighted materials, and we should do no less for our artists.

So I want, as Chairman of the House Entertainment Task Force, to thank all parties for recognizing the importance of this issue to America's creative community. Whether it is Sony, BMI, Disney or any of the major companies in the business or the fabric of our entertainment community, as the gentleman from Florida (Mr. McCOLLUM) clearly stated, 61½ million workers make up the work force of the entertainment industry in America. It is a thriving business, it is an important business, but, more importantly, it is a business that needs protection so that the works of these creative artists, the works they have struggled to produce, the works that have now reached critical acclaim are not stolen and pirated.

When we were in China with the Speaker last year we noticed that there were CDs for sale in the streets of China for a $1.25 and $2, American currency. That record cost $14 here in the United States but was being bootlegged by foreign sources, if my colleagues will, and sold under market, under value and no attribution to the recording label or the artist.

So, again I want to take a moment because I know it has been difficult, and I know it has been stressful to reach a compromise. But thanks to the leadership of the gentleman from Wisconsin (Mr. SENSENBERNRENNER) bringing all parties together, we were able to really produce what this House is all about, Comity. And I would also like to thank the minority and certainly those that have worked so hard at this, the gentlewoman from Texas (Ms. JACKSON-LEE), the gentleman from Massachusetts (Mr. FRANK) on the Judiciary Committee for their hard work on this effort because they too recognize the importance of the artistic community.

So really this is a spirit of bipartisanship, this is a good bill, and I urge all Members to support it as it reaches the floor tonight.

Mrs. BONO. Mr. Speaker, I rise to extend my deep appreciation to my colleagues, including the gentleman from Florida, for honoring Sonny, I know it has been difficult, and I also want, as Chairman of the House Entertainment Task Force, to thank all parties for recognizing the importance of this issue to America's creative community. Whether it is Sony, BMI, Disney or any of the major companies in the business or the fabric of our entertainment community, as the gentleman from Florida (Mr. McCOLLUM) clearly stated, 61½ million workers make up the work force of the entertainment industry in America. It is a thriving business, it is an important business, but, more importantly, it is a business that needs protection so that the works of these creative artists, the works they have struggled to produce, the works that have now reached critical acclaim are not stolen and pirated.

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So really this is a spirit of bipartisanship, this is a good bill, and I urge all Members to support it as it reaches the floor tonight.
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 and grave threat to our music industry. 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 was to bring our system up to 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 multilateral 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.


HON. WENDY GIENCH, Speaker of the House of Representatives, Washington, DC.

DEAR MR. SPEAKER: The House may consider H.R. 2589, the “Copyright Term Extension Act,” next week. The Administration is concerned that the bill is contrary to our international obligations and fails to respect the seriousness with which we take all of our international commitments. With respect to music licensing, the Administration has opposed legislation for a wide variety of policy reasons. I appreciate this opportunity to reiterate the Administration’s concerns regarding the pending legislation and would be pleased to respond to any further questions that you might have.

Sincerely,

RICHARD W. FISHER, Acting.


HON. HOWARD COBBLE, Chairman, Subcommittee on Courts and Intellectual Property, Committee on the Judiciary, House of Representatives, Washington, DC.

We received the attached letter from the late Representative Sonny Bono raising issues concerned with certain provisions in H.R. 789, the “Fairness in Musical Licensing Act” and its potential consequences of this portion of the bill.

The Administration strongly urges the House to reject any attempt to attach the provisions of H.R. 789 to H.R. 2589. Thank you for your consideration.

Sincerely,

WILLIAM M. DALEY.
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 restrictions on the public performance right, such limitations should be the subject of private agreements and not set in legislation.

We restate our concern that, if it is determined that there must be specific guidance in the copyright law, an exemption 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 or size of establishments are the appropriate solution, 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, D.C.

Dear Chairman Hughes: I would like to comment on H.R. 4936, the “Fairness in Music Licensing Act of 1994,” which has been introduced.

At a time when we are reviewing its copyright law to make sure that it was consistent with the requirements of Berne. For the most part deficiencies in our law were corrected in the Berne Convention Implementation Act of 1988; P.L. 100-568, 102 Stat. 2853 (1988). One of the sections reviewed was section 110(5). An Ad Hoc Working Group on U.S. Berne had reviewed the Berne Convention and noted that section 110(5) was an extremely narrow exemption to the public performance right and that the case law interpreting that section had not broadened the exemption beyond Congress intent. The Working Group noted that the exemption did not extend to the use of loudspeakers or any sort of speaker arrangement which was the characteristics of a commercial sound system and therefore found section 110(5) compatible with the provisions of the Convention.

Let me reiterate some of the important facts as a result of the legislative history of section 110(5). The 1965 Supplementary Report of the Register on the General Revision of the Copyright Law stated:

“The intention behind this exception is to make clear that it is not an infringement of copyright merely to turn on, in a public place, an ordinary radio or television receiving apparatus of a type commonly sold to members of the public for private use. This exception is limited to the incidental performance of a broadcast transmitted by signs, sounds, or images, the broadcast 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 being broadcast is intended to be heard not, say, by loudspeaker, or otherwise, to the public. The case is becoming more common. In places where people gather (cafes, restaurants, tea-rooms, shops, trains, aircraft, etc.) the practice of growing of providing broadcast programs... The question is whether the license given by the broadcaster is sufficient to avoid liability. In another 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 entertainment 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 implementation of Berne standards will promote development of acceptable copyright regimes in bilateral and multilateral contexts.” H.R. Rep. No. 609, 100th Cong., 2d Sess. 16 (1988).

To expand the section 110(5) exemption would send the wrong signal. Moreover, I am not aware of any new or unusual difficulties in applying the Berne Convention 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 “commercial establishment.” There is no indication on how this is to be interpreted. Entertainment and background music is frequently part of the overhead costs of a business. An establishment built to increase costs and reduce expenses may be fit into the price of food, for example, make this exception unavailable?

CHORAL GROUP EXEMPTION

This proposal exemption would 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 the public.” H.R. Rep. No. 609, 100th Cong., 2d Sess. 16 (1988).

There is no indication on how this is to be interpreted. Entertainment and background music is frequently part of the overhead costs of a business. An establishment built to increase costs and reduce expenses may be fit into the price of food, for example, make this exception unavailable?

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proceeds are used exclusively for educational, charitable or religious purposes. Although a copyright owner may prohibit such a performance by serving the performing party with a written notice of his objection, this is rarely done. Thus, it would seem that virtually all performances by such choral groups are covered either by existing agreements or exceptions to the notice rule. I urge you to reconsider the necessity for a further exemption.

Arbitration of Rate Disputes

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. 632(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 over their rates must be resolved by means of 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 Justice Department 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 deluge of licensing organizations 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 that is fairer to copyright owners or users than a negotiated licensing agreement would have been. Such a result would make it difficult forperformers to get prices for use consistently, as they are required to do now.

I am also troubled by the proposed conforming amendment to Title 26 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 also provides that “[f]or 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.