Minnesota concerning baseball's status under the antitrust laws.

Mr. WELLSTONE. I thank the Senator. I call to my colleagues attention the decision in *Minnesota Twins* v. *State by Humphrey,* No. 62–CX–98–568 (Minn. dist. Court, 2d Judicial dist., Ramsey County April 20, 1998) reprinted in 1998–1 Trade Cases (CCH) 72,136.

Mr. BILIRAKIS. Mr. Speaker, I rise to support S. 53, the Curt Flood Act, which gives major league baseball players the same rights other professional athletes have under antitrust laws.

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 amusement 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.

In 1972, the Supreme Court called 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 chase this year between Mark McGwire and Sammy Sosa that culminated in both players smashing the thirty-seven-year home run record held by Roger Maris?

I felt immense personal pride 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 by the owners of minor league baseball teams 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 the organized baseball exemption. Also, the legislation does not change in any way the antitrust exemption for 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.

I believe the compromise is successful because it protects minor league baseball by barring minor league players or amateur players from using the antitrust laws to attack issues unique to the continued economic success of minor league baseball.

Mr. CLAY. Mr. Speaker, I rise in strong support of S. 53, the ''Curt Flood Act of 1998.'' This is the Senate counterpart of H.R. 21, legislation I introduced in the each of the last two Congresses providing for the partial repeal of baseball's antitrust exemption. I'd like to thank Chairman Hyde for his leadership in seeing that this vital and long overdue legislation reached the House Floor.

Professional baseball is the only industry in the United States exempt from antitrust laws without being subject to alternative regulatory supervision. This circumstance resulted from an erroneous 1922 Supreme Court decision holding that baseball did not involve ''interstate commerce'' and was therefore beyond the reach of the antitrust laws. Congress has failed to overturn this decision despite subsequent court decisions holding that the other 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 revenues—we can no longer afford to treat professional baseball in a manner enjoyed by no other professional sport.

Because concerns have previously been raised that by repealing the antitrust exemption we could somehow be disrupting the operation of the minor leagues, or professional baseball's ability to limit franchise relocation, the legislation carefully eliminates these matters from the scope of the new antitrust coverage.

In the past, some in Congress had objected to legislating in this area because of their hesitancy to take any action which could impact the ongoing labor dispute. But because the owners and players have recently agreed to enter into a new collective bargaining agreement, this objection no longer exists. In addition, the baseball owners are now in full support of this legislation as are the Major League Players Association.

I originally introduced the House version of the bill as H.R. 21, in honor of the courageous center fielder, Curt Flood, who passed away earlier this year on January 21. Mr. Flood, one of the greatest players of his time, risked his career when he challenged baseball's reserve clause after he was traded from the St. Louis Cardinals to the Philadelphia Phillies. Although the Supreme Court rejected Flood's challenge in 1972, we all owe a debt of gratitude for his willingness to challenge the baseball oligarchy.

This bill has gone through many iterations over the years, beginning with its first enaction by the House Judiciary Committee at the end of the 103d Congress. That legislation was introduced by my former colleague Mike Synar.

In order to address the concern of the minor leagues, it contains many redundancies. Accordingly, a court may have questions about how the provisions of this bill interrelate. Any court facing such questions would be well-advised to return to the purpose section of the bill for aid in interpretation. The purpose section is the statement of what Congress intends the bundle of works now known as the ''Curt Flood Act of 1998'' to mean—that is, it is no longer subject to question that major league baseball players have the same rights under the antitrust laws as do other professional athletes. That is a simple proposition, yet it is indeed startling that 26 years after a brave and eloquent player stood alone before the Supreme Court to seek an answer that was obvious to him, it is only now being addressed directly by any branch of the United States government. If a court has any doubt as to the meaning or purpose of any provision of this new Act, it should be guided by our purpose which is at long last to give the answer Mr. Flood knew to be the correct one. This legislation is not intended to have any adverse effect on any ongoing litigation nor is it intended to limit the ability of the United States to bring antitrust actions.

Mr. Speaker, this bill is long overdue. I hope the House will act quickly to pass it for the good of the game, which has once again demonstrated why we love it, and for the good of the fans, who deserve to enjoy the national pastime without the continuous interruptions that have become nearly as predictable and plentiful, as McGwire or Sosa home runs.

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. GUTKNECHT). 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 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) PREEMPTION WITH RESPECT TO OTHER LAWS.—Section 301(c) of title 17, United States Code, is amended by striking ''February 15, 2047'' each place it appears 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''; and

(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 BEFORE JANUARY 1, 1978.—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.—

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

(A) in subsection (a)—

(i) in paragraph (1)—

(I) in subparagraph (B) by striking ''47'' and inserting ''67''; and

(II) in subparagraph (C) by striking ''47'' and inserting ''67'';

(ii) in paragraph (2)—

(I) in subparagraph (A) by striking ''47'' and inserting ''67''; and

(II) in subparagraph (B) by striking ''47'' and inserting ''67''; and

(iii) in paragraph (3)—

(I) in subparagraph (A)(i) by striking ''47'' and inserting ''67''; and

(II) in subparagraph (B) by striking ''47'' and inserting ''67'';

(B) by amending subsection (b) to read as follows:

''(b) COPYRIGHTS IN THEIR RENEWAL TERM AT THE TIME OF THE EFFECTIVE DATE OF THE SONNY BONO COPYRIGHT TERM EXTENSION ACT.—Any copyright still in its renewal term at the time that the Sonny Bono Copyright Term Extension Act becomes effective shall have a copyright term of 95 years from the date copyright was originally secured.'';

(C) in subsection (c)(4)(A) in the first sentence by inserting ''or, in the case of a termination under subsection (d), within the five-year period specified by subsection (d)(2),'' after ''specified by clause (3) of this subsection,''; and

(D) by adding at the end the following new subsection:

''(d) TERMINATION RIGHTS PROVIDED IN SUBSECTION (c) WHICH HAVE EXPIRED ON OR BEFORE THE EFFECTIVE DATE OF THE SONNY BONO COPYRIGHT TERM EXTENSION ACT.—In the case of any copyright other than a work made for hire, subsisting in its renewal term on the effective date of the Sonny Bono Copyright Term Extension Act for which the termination right provided in subsection (c) has expired by such date, where the author or owner of the termination right has not previously exercised such termination right, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, 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:

''(1) The conditions 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.—Section 102 of the Copyright Amendments Act of 1992 (Public Law 102–307; 106 Stat. 266; 17 U.S.C. 304 note) is amended—

(A) in subsection (c)—

(i) by striking ''47'' and inserting ''67'';

(ii) by striking ''(as amended by subsection (a) of this section)''; and

(iii) by striking ''effective date of this section'' each place it appears and inserting ''effective date of the Sonny Bono Copyright Term Extension Act''; and

(B) in subsection (g)(2) in the second sentence by inserting before the period the following: '', except each reference to forty-seven years in such provisions shall be deemed to be 67 years''.

SEC. 103. TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM.

Sections 203(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''; and

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

''(D) 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. 104. REPRODUCTION BY LIBRARIES AND ARCHIVES.

Section 108 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)(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, or perform in facsimile or digital form a 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, 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 can 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 subsequent uses by users other than such library or archives.''.

SEC. 105. VOLUNTARY NEGOTIATION REGARDING 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 in 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.

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 (5)—

(A) by striking ''(5)'' and inserting ''(5)(A) except as provided in subparagraph (B),''; and

(B) 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—

''(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 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;

''(ii) in the case of a food service 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—

''(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 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;

''(iii) no direct charge is made to see or hear the transmission or retransmission;

''(iv) the transmission or retransmission is not further transmitted beyond the establishment where it is received; and

''(v) the transmission or retransmission is licensed by the copyright owner of the work so publicly performed or displayed;''; and

(2) by adding after paragraph (10) the following:

''The exemptions provided under paragraph (5) shall not be taken into account in any administrative, judicial, or other governmental proceeding to set or adjust the royalties payable to copyright owners for the public performance or display of their works. Royalties payable to copyright owners for any public performance or display of their works other than such performances or displays as are exempted under paragraph (5) shall not be diminished in any respect as a result of such exemption''.

(b) EXEMPTION RELATING TO PROMOTION.—Section 110(7) of title 17, United States Code, is amended by inserting ''or of the audiovisual or other devices utilized in such performance,'' after ''phonorecords of the work,''.

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 rates or fees to be 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 within 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) The proceeding 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 such judge. Should that 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 repertoire 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 when a final rate or fee has been 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 judge of the court with jurisdiction over the consent decree governing the performing rights society. Such proceeding, including such review, shall be concluded within 6 months after its commencement.

''(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 music users 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.

''(9) For purposes of this section, the term 'industry rate' means the license fee a performing rights society has agreed to with, or which has been determined by the court for, a significant segment of the music user industry to which the individual proprietor belongs.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 17, United States Code, is amended by adding after the item relating to section 511 the following:

''512. 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:

''(d) 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 were exempt under section 110(5) 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 proprietor of 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 similar place of business open to the general public for the primary purpose of selling goods or services 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 similar 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 that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.'';

(2) by inserting after the definition of ''fixed'' the following:

''The 'gross square feet of space' of an establishment means the entire interior space of that establishment, and any adjoining outdoor space used to serve patrons, whether on a seasonal basis or otherwise.'';

(3) by inserting after the definition of ''perform'' the following:

''A 'performing rights society' is an association, corporation, or other entity 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

(4) by inserting after the definition of ''pictorial, graphic and sculptural works'' 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 facilities therefor, telecommunications company, or any other such audio or audiovisual service or programmer now known or as may be developed in the future, commercial subscription 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 State or local statute, ordinance, or law, or consent decree or other court order governing its operation, as such statute, ordinance, law, decree, or order is in effect on the date of the enactment of this Act, as it may be amended after such date, 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. SENSENBRENNER) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 20 minutes.

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

GENERAL LEAVE

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.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

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 on the issue of fairness in music licensing issue. This agreement is the product of grueling and ofttimes contentious negotiations. I am proud of the final product and am pleased that all sides were able to work together to bridge their 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 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 televisions measuring 55 inches or less. Secondly, the bill contains 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 rate court. Under the provision in this bill, the existing New York 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 colloquy 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 rights 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. 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 for small business should make Congress 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
Washington, DC, October 7, 1998.

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 of the license rate. I want to make certain that this 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 rights society.

Mr. Chairman, I respectfully request your affirmation of this understanding be included in the record for purposes of providing legislative history on this subject.

Sincerely,
F. JAMES SENSENBRENNER, JR.,
Member of Congress.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, October 7, 1998.

Hon. F. JAMES SENSENBRENNER, Jr.,
U.S. Representative for the 9th District of Wisconsin, Rayburn House Office Building, Washington, DC.

DEAR REPRESENTATIVE SENSENBRENNER: Thank you for your letter of October 7, 1998, 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.

This letter is to affirm your understanding that nothing in section 512(4) of the Copyright Act, as amended by the bill, is intended to change the burden of proof with respect to rates or fees under applicable consent decrees, which places the burden of showing a reasonable rate or fee on the performing rights society.

This letter, along with your letter, will be placed in the RECORD for purposes of providing legislative history on this subject.

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

Madam Speaker, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. 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 which marks 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, as I have said, 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. 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 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.

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 struggles 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. This has been a long, 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 in support of 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 (Mr. GINGRICH) for his efforts 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 will give 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 industries give us one of 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. 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.

Finally, the 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 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 protects small business 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 gentlewoman for yielding me this time. I want to rise in opposition to that portion of the bill regulating music licensing fees. This is a very interesting occasion. Here we have under the leadership of the party that believes preeminently in the free enterprise system that government should not intervene against the operation of the free market advancing 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 have the government 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, 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 public 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 necessitates 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 justify the government intervention 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''?

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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 average of $400 a year for these 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.

So let us take the song writer for whom this may be a very large part of their income and say, ''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 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 the antitrust has to be promoted, 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. SENSENBRENNER. Madam Speaker, I yield 3 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 colleague, the gentleman from Wisconsin (Mr. SENSENBRENNER) 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. SENSENBRENNER'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 dedicated commitment to copyright protection.

Extending the term of copyright protection by 20 years will ensure that the American public continues to enjoy the contributions made by our creative community. In addition, it would eliminate harmful discrimination against American works abroad. Copyright protection benefits the public. It promotes the creation of educational materials, widens the dissemination of information and provides countless hours of entertainment. Copyright products such as movies, software, music and books contributed more than $275 billion to the U.S. economy in 1996 and employed more than 6½ million workers.

It is clear that we must be as vigilant in protecting intellectual property as we are protecting physical property. Unfortunately, without the enactment of this legislation, U.S. copyright owners would continue to be at a critical disadvantage in overseas markets. The European Union, which is the largest market for U.S. copyrighted products protects its own products for 20 years longer than it protects American works. This is due to the fact that foreign countries only protect U.S. works for as long as the U.S. itself protects its own works. Enactment of S. 505 would eliminate this extreme economic disadvantage and contribute to America's balance of trade.

With S. 505 we will no longer be abandoning 20 years worth of copyright protection for our creative community. In addition, we will be promoting the creation of new copyrighted works for the American public and strengthening our international trading position abroad. Also, S. 505 resolves the longstanding dispute between song writers, music publishers and the performing rights societies on the side, one side, and 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 additional forums for 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. SENSENBRENNER) in 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 fair treatment 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. SENSENBRENNER. 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. SENSENBRENNER), 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, as many of my colleagues know, was a song writer and cared deeply about the rights of performers 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.

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 multitude of companies that make up the fabric of our entertainment community, as the gentleman from Florida (Mr. MCCOLLUM) clearly stated, 6½ 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 it 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. SENSENBRENNER) 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) in the Committee on the Judiciary for their hard work in 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 with the legislation before us today. I support this bill and ask my colleagues to do the same.

Copyright term extension is a very fitting memorial for Sonny. This is not only because of his experience as a pioneer in the music and television industries. The most important reason for me was that he was a legislator who understood the delicate balance of the constitutional interests at stake. Last year he sponsored the term extension bill, H.R. 1621, in conjunction with Sen. HATCH. He was active on intellectual property issues because he truly understood the goals of Framers of the Constitution: that by maximizing the incentives for original creation, we help expand the public store-house of art, films music, books and now

also, software. It is said that ''it all starts with a song,'' and these works have defined our culture to audiences world-wide.

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 all of you to work with me 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 change in the music licensing system. 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 having our system conform 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 this portion 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.

THE U.S. TRADE REPRESENTATIVE,
Washington, DC, August 26, 1998.

Hon. MARY BONO,
U.S. House of Representatives, Washington, DC.

DEAR CONGRESSWOMAN BONO: Thank you for your recent letter regarding the Fairness in Musical Licensing Act. As you note in your letter, Administration officials have expressed serious concerns about this legislation on a number of occasions. If this legislation is passed, we believe that our trading partners will argue that it violates our international obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

You have asked whether it is fair to conclude that there would be repercussions in the global community if Congress passed legislation that violated U.S. multilateral treaty obligations. Your question is phrased as a hypothetical one and we assume that it is not limited to the music licensing context. In general, we would expect that our relations with our trading partners would be impaired if the United States enacted legislation that was inconsistent with its previous commitments. In response to your second question—again, as a general matter—we would also expect that our trading partners might pursue action in the World Trade Organization (WTO) if the United States enacted legislation that those countries believed violated our WTO obligations and impaired their interests.

You have also asked whether our trading partners could respond to the passage of music licensing legislation in a manner that would compromise the integrity of the copyright sectors and other sectors of the U.S. economy. It is difficult to predict exactly how our trading partners would react to the passage of legislation resembling the Fairness in Musical Licensing Act. We are certain, however, that the reaction would be a strong negative one. One of our most important trading partners, the European Union (EU), has already expressed significant concern about the pending legislation, and we know that EU officials are following its progress in Congress very closely. The EU is currently threatening to bring dispute settlement proceedings in the WTO challenging the existing ''home style'' exception in U.S. copyright law as overly broad. The pending legislation, as you know, would expand that exception, and thus would likely elicit a strong reaction.

Finally, you have asked whether it is the policy of the Administration to oppose a legislative package that violates our multilateral trade obligations. We cannot generalize about the Administration's likely position on legislation in the abstract, but can reiterate the seriousness with which we take all of our international commitments. With respect to music licensing, the Administration has opposed the pending 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.

THE SECRETARY OF COMMERCE,
Washington, DC, March 20, 1998.

Hon. NEWT GINGRICH,
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 supports passage of this bill, as reported by the House Judiciary Committee, and urges favorable consideration. I have been informed, however, that there also 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. 2589. 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 because it would amend section 110 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 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 ''admission fee'' is charged or the transmission is otherwise not licensed. This change would thereby expand the limited ''home style'' exemption to encompass profitable restaurants and bars and would favor these establishments at the expense of the copyright owner and his or her Constitutionally granted 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 for the Protection of Literary Works and the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement). We are equally concerned that enactment could sacrifice the interests of U.S. music copyright owners abroad to satisfy the demands of those domestic interests that seek uncompensated use of their music. The American music industry is the most successful in the world, and royalties from foreign performances are an important source of income for U.S. artists and composers. If we expand the exemptions in our law as contemplated in H.R. 789, other countries may use that as an excuse to adopt this or other exemptions in their copyright laws, thereby leading to economic losses to U.S. music copyright owners in hundreds of millions of dollars.

Accordingly, 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.

PATENT AND TRADEMARK OFFICE
Washington, DC, January 16, 1998.

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

DEAR MR. CHAIRMAN: We received the attached letter from the late Representative Sonny Bono raising issues concerned with certain provisions in H.R. 789, the ''Fairness in Music Licensing Act.'' In view of the tragic and untimely death of Mr. Bono and the importance of these issues, I thought we should send this response to you so that the Committee could be made aware of the depth of his concerns. I am pleased to share the Administration's views on this issue with you.

As we testified last summer, the Administration is concerned that the United States maintain its role as the world's leader in ensuring adequate and effective intellectual property protection. We are seriously concerned, as are you, that, if enacted, section 110(5) of H.R. 789, could be challenged by our trading partners, who could argue that it is an overly broad exception 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—authors, 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 widely in virtually every country on the planet. Royalties from those foreign performances is an important part of the income for U.S. artists and composers. 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. If put in place, such limitations would keep U.S. music copyright owners from collecting royalties for the public performance of their works in those countries which would cause hundreds of millions of dollars in losses to U.S. music copyright owners.

As you have noted in your letter, the current ''home style exception'' has been applied by the courts to exempt establishments of approximately 1000 square feet. The Irish Performing Rights Organization has requested the Commission of the European

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 exemption would be problematic. If there are to be further limitations on the public performance right, such limitations should be the subject of private agreements and not set in legislation.

We share your 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, but even 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,
Washington, DC, Sept. 28, 1994.

Hon. WILLIAM J. HUGHES,
Chairman, House Subcommittee on Intellectual Property and Judicial Administration, Washington, DC.

DEAR CHAIRMAN HUGHES: I would like to comment on H.R. 4936, the ''Fairness in Musical 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 copyright owner's exclusive right of public performance under section 106(4). I believe that H.R. 4936 would make major changes and would violate our treaty obligations.

At the time section 110(5) was enacted into law the United States was not a member of the Berne Convention. The United States became a signatory to the Berne Convention on March 1, 1989. In joining the Berne Convention the United States reviewed 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. Adherence to the Berne Convention 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 quickly review part 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 would apply for the most part to the incidental entertainment of small public audiences (patrons in a bar, customers getting a shoeshine, patients waiting in a doctor's office, etc.). It is not intended to exempt larger establishments, such as supermarkets, bus stations, factories, etc., in which broadcasts are not merely received in the usual manner of a private reception, but are transmitted to substantial audiences by means of a receiving system connected with a number of loudspeakers spread over a wide area. The exemption would also not apply in any case where the public is charged directly to see or hear the broadcast.'' *Id.* at 44.

The legislative history shows that the rationale for the subsection was that the secondary use of the transmission by turning on an ordinary receiver in public is so remote and minimal that no further liability should be imposed.

During the revision process the Supreme Court decided *Twentieth Century Music Corp.* v. *Aiken*, 422 U.S. 151 (1975) which, though addressing the issue of what constituted a performance under the 1909 law, raised questions about the proper interpretation of section 110(5). The Senate, House and Conference Committee Reports all written after *Aiken* indicate how that case would be decided under the 1976 Copyright Act. The House Report states that *Aiken* represented the outer limit of the exemption; (Aiken operated a small fast-food restaurant which had a radio with four ordinary speakers in the ceiling.) That report states that the line should be drawn here. It goes on to say ''the clause would exempt small commercial establishments whose proprietors merely bring onto their premises standard radio or television equipment and turn it on for their customers' enjoyment.'' H. Rep. No. 1476, 94th Cong., 2d Sess. 87 (1976).

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 sufficient size to justify, as a practical matter, a subscription to a commercial background music service.'' H.R. Conf. Rept. No. 1733, 94th Cong., 2d Sess. 75 (1976).''

It is true that there has been litigation on the scope of section 110(5) exemption; some courts have relied on the legislative history while others have refused to go beyond the plain language of the statute.

At the time that the United States joined the Berne Convention courts had consistently held that the §110(5) exemption was not available to businesses financially capable of paying reasonable licensing fees for the use of music. However, since that time two decisions have significantly expanded scope of the exemption. *Broadcast Music, Inc. v. Claire's Boutiques*, 949 F.2d 1482 (7th Cir. 1991) and *Edison Brothers Stores, Inc. v. Broadcast Music, Inc.*, 954 F.2d 1419 (8th Cir. 1992). It can be argued that the holding in these cases violate the spirit, if not the letter, of the Berne Convention.

My concern is that the proposed amendment to section 110(5) would do further violence to our Berne Convention obligations.

Berne allows only narrow exemptions to the author's exclusive right to authorize public performance. Thus, only in rare instances may third parties use a broadcast without a license and without remuneration to the author. Article 11 *bis* (1) (iii) establishes the exclusive right of the author to authorize the ''public communication by loudspeaker or any other analogous instrument transmitting 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 has been broadcast is publicly communicated e.g., by loudspeaker, or otherwise, to the public. The case is becoming more common. In places where people gather (cafes, restaurants, tea-rooms, hotels, large shops, trains, aircraft, etc.) the practice is growing of providing broadcast programs . . . The question is whether the license given by the author to the broadcasting station covers, 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 information products have become precious export commodities of immense economic value. That value is badly eroded by low international copyright standards. Berne standards are both high, reasonable and widely accepted internationally. Lending our prestige and power to the international credibility of those standards will promote development of acceptable copyright regimes in bilateral and multilateral contexts.'' H.R. Rep. No. 609, 100th Cong., 2d Sess. 19–20 (1988).

To expand the section 110(5) exemption would send the wrong signal. Moreover, I am not aware of any new or unusual difficulties with respect to the licensing of 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 ''indirect charge.'' There is no indication on how this is to be interpreted. Entertainment and background music is frequently part of the overhead cost of running an establishment. Would overhead costs built 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 ''nondramatic musical work by a choral group of a nonprofit educational institution choral group, unless a direct or indirect charge is made to hear the performance.'' I understand that this change was suggested in response to complaints that performing rights organizations were attempting to require school groups to pay license fees for performing seasonal musical compositions.

The Copyright Act of 1976 already covers most situations in which a choral group connected with a non-profit institution may be permitted to perform works freely. Section 110(4) contains a nonprofit exemption for performance of nondramatic literary and musical works if the performance is ''without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, organizers . . .'' 17 U.S.C. §110(4). If there is a charge, the exemption is still available if the net

proceeds are used exclusively for educational, charitable or religious purposes. Although a copyright owner may prohibit such a performance by serving the performing organization with a signed written notice, this is rarely done. Thus, it would seem that virtually all performances by such choral groups are already covered either by existing licenses or existing exemptions. 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 for the license. 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 solved 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 burden on the 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 any fairer to copyright owners or users than a negotiated licensing agreement would have been. Such a result would make it difficult for representatives of performers to set prices for use consistently, as they are required to do now.

I am also troubled by 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 also says that ''[e]ach 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 private parties have developed a certain expertise in music licensing matters that other courts would take time to gain.

ACCESS TO REPERTOIRE

This proposed section mandates free access to critical information about copyrighted works by those who wish to license use of the works from performing rights organizations. We think it is unwise to mandate provision of this information at this time. Moreover, address and telephone information about authors who no longer are copyright owners seems unwarranted.

ASCAP is now providing information about its activities and its membership via CompuServe's Entertainment Drive. In addition, BMI recently launched its accessible database containing information that more than satisfies the needs evidenced by H.R. 4936's Sec. 5. The Library of Congress and the Copyright Office are working with the Corporation for National Research Initiative to develop an electronic copyright management system; a key feature of this system will make certain basic information about copyright owners available to the public for licensing purposes.

In conclusion, I urge you to reconsider this legislation. Many of the problems H.R. 4936 is attempting to resolve are currently being addressed elsewhere; thus, the proposed legislation seems premature. In at least one case, the new exemption for choral groups, it is difficult to see where the problem is, and finally, the proposed modification to §110(5) seems unwise.

Sincerely,

MARYBETH PETERS,
Register of Copyrights.

Mr. SENSENBRENNER. 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. SENSENBRENNER) 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.

CONFERENE 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:

CONFERENCE REPORT (H. REPT. 105–794)

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: