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FEDERAL COPYRIGHT LAW

THE LEGISLATIVE HISTORIES OF THE MAJOR ENACTMENTS OF THE 105th CONGRESS

Volume II Document Numbers 26-65

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INTRODUCTION

Three major pieces of copyright legislation were passed by the 105th Congress. The first to be enacted was the No Electronic Theft (NET) Act, passed in response to a federal district court decision finding no criminal liability in the distribution of copyrighted software where there was no financial gain. Under the NET Act, liability is determined by the retail value of the work in question. Reproduction of works worth over \$1,000 is a misdemeanor, while copying works valued over \$2,500 ranks as a felony. Those convicted face fines and imprisonment of up to three years for the first offense, and up to six years for a second conviction. The act also extends the statute of limitations from three to five years and mandates “victim impact statements.”

More controversial was the issue of copyright term extension. Opponents viewed such proposals as a move by major publishers and producers to deprive the public of access to copyrighted works soon to enter the public domain with the expiration of the old copyright term, most notably Disney’s Mickey Mouse in 2002. Proponents claimed the extension of the copyright term by twenty years would promote creativity by offering artists and authors a greater return on their work, and would bring the United States into line with the copyright term in effect overseas.

Their views prevailed with the passage of the Sonny Bono Copyright Term Extension Act. Title I of the Act amends federal law so as to extend from fifty to seventy years the duration of copyrights. Most notably this includes copyrights on works created after Jan. 1, 1978, for which it extends the term to the life of the author plus seventy years. Section 104 of the Act provides an exception for libraries and archives, allowing reproduction for preservation, scholarship, or research during the last twenty years of the copyright term. This limited exception applies only if it can be determined that the work in question is not subject to normal commercial exploitation, cannot be obtained at a reasonable price, and the copyright holder has not provided notice that either of these conditions applies. Title II consists of the Fairness in Music Licensing Act of 1998. This provides that the use of transmission or retransmission of a non-dramatic musical work originated by a radio or television broadcast is not a copyright infringement if the establishment is a food service or drinking establishment, no direct charge was made to see or hear the

transmission, and such, and that the transmission or retransmission was licensed by the copyright holder.

The final and most important copyright enactment of the 105th Congress was the Digital Millennium Copyright Act. The most notable part of the legislation was Title I, the WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998. This Act, which amends federal law to conform to these treaties, sparked controversy because of its “anti-circumvention” provisions which opponents claimed would render unlawful such legitimate activities as encryption research and reverse engineering. The remainder of the legislation includes:

Title II - the Online Copyright Infringement Liability Limitation Act which limits the liability for copyright infringement of Internet service providers;

Title III - the Computer Maintenance Competition Assurance Act providing that under certain conditions there is no copyright violation where copies of computer programs are made solely in conjunction with the repair of computer equipment;

Title IV - Miscellaneous Provisions;

Title V - Vessel Hull Design Protection Act which amends federal copyright law to protect original hull designs which make vessels distinctive or attractive.

Notably absent from the Act was any provision extending copyright protection to databases. Such a provision had been a last minute addition by the House to H.R. 2281, but was dropped from the final bill version by the Conference Committee.

This compilation includes the full text of all three enactments, prior bill versions, relevant congressional reports and hearings, *Congressional Record* references, and presidential statements. Also included are the full texts of the WIPO treaties.

William H. Manz
St. John's University
June 1999

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- Doc. No. 19** 143 Cong. Rec. S7772 (daily ed. July 21, 1997) (introduction of S. 1044 by Sen. Leahy and the text of the bill).
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- Doc. No. 38** H.R. 989 - Copyright Term Extension Act of 1995. Introduced and referred to the Committee on the Judiciary, 104th Cong., 1st Sess. (Feb. 16, 1995).
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Doc. No. 44 142 Cong. Rec. S3238 (daily ed. Mar. 29, 1996) (remarks of Sen. Boxer on the Copyright Term Extension Act),

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- Doc. No. 53** 144 Cong. Rec. H9946 (daily ed. Oct. 7, 1998) (consideration of S. 505 and the text of the bill).
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- Doc. No. 70** Digital Millennium Copyright Act of 1998, H. Rep. No. 105-551, pt. II, 105th Cong., 2d Sess. (July 22, 1998).
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- Doc. No. 75** H.R. 2281 - WIPO Copyright Treaties Implementation Act. Reported in the House, 105th Cong., 2d Sess. (July 22, 1998).
- Doc. No. 76** H.R. 2281 - Digital Millennium Copyright Act. Engrossed in the House, 105th Cong., (Aug. 4, 1998).
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- Doc. No. 78** H.R. 2281 - Digital Millennium Copyright Act. Placed on the Senate calendar, 105th Cong., 2d Sess. (Aug. 31, 1998).
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- Doc. No. 85** H.R. 2652 - Collections of Information Antipiracy Act. Passed by the House, 105th Cong., 2d Sess. (May 19, 1998).
- Doc. No. 86** H.R. 2652 - Collections of Information Antipiracy Act. Referred to Senate committee, 105th Cong., 2d Sess. (May 20, 1998).
- Doc. No. 87** H.R. 2696 - Vessel Hull Design Protection Act. Introduced by Rep. Coble and referred to the Committee on the Judiciary, 105th Cong., 1st Sess. (Oct. 22, 1997).

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- Doc. No. 91** H.R. 3048 - Digital Era Copyright Enhancement Act. Introduced by Rep. Boucher and referred to the Committee on the Judiciary, 105th Cong., 1st Sess. (Nov. 13, 1997).
- Doc. No. 92** H.R. 3209 - On-Line Copyright Infringement Liability Limitation Act. Introduced by Rep. Coble and referred to the Committee on the Judiciary, 105th Cong., 2d Sess. (Feb. 12, 1998).
- Doc. No. 93** S. 2037 - Digital Millennium Copyright Act of 1998. Introduced by Sen. Hatch and referred the Committee on the Judiciary, 105th Cong. 2d Sess. (May 6, 1998).

- Doc. No. 94** S. 2037 - Digital Millennium Copyright Act of 1998. Passed by the Senate, 105th Cong., 2d Sess. (May 14, 1998).
- Doc. No. 95** S. 2291 - Collections of Information Antipiracy Act. Introduced by Rep. Grams and referred to the Committee on the Judiciary, 105th Cong., 2d Sess. (July 10, 1998).
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- Doc. No. 99** Statement by the President on signing H.R. 2281 (Oct. 28, 1998).

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- Doc. No. 101** 143 Cong. Rec. S6726 (daily ed. June 27, 1997) (remarks of Sen. Hatch on the WIPO treaties).
- Doc. No. 102** 143 Cong. Rec. E1452 (daily ed. July 17, 1997) (introduction of the On-line Copyright Liability Limitation Act and the text of the bill).
- Doc. No. 103** 143 Cong. Rec. S8582 (daily ed. July 31, 1997) (introduction of S. 1121, the text of the bill, and remarks of Sens. Hatch, Leahy, Thompson, and Kohl).
- Doc. No. 104** 143 Cong. Rec. S8728 (daily ed. Sept. 3, 1997) (remarks of Sen. Ashcroft on H.R. 1146 and the text of the bill).
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- Doc. No. 120** 144 Cong. Rec. S10657 (daily ed. Sept. 21, 1998) (introduction of S. 2502, the Vessel Hull Design Protection Act, by Sen. Breaux, and the text of the bill).

- Doc. No. 121** 144 Cong. Rec. 11887 (daily ed. Oct. 8, 1998) (consideration of the conference report on S. 2281).
- Doc. No. 122** 144 Cong. Rec. S12730 (daily ed. Oct. 10, 1998) (remarks of Sen. Leahy on H.R. 2281).
- Doc. No. 123** 144 Cong. Rec. H10615 (daily ed. Oct. 12, 1998) (consideration of the conference report on S. 2281).
- Doc. No. 124** 144 Cong. Rec. S12375 (daily ed. Oct. 12, 1998) (remarks of Sen. Hatch on H.R. 2281).
- Doc. No. 125** 144 Cong. Rec. S12378 (daily ed. Oct. 12, 1998) (remarks of Sen Grams on the WIPO Copyright Treaties Implementation Act Conference Report).
- Doc. No. 126** 144 Cong. Rec. E2136, (daily ed. Oct. 13, 1998) (remarks of Rep. Bliley on the Digital Millennium Copyright Act).
- Doc. No. 127** 144 Cong. Rec. E2144 (daily ed. Oct. 13, 1998) (remarks of Rep. Tauzin on H.R. 2281).
- Doc. No. 128** 144 Cong. Rec. S12730 (daily ed. Oct. 20, 1998) (remarks of Sen. Leahy on H.R. 2281).
- Doc. No. 129** 144 Cong. Rec. S12972 (daily ed. Oct. 21, 1998) (consideration of the WIPO treaties).
- Doc. No. 130** 144 Cong. Rec. S12985 (daily ed. Nov. 12, 1998) (Resolution of Ratification of the Treaties).

VII. Related Reports

- Doc. No. 131** Vessel Hull Design Protection Act, H. Rep. No. 105-436, 105th Cong., 2d Sess. (Mar. 11, 1998).
- Doc. No. 132** Digital Millennium Copyright Act of 1998, S. Rep. No. 105-190, 105th Cong., 2d Sess. (May 11, 1998).
- Doc. No. 133** Collections of Information Antipiracy Act, H. Rep. No. 525, 105th Cong., 2d Sess. (May 12, 1998).
- Doc. No. 134** WIPO Copyright Treaty (WCT) (1996) and WIPO Performances and Phonograms Treaty (WPPT) (1996), Exec. Rep. No. 105-25, 105th Cong., 2d Sess. (Oct. 14, 1998).

VIII. Related Hearing

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IX. WIPO Treaties and Documents

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Doc. No. 137 WIPO Performances and Phonograms Treaty adopted by the Diplomatic Conference on Dec. 20, 1996.

Doc. No. 138 Resolution Concerning Audiovisual Performances (Dec. 2-20, 1996).

Doc. No. 139 Agreed Statements Concerning the WIPO Copyright Treaty (Dec. 20, 1996).

Doc. No. 140 Agreed Statements Concerning the WIPO Performances and Phonograms Treaty (Dec. 20, 1996).

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LEGISLATIVE CHRONOLOGY

I. No Electronic Theft (NET) Act

House Actions

- Jul. 25, 1997:** Referred to the House Committee on the Judiciary.
- Aug. 5, 1997:** Referred to the Subcommittee on Courts and Intellectual Property.
- Sep. 11, 1997:** Subcommittee Hearings held.
- Sep. 30, 1997:** Subcommittee Consideration and Mark-up Session held.
- Sep. 30, 1997:** Forwarded by Subcommittee to Full Committee (Amended) by Voice Vote.
- Oct. 7, 1997:** Committee Consideration and Mark-up Session held.
- Oct. 7, 1997:** Ordered to be Reported (Amended) by voice vote.
- Oct. 23, 1997:** Reported to House (Amended) by House Committee on the Judiciary. H. Rep. No. 105-339.
- Oct. 23, 1997:** Placed on the Union Calendar, Calendar No. 198.
- Nov. 4, 1997:** Called up by House under suspension of the rules. Considered by House as unfinished business. Passed House (Amended) by voice vote.

Senate Actions

- Nov. 5, 1997:** Received in the Senate and read twice and referred to the Committee on the Judiciary.
- Nov. 13, 1997:** Passed Senate without amendment by unanimous consent.
- Nov. 14, 1997:** Message on Senate action sent to the House.

Executive Actions

- Nov. 13, 1997:** Cleared for White House.
- Dec. 5, 1997:** Presented to President.

Dec. 16, 1997: Signed by President. Became Public Law No: 105-147.

II. Sonny Bono Copyright Extension Act

Senate Actions

- Mar. 20, 1997:** S. 505 read twice and referred to the Committee on the Judiciary.
- Mar. 26, 1998:** H.R. 2589 received in the Senate and read twice and referred to the Committee on Judiciary.
- Oct. 7, 1998:** S. 505 discharged by Senate Committee on the Judiciary. Measure laid before the Senate by unanimous consent. Amendment SP 3782 proposed by Senator Lott for Senator Hatch agreed to in Senate by unanimous consent. Passed Senate with an amendment by unanimous consent. Message on Senate action sent to the House.

House Actions

- Oct. 1, 1997:** H.R. 2589 referred to the House Committee on the Judiciary.
- Mar. 3, 1998:** Committee Consideration and Mark-up Session held on H.R. 2589.
- Mar. 4, 1998:** H.R. 2589 ordered to be Reported (Amended) by voice vote.
- Mar. 18, 1998:** H.R. 2589 reported to House (Amended) by House Committee on Judiciary. H. Rep. No.105-452.
- Mar. 18, 1998:** H.R. 2589 placed on the Union Calendar, Calendar No. 258.
- Mar. 24, 1998:** H.R. 2589 reported to House.
- Mar. 25, 1998:** H.R. 2589 Amendments: HA 531 Amendment offered by Representative Coble, and agreed to by voice vote; HA 533 Amendment Offered by Representative McCollum, and failed by recorded vote: 150 - 259; HA 532 Amendment Offered by Representative Sensenbrenner, and agreed to by recorded vote: 297 - 112. Rule H. Res. 390 passed House. Called up by House under the provisions of rule H. Res. 390. The House

adopted the amendment in the nature of a substitute as agreed to by the Committee of the whole House on the state of the Union. H.R. 2589 passed House (Amended) by voice vote.

Oct. 7, 1998: S. 505 called up by House under suspension of the rules and passed by voice vote.

Executive Actions

Oct. 7, 1998: Cleared for White House.

Oct. 15, 1998: Presented to President.

Oct. 27, 1998: Signed by President. Became Public Law No: 105-298.

III. Digital Millennium Copyright Act

House Actions

July 29, 1997: Referred to the House Committee on the Judiciary.

Aug. 7, 1997: Referred to the Subcommittee on Courts and Intellectual Property.

Sep. 16, 1997: Subcommittee hearings held.

Apr. 1, 1998: Committee consideration and mark-up session held.

Apr. 1, 1998: Ordered to be Reported (Amended) by voice vote.

May 22, 1998: Reported to House (Amended) by House Committee on 105-551, Part I.

May 22, 1998: Referred jointly and sequentially to the House Committee on Commerce.

Jun. 5, 1998: Subcommittee hearings held.

Jun. 17, 1998: Subcommittee consideration and mark-up session held.

Jul. 17, 1998: Committee consideration and mark-up session held.

Jul. 17, 1998: Ordered to be Reported (Amended) by Yeas- Nays vote: 41 - 0.

Jul. 22, 1998: Reported to House (Amended) by House Committee on Commerce. H.Rep No. 105-551,Part II.

- May 22, 1998:** Referred jointly and sequentially to the House Committee on Ways and Means.
- Jul. 22, 1998:** House Committee on Ways and Means discharged. Placed on the Union Calendar, Calendar No. 362.
- Aug. 4, 1998:** Called up by the House under suspension of the rules. Passed House (Amended) by voice vote.

Senate Actions

- Apr. 30, 1998:** S. 2037 ordered to be reported by the Committee on Judiciary.
- May 6, 1998:** S. 2037 reported to Senate by Senator Hatch without a report, and is placed on Senate Legislative Calendar under General Orders. Calendar No. 358.
- May 11, 1998:** By Senator Hatch from Committee on Judiciary filed written report on S. 2037. Report No. 105-190. Additional views filed.
- May 14, 1998:** S. 2037 laid before Senate by unanimous consent. Amendment SP 2411 proposed by Senator Hatch, and agreed to in Senate by voice vote. Passed Senate with an amendment by Yea-Nay vote. 99-0.
- Sep. 17, 1998:** Senate incorporated S. 2037 in H.R. 2281 as an amendment. Senate passed companion measure H.R. 2281 in lieu of this measure by unanimous consent. Senate vitiated previous passage. Indefinitely postponed by Senate by unanimous consent.
- Aug. 31, 1998:** Received in the Senate. Read twice. Placed on Senate Legislative Calendar under General Orders. Calendar No. 535.
- Sep. 17, 1998:** Measure laid before Senate by unanimous consent. Senate struck all after the Enacting Clause and substituted the language of S. 2037 amended. Passed Senate in lieu of S. 2037 with an amendment by unanimous consent.
- Sep. 18, 1998:** Message on Senate action sent to the House.

Oct. 8, 1998: Conference papers: Senate report and managers' statement official papers held at the desk in Senate. Message on Senate action sent to the House.

Conference Actions

Sep. 17, 1998: Senate insists on its amendment asks for a conference and appoints as conferees Sens. Hatch; Thurmond and Leahy.

Sep. 23, 1998: On motion that the House disagree to the Senate amendment, and agree to a conference Agreed to without objection. The Speaker appoints as conferees Reps. Hyde, Coble, Goodlatte, Conyers, Berman Bliley, Tauzin, and Dingell..

Sep. 24, 1998: Conference held.

Oct. 8, 1998: Conference report H. Rep No. 105-796 filed in House. Senate agreed to conference report by unanimous consent. Conferees agreed to file conference report.

Oct. 12, 1998: House agreed to conference report by voice vote.

Executive Actions

Oct. 12, 1998: Cleared for White House.

Oct. 20, 1998: Presented to President.

Oct. 28, 1998: Signed by President. Became Public Law No: 105-304.

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Document No. 26

Public Law 105-298
105th Congress

An Act

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

Oct. 27, 1998
[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

Sonny Bono
Copyright Term
Extension Act.
17 USC 101 note.

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 subsections (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)”;

(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”.

17 USC 101 note.

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.

17 USC 108 note.

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

Fairness In
Music Licensing
Act of 1998.

TITLE II—MUSIC LICENSING EXEMPTION FOR FOOD SERVICE OR DRINKING ESTABLISHMENTS

17 USC 101 note. 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 2,000 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 2,000 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 1 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 3,750 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 3,750 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.”.

17 USC 101 note. **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.

17 USC 101 note. **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.

Approved October 27, 1998.

LEGISLATIVE HISTORY—S. 505 (H.R. 2589):

HOUSE REPORTS: No. 105-452 accompanying H.R. 2589 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 144 (1998):

Oct. 7, considered and passed House and Senate.



Document No. 27

COPYRIGHT TERM EXTENSION ACT

MARCH 18, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. COBLE, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 2589]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2589) to amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Copyright Term Extension Act".

SEC. 2. 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 COPYRIGHT TERM EXTENSION ACT OF 1997.—Any copyright still in its renewal term at the time that the Copyright Term Extension Act of 1997 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 COPYRIGHT TERM EXTENSION ACT OF 1997.—In the case of any copyright other than a work made for hire, subsisting in its renewal term on the effective date of the Copyright Term Extension Act of 1997 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 Copyright Term Extension Act of 1997.

"(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 RENEWAL ACT OF 1992.—Section 102 of the Copyright Renewal 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 Copyright Term Extension Act of 1997"; 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. 3. 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, widower, children, and grandchildren are not living, the author's executors shall own the author's entire termination interest, or, in the absence of a will of the author, the author's next of kin shall own the author's entire termination interest, on a per stirpes basis according to the number of such author's next of kin represented. The share of the children of a dead next of kin at the same level of relationship to the author eligible to take a share of a termination interest can be exercised only by the action of a majority of them."

SEC. 4. 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. 5. 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 Act, 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. 6. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

PURPOSE AND SUMMARY

H.R. 2589, the "Copyright Term Extension Act," will extend the term of copyright protection in all copyrighted works that have not fallen into the public domain by twenty years.

BACKGROUND AND NEED FOR LEGISLATION

Pursuant to Article I, Section 8 of the United States Constitution, Title 17 of the United States Code gives the owners and authors of creative works an exclusive right to keep others from using

their work for a limited period of time through copyright protection.

The term of copyright protection varies depending on the type of work. Under current law, most creative works receive copyright protection for the life of the author plus fifty years. In a work created by two or more authors, the copyright term endures for the life of the last surviving author plus fifty years. In the case of anonymous works, pseudonymous works, and works made for hire, the copyright term endures for a period of seventy-five years from the year of its publication, or a term of one hundred years from its creation, whichever expires first. A work made for hire is a work prepared by an employee in the scope of his employment or a work that is specifically commissioned for use in certain types of works, such as a collective work or motion picture.

Upon the expiration of the copyright term, the work falls into the public domain. This means that anyone may perform the work, display the work, make copies of the work, distribute copies of the work, and create derivative works based on the work without first having to get authorization from the copyright holder. Essentially, the copyright holder no longer has the exclusive ability to exploit the work to their financial gain and no longer "owns" the work.

The United States has international obligations to protect copyrights as well. The Berne Convention, originally drafted in 1886, is the international treaty which mandates basic copyright protection rules for its member countries. Currently there are over 100 countries that are members of the convention. The United States became a member in 1989. Under the Berne Convention, member countries must protect copyright for a term of life of the author plus fifty years. Under "the rule of the shorter term", member states need only protect the work of foreign authors to the same extent that they would be protected in their country of origin.

In 1995, the European Union extended the copyright term for all of its member states from life of the author plus fifty years to life of the author plus seventy years. As the world leader in the export of intellectual property, this has profound effects for the United States if it does not extend copyright term as well.

European Union countries, which are huge markets for U.S. intellectual property, would not have to provide twenty years of copyright protection to U.S. works and the U.S. would lose millions of dollars in export revenues. Extending copyright term to life of the author plus seventy years means that U.S. works will generally be protected for the same amount of time as works created by European Union authors. Therefore, the United States will ensure that profits generated from the sale of U.S. intellectual property abroad will come back to the United States.

Extending copyright protection will be an incentive for U.S. authors to continue using their creativity to produce works, and provide copyright owners generally with the incentive to restore older works and further disseminate them to the public. Authors will be able to pass along to their children and grandchildren the financial benefits of their works.

HEARINGS

The Committee's Subcommittee on Courts and Intellectual Property held a hearing on the issue of copyright term extension on June 27, 1997. Testimony was received from Fritz Attaway representing the Motion Picture Association of America; George David Weiss, representing the Songwriters Guild of America; Frances Preston, representing Broadcast Music, Incorporated; and Professor Jerome Reichman of Vanderbilt Law School.

COMMITTEE CONSIDERATION

On September 30, 1997, the Subcommittee on Courts and Intellectual Property met in open session and ordered reported the bill H.R. 2589 by voice vote, a quorum being present. On March 3, 4, 1998, the Committee met in open session and ordered reported favorably the bill H.R. 2589, as amended, by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 2589, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 11, 1998.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2589, the Copyright Term Extension Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kim Cawley.

Sincerely,

JUNE E. O'NEILL, *Director*.

Enclosure.

H.R. 2589—Copyright Term Extension Act

CBO estimates that enacting this bill would not have a significant effect on the federal budget. We estimate the Copyright Office would spend less than \$500,000 to promulgate necessary regulations if the bill were enacted. Because enactment of this bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 2589 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not affect the budgets of state, local, or tribal governments.

H.R. 2589 would extend the copyright term for works created on or after January 1, 1978, from life of the author plus 50 years after the author's death to life of the author plus 70 years after death. The bill would extend most other current copyrights for an additional 20 years. The bill also would direct the Copyright Office to prepare regulations to allow libraries to reproduce works in hard copies or in digital form during the 20-year copyright extension period, for purposes of preservation, scholarships, or research, provided certain conditions are met. Based on information from the Copyright Office, we estimate that promulgating these regulations and updating the office's printed materials would cost less than \$500,000, assuming appropriation of the necessary amounts.

The CBO staff contact for this estimate is Kim Cawley. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

SECTION 1. SHORT TITLE

This section states that this bill may be cited as the "Copyright Term Extension Act."

SECTION 2. DURATION OF COPYRIGHT PROVISIONS

Subsection (a), Preemption With Respect to Other Laws

Section 301(c) of the current copyright statute contains an exception to the general preemption of state common law and statutory copyright. The exception "grandfathers" state common law and statutory protection for sound recordings against record piracy for 75 years from February 15, 1972, the date the federal copyright statute was amended to first grant federal protection for sound recordings. Because this bill will extend the total term of protection for pre-1978 copyrighted works by 20 years, to a total of 95 years, a similar 20-year extension is to be given to the "grandfathered" pre-February 15, 1972 sound recordings in H.R. 2589.

Subsection (b), Duration of Copyright: Works created on or After January 1, 1978

Section 302(a) of the current copyright statute grants a basic term of life-plus-50-years; in the case of joint works, Section 302(b) measures the "life" by that of the longest surviving co-author. The bill makes both terms life-plus-70-years. Section 302(c) of the current statute grants a term of 75 years from publication or 100 years from creation (whichever expires first) in the cases of works made for hire, anonymous and pseudonymous works (as there is no known "life" to be measured in those cases). The bill extends those terms by 20 years, to 95 years from publication or 120 years from creation, whichever expires first. Section 302(e) of the current statute establishes a presumption with respect to an author's death: if a search of Copyright Office records made after 75 years from publication or 100 years from creation of a work does not disclose that the author died within the past 50 years, the author is presumed dead for at least 50 years and no infringement action will lie. The bill extends all those time periods by 20 years.

Subsection (c), Duration of Copyright: Works Created but Not Published or Copyrighted Before January 1, 1978

Prior to January 1, 1978, state common law copyright for unpublished works was perpetual. The 1976 Copyright Act preempted such perpetual common law protection, and the perpetual term for unpublished works protected by common law on January 1, 1978 transformed to the life-plus-50-years (or other applicable) term. However, because some of those unpublished works were written by authors who had been dead for more than 50 years on January 1, 1978, it was thought unfair to thrust those works into the public domain immediately (which would have been the effect if the life-plus-50-year term were applied). Section 303 of the current law gave those unpublished works a minimum of 25 years of protection until December 31, 2002. In order to provide an incentive to make those works available to the public, an additional 25 years was provided if the work was published before December 31, 2002, making the potentially available term last through the year 2027. In the 104th Congress, the bill H.R. 989 extended both of these dates. H.R. 2589 leaves unaffected the ordinary term for section 303 works, so that protection expires at the latest in the year 2002. These older works by definition have not been subject to commercial exploitation, so that the benefit from extending the term of protection for this category of works do not outweigh the detriments from limiting public access to these often historically significant works. However, works in this category that are published before the year 2002 would have protection until the year 2047, an extra twenty years beyond the current possible term.

Subsection (d), Duration of Copyright: Subsisting Copyrights

Subsection (d)(1) In General

This section amends Section 304(a) which deals with copyrights in their first term on January 1, 1978. Under current law, works in their first term are eligible for a renewal term of 47 years. H.R. 2589 will extend the renewal term of copyright protection by twen-

ty years making it a 67 year renewal term. This section also amends Section 304(b) which deals with copyrights in their renewal term before January 1, 1978. Under current law, works in their renewal term before January 1, 1978, received a term of seventy-five years from the date copyright was originally secured. This bill would extend that term to ninety-five years from the date copyright was originally secured. This bill also subjects to termination any exclusive or nonexclusive transfers or licenses of works in their renewal term in certain circumstances. This is to allow the original authors of works and their beneficiaries to benefit from the extended copyright protection.

Subsection (d)(2), Copyright Renewal Act of 1992 Amendment

In 1992, Public Law 102-307 (the Copyright Renewal Act of 1992) amended the then-current Section 304(a) to make renewals of pre-1978 works automatic rather than dependent on timely filing of a renewal application. Section 102(2) of Title I of Public Law 102-307 spoke of the effect of renewal "for a further term of 47 years" on grants of transfer or license made before the amendment went into effect. As the bill will make the renewal term 67 rather than 47 years, this provision of Public Law 102-307 is accordingly amended, to avoid any implication that a shorter term still applies to some older works.

**SECTION 3. TERMINATION OF TRANSFERS AND LICENSES COVERING
EXTENDED RENEWAL TERM**

This section amends Sections 203(a)(2) and 304(c)(2) by allowing an author's executor to receive his entire termination interest in the event that the author's widow, widower, children, or grandchildren are not living, or in the absence of a will, the author's next of kin shall own the author's entire termination interest.

SECTION 4. REPRODUCTION BY LIBRARIES AND ARCHIVES

This section is designed to permit libraries and archives to make certain uses of copyrighted material, including in digital form, during the 20-year extension, in certain circumstances. This is an exemption for libraries and archives, or other nonprofit educational institution, allowing them to reproduce, distribute, display, or perform a copy of a work or phonorecord for purposes of preservation, scholarship, or research. However, the exemption applies only where the entity has determined after reasonable investigation, that none of the following conditions apply: (1) that the work is subject to normal commercial exploitation, (2) a copy of the work can be obtained at a reasonable price, and (3) the copyright owner or its agents have provided notice that either of the first two conditions apply. This exemption would allow library users the benefit of access to published works that are not commercially exploited or otherwise reasonably available during the extended term.

**SECTION 5. VOLUNTARY NEGOTIATION REGARDING DIVISION OF
ROYALTIES**

This is a new provision containing a Sense of Congress that the parties involved in the making of motion pictures should negotiate

voluntarily and in good faith to decide amongst themselves the amount of remuneration to be divided between them for the amounts received as a result of this bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 17, UNITED STATES CODE

* * * * *

CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

* * * * *

§ 108. Limitations on exclusive rights: Reproduction by libraries and archives

(a) * * *

* * * * *

(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.

[(h)] *(i) The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections (b) and (c), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).*

* * * * *

CHAPTER 2—COPYRIGHT OWNERSHIP AND TRANSFER

* * * * *

§ 203. Termination of transfers and licenses granted by the author

(a) **CONDITIONS FOR TERMINATION.**—In the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, otherwise than by will, is subject to termination under the following conditions:

(1) * * *

(2) Where an author is dead, his or her termination interest is owned, and may be exercised, [by his widow or her widower and his or her children or grandchildren] as follows:

(A) * * *

* * * * *

(D) In the event that the author's widow, widower, children, and grandchildren are not living, the author's executors shall own the author's entire termination interest, or, in the absence of a will of the author, the author's next of kin shall own the author's entire termination interest, on a per stirpes basis according to the number of such author's next of kin represented. The share of the children of a dead next of kin at the same level of relationship to the author eligible to take a share of a termination interest can be exercised only by the action of a majority of them.

* * * * *

CHAPTER 3—DURATION OF COPYRIGHT

* * * * *

§ 301. Preemption with respect to other laws

(a) * * *

* * * * *

(c) With respect to sound recordings fixed before February 15, 1972, any rights or remedies under the common law or statutes of any State shall not be annulled or limited by this title until February 15, [2047] 2067. The preemptive provisions of subsection (a) shall apply to any such rights and remedies pertaining to any cause of action arising from undertakings commenced on and after February 15, 2047. Notwithstanding the provisions of section 303, no sound recording fixed before February 15, 1972, shall be subject to copyright under this title before, on, or after February 15, [2047] 2067.

* * * * *

§ 302. Duration of copyright: Works created on or after January 1, 1978

(a) **IN GENERAL.**—Copyright in a work created on or after January 1, 1978, subsists from its creation and, except as provided by

the following subsections, endures for a term consisting of the life of the author and [fifty] 70 years after the author's death.

(b) JOINT WORKS.—In the case of a joint work prepared by two or more authors who did not work for hire, the copyright endures for a term consisting of the life of the last surviving author and [fifty] 70 years after such last surviving author's death.

(c) ANONYMOUS WORKS, PSEUDONYMOUS WORKS, AND WORKS MADE FOR HIRE.—In the case of an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of [seventy-five] 95 years from the year of its first publication, or a term of [one hundred] 120 years from the year of its creation, whichever expires first. If, before the end of such term, the identity of one or more of the authors of an anonymous or pseudonymous work is revealed in the records of a registration made for that work under subsections (a) or (d) of section 408, or in the records provided by this subsection, the copyright in the work endures for the term specified by subsection (a) or (b), based on the life of the author or authors whose identity has been revealed. Any person having an interest in the copyright in an anonymous or pseudonymous work may at any time record, in records to be maintained by the Copyright Office for that purpose, a statement identifying one or more authors of the work; the statement shall also identify the person filing it, the nature of that person's interest, the source of the information recorded, and the particular work affected, and shall comply in form and content with requirements that the Register of Copyrights shall prescribe by regulation.

* * * * *

(e) PRESUMPTION AS TO AUTHOR'S DEATH.—After a period of [seventy-five] 95 years from the year of first publication of a work, or a period of [one hundred] 120 years from the year of its creation, whichever expires first, any person who obtains from the Copyright Office a certified report that the records provided by subsection (d) disclose nothing to indicate that the author of the work is living, or died less than [fifty] 70 years before, is entitled to the benefits of a presumption that the author has been dead for at least [fifty] 70 years. Reliance in good faith upon this presumption shall be a complete defense to any action for infringement under this title.

§ 303. Duration of copyright: Works created but not published or copyrighted before January 1, 1978

(a) Copyright in a work created before January 1, 1978, but not theretofore in the public domain or copyrighted, subsists from January 1, 1978, and endures for the term provided by section 302. In no case, however, shall the term of copyright in such a work expire before December 31, 2002; and, if the work is published on or before December 31, 2002, the term of copyright shall not expire before December 31, [2027] 2047.

* * * * *

§ 304. Duration of copyright: Subsisting copyrights

(a) COPYRIGHTS IN THEIR FIRST TERM ON JANUARY 1, 1978.—(1)(A) Any copyright, the first term of which is subsisting on Janu-

ary 1, 1978, shall endure for 28 years from the date it was originally secured.

(B) In the case of—

(i) * * *

* * * * *

the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of [47] 67 years.

(C) In the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work—

(i) * * *

* * * * *

shall be entitled to a renewal and extension of the copyright in such work for a further term of [47] 67 years.

(2)(A) At the expiration of the original term of copyright in a work specified in paragraph (1)(B) of this subsection, the copyright shall endure for a renewed and extended further term of [47] 67 years, which—

(i) * * *

* * * * *

(B) At the expiration of the original term of copyright in a work specified in paragraph (1)(C) of this subsection, the copyright shall endure for a renewed and extended further term of [47] 67 years, which—

(i) * * *

* * * * *

(3)(A) An application to register a claim to the renewed and extended term of copyright in a work may be made to the Copyright Office—

(i) within 1 year before the expiration of the original term of copyright by any person entitled under paragraph (1)(B) or (C) to such further term of [47] 67 years; and

* * * * *

(B) Such an application is not a condition of the renewal and extension of the copyright in a work for a further term of [47] 67 years.

* * * * *

[(b) COPYRIGHTS IN THEIR RENEWAL TERM OR REGISTERED FOR RENEWAL BEFORE JANUARY 1, 1978.—The duration of any copyright, the renewal term of which is subsisting at any time between December 31, 1976, and December 31, 1977, inclusive, or for which renewal registration is made between December 31, 1976, and December 31, 1977, inclusive, is extended to endure for a term of seventy-five years from the date copyright was originally secured.]

(b) COPYRIGHTS IN THEIR RENEWAL TERM AT THE TIME OF THE EFFECTIVE DATE OF THE COPYRIGHT TERM EXTENSION ACT OF 1997.—Any copyright still in its renewal term at the time that the Copyright Term Extension Act of 1997 becomes effective shall have a copyright term of 95 years from the date copyright was originally secured.

(c) **TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM.**—In the case of any copyright subsisting in either its first or renewal term on January 1, 1978, other than a copyright in a work made for hire, 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 by subsection (a)(1)(C) of this section, otherwise than by will, is subject to termination under the following conditions:

(1) * * *

(2) Where an author is dead, his or her termination interest is owned, and may be exercised, [by his widow or her widower and his or her children or grandchildren] as follows:

(A) * * *

* * * * *

(D) In the event that the author's widow, widower, children, and grandchildren are not living, the author's executors shall own the author's entire termination interest, or, in the absence of a will of the author, the author's next of kin shall own the author's entire termination interest, on a per stirpes basis according to the number of such author's next of kin represented. The share of the children of a dead next of kin at the same level of relationship to the author eligible to take a share of a termination interest can be exercised only by the action of a majority of them.

* * * * *

(4) The termination shall be effected by serving an advance notice in writing upon the grantee or the grantee's successor in title. In the case of a grant executed by a person or persons other than the author, the notice shall be signed by all of those entitled to terminate the grant under clause (1) of this subsection, or by their duly authorized agents. In the case of a grant executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or his or her duly authorized agent or, if that author is dead, by the number and proportion of the owners of his or her termination interest required under clauses (1) and (2) of this subsection, or by their duly authorized agents.

(A) The notice shall state the effective date of the termination, which shall fall within the five-year period specified by clause (3) of this subsection, *or, in the case of a termination under subsection (d), within the five-year period specified by subsection (d)(2)*, and the notice shall be served not less than two or more than ten years before that date. A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.

* * * * *

(d) TERMINATION RIGHTS PROVIDED IN SUBSECTION (c) WHICH HAVE EXPIRED ON OR BEFORE THE EFFECTIVE DATE OF THE COPYRIGHT TERM EXTENSION ACT OF 1997.—*In the case of any copyright other than a work made for hire, subsisting in its renewal term on the effective date of the Copyright Term Extension Act of 1997 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 Copyright Term Extension Act of 1997.

(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.

* * * * *

SECTION 102 OF THE COPYRIGHT RENEWAL ACT OF 1992

* * * * *

SEC. 102. COPYRIGHT RENEWAL PROVISIONS.

(a) * * *

* * * * *

(c) **LEGAL EFFECT OF RENEWAL OF COPYRIGHT UNCHANGED.**—The renewal and extension of a copyright for a further term of [47] 67 years provided for under paragraphs (1) and (2) of section 304(a) of title 17, United States Code [(as amended by subsection (a) of this section)] shall have the same effect with respect to any grant, before the [effective date of this section] *effective date of the Copyright Term Extension Act of 1997*, of a transfer or license of the further term as did the renewal of a copyright before the [effective date of this section] *effective date of the Copyright Term Extension Act of 1997* under the law in effect at the time of such grant.

* * * * *

(g) **EFFECTIVE DATE; COPYRIGHTS AFFECTED BY AMENDMENT.**—(1) Subject to paragraphs (2) and (3), this section and the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) The amendments made by this section shall apply only to those copyrights secured between January 1, 1964, and December 31, 1977. Copyrights secured before January 1, 1964, shall be governed by the provisions of section 304(a) of title 17, United States Code, as in effect on the day before the effective date of this section, *except each reference to forty-seven years in such provisions shall be deemed to be 67 years.*

* * * * *

ADDITIONAL VIEWS OF CONGRESSWOMAN ZOE LOFGREN

Despite opposition from much of the academic legal community, The New York Times, and others, to the extension of the term of copyrights through H.R. 2589, I have been a supporter of extending the term. I have supported term extension because I believe that the reciprocal recognition of copyrights by the European Union—part of the tradeoff if the United States extends copyright terms—is important for American copyright holders. However, I signed on as an original cosponsor of H.R. 2589 with the understanding that the original bill was only a starting point and not a final product.

While the objectives of H.R. 2589 are important, the bill could be improved. In Subcommittee and at full Committee markup, I asked that H.R. 2589 deal with the narrow, yet important, situation when a creative work is lawfully possessed by a library or school, remains protected by copyright solely as a consequence of the term extension under H.R. 2589, yet is commercially unavailable. When we consider that copyright terms will grow to last long after the creator has passed on, it is reasonable to expect that there will be some copyrighted works that, toward the end of their copyright term, will be out-of-print or unavailable. In that narrow case, I think it makes sense to allow, for the purposes of research, private study, or archival activities, the work to be used as if it were still in the public domain.

This would be a benign and public-spirited exception, which would cause no damage to copyright holders. For instance, in the amendment considered and rejected by voice vote at full Committee markup, this publication-profit exception could have been terminated merely by a notification by the copyright holder to the copyright office or the public/non-profit institution that commercial exploitation was taking place or contemplated.

While the failure to adopt this amendment is not fatal to the bill, I believe it is important to listen carefully to schools and libraries and to craft provisions of law that will assist them in their honorable mission to disseminate the accumulated knowledge and wisdom of mankind. Therefore, despite the fact that the amendment rejected in full Committee was narrow and arcane, I still believe that it is important for the Congress to consider and adopt some amendment to this bill that will accommodate the mission of public sector libraries and schools to assist in the intellectual development of humankind.

ZOE LOFGREN.

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Document No. 28

PROVIDING FOR THE CONSIDERATION OF H.R. 2589, THE
COPYRIGHT TERM EXTENSION ACT

MARCH 24, 1998.—Referred to the House Calendar and ordered to be printed

Mr. DIAZ-BALART, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 390]

The Committee on Rules, having had under consideration House Resolution 390, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

BRIEF SUMMARY OF PROVISIONS OF RESOLUTION

The resolution provides for the consideration of H.R. 2589, the "Copyright Term Extension Act" under a modified open rule. The rule provides one hour of general debate divided equally between the chairman and ranking minority member of the Committee on the Judiciary.

The rule makes in order the amendment in the nature of a substitute recommended by the Committee on the Judiciary as an original bill for the purpose of amendment and provides that it will be considered as read.

The rule provides that no amendment to the committee amendment in the nature of a substitute will be in order unless printed in the Congressional Record. The rule waives points of order against the amendment by Mr. Sensenbrenner printed in the Congressional Record and numbered 1 for failure to comply with clause 7 of rule XVI (prohibiting nongermane amendments).

The rule allows the chairman of the Committee of the Whole to postpone votes during consideration of the bill, and reduce voting time to five minutes on a postponed question if the vote follows a fifteen minute vote. Finally, the rule provides for one motion to recommit with or without instructions.



Document No. 29

105TH CONGRESS
1ST SESSION

S. 505

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

IN THE SENATE OF THE UNITED STATES

MARCH 20, 1997

Mr. HATCH (for himself, Mr. LEAHY, Mr. D'AMATO, Mr. THOMPSON, Mr. ABRAHAM, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Copyright Term Ex-
5 tension Act of 1997”.

6 **SEC. 2. DURATION OF COPYRIGHT PROVISIONS.**

7 (a) **PREEMPTION WITH RESPECT TO OTHER**
8 **LAWS.**—Section 301(c) of title 17, United States Code,

1 is amended by striking “February 15, 2047” each place
2 it appears and inserting “February 15, 2067”.

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

6 (1) in subsection (a) by striking “fifty” and in-
7 serting “70”;

8 (2) in subsection (b) by striking “fifty” and in-
9 serting “70”;

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

11 (A) by striking “seventy-five” and insert-
12 ing “95”; and

13 (B) by striking “one hundred” and insert-
14 ing “120”; and

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

16 (A) by striking “seventy-five” and insert-
17 ing “95”;

18 (B) by striking “one hundred” and insert-
19 ing “120”; and

20 (C) by striking “fifty” each place it ap-
21 pears and inserting “70”.

22 (e) DURATION OF COPYRIGHT: WORKS CREATED
23 BUT NOT PUBLISHED OR COPYRIGHTED BEFORE JANU-
24 ARY 1, 1978.—Section 303 of title 17, United States

1 Code, is amended in the second sentence by striking “De-
2 cember 31, 2027” and inserting “December 31, 2047”.

3 (d) DURATION OF COPYRIGHT: SUBSISTING COPY-
4 RIGHTS.—

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

7 (A) in subsection (a)—

8 (i) in paragraph (1)—

9 (I) in subparagraph (B) by strik-
10 ing “47” and inserting “67”; and

11 (II) in subparagraph (C) by
12 striking “47” and inserting “67”;

13 (ii) in paragraph (2)—

14 (I) in subparagraph (A) by strik-
15 ing “47” and inserting “67”; and

16 (II) in subparagraph (B) by
17 striking “47” and inserting “67”; and

18 (iii) in paragraph (3)—

19 (I) in subparagraph (A)(i) by
20 striking “47” and inserting “67”; and

21 (II) in subparagraph (B) by
22 striking “47” and inserting “67”;

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

1 “(b) COPYRIGHTS IN THEIR RENEWAL TERM AT THE
 2 TIME OF THE EFFECTIVE DATE OF THE COPYRIGHT
 3 TERM EXTENSION ACT OF 1997.—Any copyright still in
 4 its renewal term at the time that the Copyright Term Ex-
 5 tension Act of 1997 becomes effective shall have a copy-
 6 right term of 95 years from the date copyright was origi-
 7 nally secured.”;

8 (C) in subsection (c)(4)(A) in the first sen-
 9 tence by inserting “or, in the case of a termi-
 10 nation under subsection (d), within the five-year
 11 period specified by subsection (d)(2),” after
 12 “specified by clause (3) of this subsection,”;
 13 and

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

16 “(d) TERMINATION RIGHTS PROVIDED IN SUB-
 17 SECTION (c) WHICH HAVE EXPIRED ON OR BEFORE THE
 18 EFFECTIVE DATE OF THE COPYRIGHT TERM EXTENSION
 19 ACT OF 1997.—In the case of any copyright other than
 20 a work made for hire, subsisting in its renewal term on
 21 the effective date of the Copyright Term Extension Act
 22 of 1997 for which the termination right provided in sub-
 23 section (c) has expired by such date, where the author or
 24 owner of the termination right has not previously exercised
 25 such termination right, the exclusive or nonexclusive grant

1 . of a transfer or license of the renewal copyright or any
 2 right under it, executed before January 1, 1978, by any
 3 of the persons designated in subsection (a)(1)(C) of this
 4 section, other than by will, is subject to termination under
 5 the following conditions:

6 “(1) The conditions specified in subsection (c)
 7 (1), (2), (4), (5), and (6) of this section apply to ter-
 8 minations of the last 20 years of copyright term as
 9 provided by the amendments made by the Copyright
 10 Term Extension Act of 1997.

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

15 (2) COPYRIGHT RENEWAL ACT OF 1992.—Sec-
 16 tion 102 of the Copyright Renewal Act of 1992
 17 (Public Law 102–307; 106 Stat. 266; 17 U.S.C. 304
 18 note) is amended—

19 (A) in subsection (c)—

20 (i) by striking “47” and inserting
 21 “67”;

22 (ii) by striking “(as amended by sub-
 23 section (a) of this section)”; and

24 (iii) by striking “effective date of this
 25 section” each place it appears and insert-

1 ing “effective date of the Copyright Term
2 Extension Act of 1997”; and
3 (B) in subsection (g)(2) in the second sen-
4 tence by inserting before the period the follow-
5 ing: “, except each reference to forty-seven
6 years in such provisions shall be deemed to be
7 67 years”.

8 **SEC. 3. REPRODUCTION BY LIBRARIES AND ARCHIVES.**

9 Section 108 of title 17, United States Code, is
10 amended—

11 (1) by redesignating subsection (h) as sub-
12 section (i); and

13 (2) by inserting after subsection (g) the follow-
14 ing:

15 “(h)(1) For purposes of this section, during the last
16 20 years of any term of copyright of a published work,
17 a library or archives, including a nonprofit educational in-
18 stitution that functions as such, may reproduce, distrib-
19 ute, display, or perform in facsimile or digital form a copy
20 or phonorecord of such work, or portions thereof, for pur-
21 poses of preservation, scholarship, or research, if such li-
22 brary or archives has first determined, on the basis of a
23 reasonable investigation, that none of the conditions set
24 forth in subparagraphs (A), (B), and (C) of paragraph
25 (2) apply.

1 “(2) No reproduction, distribution, display, or per-
2 formance is authorized under this subsection if—

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

5 “(B) a copy or phonorecord of the work can be
6 obtained at a reasonable price; or

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

11 “(3) The exemption provided in this subsection does
12 not apply to any subsequent uses by users other than such
13 library or archives.”.

14 **SEC. 4. DISTRIBUTION OF PHONORECORDS.**

15 Section 303 of title 17, United States Code, is
16 amended—

17 (1) in the first sentence by striking “Copy-
18 right” and inserting “(a) Copyright”; and

19 (2) by adding at the end the following:

20 “(b) The distribution before January 1, 1978, of
21 phonorecords shall not constitute publication of the musi-
22 cal work embodied therein for purposes of the Copyright
23 Act of 1909.”.

1 **SEC. 5. EFFECTIVE DATES.**

2 (a) **IN GENERAL.**—Except as provided in subsection
3 (b), this Act and the amendments made by this Act shall
4 take effect on the date of the enactment of this Act.

5 (b) **DISTRIBUTION OF PHONORECORDS.**—The
6 amendment made by section 4 shall not be a basis to re-
7 open an action nor to commence a subsequent action for
8 copyright infringement if an action in which such claim
9 was raised was dismissed by final judgment before the
10 date of enactment of this Act. The amendment made by
11 section 4 shall not apply to any action pending on the date
12 of enactment in any court in which a party, prior to the
13 date of enactment, sought dismissal of, judgment on, or
14 declaratory relief regarding a claim of infringement by ar-
15 guing that the adverse party had no valid copyright in a
16 musical work by virtue of the distribution of phonorecords
17 embodying it.

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Document No. 30

105TH CONGRESS
2^D SESSION

S. 505

AN ACT

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—COPYRIGHT TERM**
4 **EXTENSION**

5 **SEC. 101. SHORT TITLE.**

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

1 **SEC. 102. DURATION OF COPYRIGHT PROVISIONS.**

2 (a) **PREEMPTION WITH RESPECT TO OTHER**
3 **LAWS.**—Section 301(e) of title 17, United States Code,
4 is amended by striking “February 15, 2047” each place
5 it appears and inserting “February 15, 2067”.

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

9 (1) in subsection (a) by striking “fifty” and in-
10 sserting “70”;

11 (2) in subsection (b) by striking “fifty” and in-
12 sserting “70”;

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

14 (A) by striking “seventy-five” and insert-
15 ing “95”; and

16 (B) by striking “one hundred” and insert-
17 ing “120”; and

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

19 (A) by striking “seventy-five” and insert-
20 ing “95”;

21 (B) by striking “one hundred” and insert-
22 ing “120”; and

23 (C) by striking “fifty” each place it ap-
24 pears and inserting “70”.

25 (c) **DURATION OF COPYRIGHT: WORKS CREATED**
26 **BUT NOT PUBLISHED OR COPYRIGHTED BEFORE JANU-**

1 ARY 1, 1978.—Section 303 of title 17, United States
 2 Code, is amended in the second sentence by striking “De-
 3 cember 31, 2027” and inserting “December 31, 2047”.

4 (d) DURATION OF COPYRIGHT: SUBSISTING COPY-
 5 RIGHTS.—

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

8 (A) in subsection (a)—

9 (i) in paragraph (1)—

10 (I) in subparagraph (B) by strik-
 11 ing “47” and inserting “67”; and

12 (II) in subparagraph (C) by
 13 striking “47” and inserting “67”;

14 (ii) in paragraph (2)—

15 (I) in subparagraph (A) by strik-
 16 ing “47” and inserting “67”; and

17 (II) in subparagraph (B) by
 18 striking “47” and inserting “67”; and

19 (iii) in paragraph (3)—

20 (I) in subparagraph (A)(i) by
 21 striking “47” and inserting “67”; and

22 (II) in subparagraph (B) by
 23 striking “47” and inserting “67”;

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

1 “(b) COPYRIGHTS IN THEIR RENEWAL TERM AT THE
 2 TIME OF THE EFFECTIVE DATE OF THE SONNY BONO
 3 COPYRIGHT TERM EXTENSION ACT.—Any copyright still
 4 in its renewal term at the time that the Sonny Bono Copy-
 5 right Term Extension Act becomes effective shall have a
 6 copyright term of 95 years from the date copyright was
 7 originally secured.”;

8 (C) in subsection (c)(4)(A) in the first sen-
 9 tence by inserting “or, in the case of a termi-
 10 nation under subsection (d), within the five-year
 11 period specified by subsection (d)(2),” after
 12 “specified by clause (3) of this subsection,”;
 13 and

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

16 “(d) TERMINATION RIGHTS PROVIDED IN SUB-
 17 SECTION (c) WHICH HAVE EXPIRED ON OR BEFORE THE
 18 EFFECTIVE DATE OF THE SONNY BONO COPYRIGHT
 19 TERM EXTENSION ACT.—In the case of any copyright
 20 other than a work made for hire, subsisting in its renewal
 21 term on the effective date of the Sonny Bono Copyright
 22 Term Extension Act for which the termination right pro-
 23 vided in subsection (c) has expired by such date, where
 24 the author or owner of the termination right has not pre-
 25 viously exercised such termination right, the exclusive or

1 nonexclusive grant of a transfer or license of the renewal
 2 copyright or any right under it, executed before January
 3 1, 1978, by any of the persons designated in subsection
 4 (a)(1)(C) of this section, other than by will, is subject to
 5 termination under the following conditions:

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

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

15 (2) COPYRIGHT AMENDMENTS ACT OF 1992.—
 16 Section 102 of the Copyright Amendments Act of
 17 1992 (Public Law 102–307; 106 Stat. 266; 17
 18 U.S.C. 304 note) is amended—

19 (A) in subsection (c)—

20 (i) by striking “47” and inserting
 21 “67”;

22 (ii) by striking “(as amended by sub-
 23 section (a) of this section)”; and

24 (iii) by striking “effective date of this
 25 section” each place it appears and insert-

1 ing “effective date of the Sonny Bono
2 Copyright Term Extension Act”; and
3 (B) in subsection (g)(2) in the second sen-
4 tence by inserting before the period the follow-
5 ing: “, except each reference to forty-seven
6 years in such provisions shall be deemed to be
7 67 years”.

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

10 Sections 203(a)(2) and 304(c)(2) of title 17, United
11 States Code, are each amended—

12 (1) by striking “by his widow or her widower
13 and his or her children or grandchildren”; and

14 (2) by inserting after subparagraph (C) the fol-
15 lowing:

16 “(D) In the event that the author’s widow
17 or widower, children, and grandchildren are not
18 living, the author’s executor, administrator, per-
19 sonal representative, or trustee shall own the
20 author’s entire termination interest.”.

21 **SEC. 104. REPRODUCTION BY LIBRARIES AND ARCHIVES.**

22 Section 108 of title 17, United States Code, is
23 amended—

24 (1) by redesignating subsection (h) as sub-
25 section (i); and

1 (2) by inserting after subsection (g) the follow-
2 ing:

3 “(h)(1) For purposes of this section, during the last
4 20 years of any term of copyright of a published work,
5 a library or archives, including a nonprofit educational in-
6 stitution that functions as such, may reproduce, distrib-
7 ute, display, or perform in facsimile or digital form a copy
8 or phonorecord of such work, or portions thereof, for pur-
9 poses of preservation, scholarship, or research, if such li-
10 brary or archives has first determined, on the basis of a
11 reasonable investigation, that none of the conditions set
12 forth in subparagraphs (A), (B), and (C) of paragraph
13 (2) apply.

14 “(2) No reproduction, distribution, display, or per-
15 formance is authorized under this subsection if—

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

18 “(B) a copy or phonorecord of the work can be
19 obtained at a reasonable price; or

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

1 “(3) The exemption provided in this subsection does
2 not apply to any subsequent uses by users other than such
3 library or archives.”.

4 **SEC. 105. VOLUNTARY NEGOTIATION REGARDING DIVISION**
5 **OF ROYALTIES.**

6 It is the sense of the Congress that copyright owners
7 of audiovisual works for which the term of copyright pro-
8 tection is extended by the amendments made by this title,
9 and the screenwriters, directors, and performers of those
10 audiovisual works, should negotiate in good faith in an ef-
11 fort to reach a voluntary agreement or voluntary agree-
12 ments with respect to the establishment of a fund or other
13 mechanism for the amount of remuneration to be divided
14 among the parties for the exploitation of those audiovisual
15 works.

16 **SEC. 106. EFFECTIVE DATE.**

17 This title and the amendments made by this title
18 shall take effect on the date of the enactment of this Act.

19 **TITLE II—MUSIC LICENSING EX-**
20 **EMPTION FOR FOOD SERVICE**
21 **OR DRINKING ESTABLISH-**
22 **MENTS**

23 **SEC. 201. SHORT TITLE.**

24 This title may be cited as the “Fairness In Music
25 Licensing Act of 1998.”

1 **SEC. 202. EXEMPTIONS.**

2 (a) **EXEMPTIONS FOR CERTAIN ESTABLISHMENTS.—**

3 Section 110 of title 17, United States Code is amended—

4 (1) in paragraph (5)—

5 (A) by striking “(5)” and inserting
6 “(5)(A) except as provided in subparagraph
7 (B),”; and

8 (B) by adding at the end the following:

9 “(B) communication by an establishment
10 of a transmission or retransmission embodying
11 a performance or display of a nondramatic mu-
12 sical work intended to be received by the gen-
13 eral public, originated by a radio or television
14 broadcast station licensed as such by the Fed-
15 eral Communications Commission, or, if an
16 audiovisual transmission, by a cable system or
17 satellite carrier, if—

18 “(i) in the case of an establishment
19 other than a food service or drinking es-
20 tablishment, either the establishment in
21 which the communication occurs has less
22 than 2000 gross square feet of space (ex-
23 cluding space used for customer parking
24 and for no other purpose), or the establish-
25 ment in which the communication occurs
26 has 2000 or more gross square feet of

1 space (excluding space used for customer
2 parking and for no other purpose) and—

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

10 “(II) if the performance or dis-
11 play is by audiovisual means, any vis-
12 ual portion of the performance or dis-
13 play is communicated by means of a
14 total of not more than 4 audiovisual
15 devices, of which not more than one
16 audiovisual device is located in any 1
17 room, and no such audiovisual device
18 has a diagonal screen size greater
19 than 55 inches, and any audio portion
20 of the performance or display is com-
21 municated by means of a total of not
22 more than 6 loudspeakers, of which
23 not more than 4 loudspeakers are lo-
24 cated in any 1 room or adjoining out-
25 door space;

1 “(ii) in the case of a food service or
2 drinking establishment, either the estab-
3 lishment in which the communication oc-
4 curs has less than 3750 gross square feet
5 of space (excluding space used for cus-
6 tomer parking and for no other purpose),
7 or the establishment in which the commu-
8 nication occurs has 3750 gross square feet
9 of space or more (excluding space used for
10 customer parking and for no other pur-
11 pose) and—

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

19 “(II) if the performance or dis-
20 play is by audiovisual means, any vis-
21 ual portion of the performance or dis-
22 play is communicated by means of a
23 total of not more than 4 audiovisual
24 devices, of which not more than one
25 audiovisual device is located in any 1

1 room, and no such audiovisual device
2 has a diagonal screen size greater
3 than 55 inches, and any audio portion
4 of the performance or display is com-
5 municated by means of a total of not
6 more than 6 loudspeakers, of which
7 not more than 4 loudspeakers are lo-
8 cated in any 1 room or adjoining out-
9 door space;

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

12 “(iv) the transmission or retrans-
13 mission is not further transmitted beyond
14 the establishment where it is received; and

15 “(v) the transmission or retrans-
16 mission is licensed by the copyright owner
17 of the work so publicly performed or dis-
18 played;” and

19 (2) by adding after paragraph (10) the follow-
20 ing:

21 “The exemptions provided under paragraph (5) shall not
22 be taken into account in any administrative, judicial, or
23 other governmental proceeding to set or adjust the royal-
24 ties payable to copyright owners for the public perform-
25 ance or display of their works. Royalties payable to copy-

1 right owners for any public performance or display of their
2 works other than such performances or displays as are ex-
3 empted under paragraph (5) shall not be diminished in
4 any respect as a result of such exemption”.

5 (b) EXEMPTION RELATING TO PROMOTION.—Section
6 110(7) of title 17, United States Code, is amended by in-
7 serting “or of the audiovisual or other devices utilized in
8 such performance,” after “phonorecords of the work,”.

9 **SEC. 203. LICENSING BY PERFORMING RIGHTS SOCIETIES.**

10 (a) IN GENERAL.—Chapter 5 of title 17, United
11 States Code, is amended by adding at the end the follow-
12 ing:

13 **“§ 512. Determination of reasonable license fees for**
14 **individual proprietors**

15 “In the case of any performing rights society subject
16 to a consent decree which provides for the determination
17 of reasonable license rates or fees to be charged by the
18 performing rights society, notwithstanding the provisions
19 of that consent decree, an individual proprietor who owns
20 or operates fewer than 7 non-publicly traded establish-
21 ments in which nondramatic musical works are performed
22 publicly and who claims that any license agreement offered
23 by that performing rights society is unreasonable in its
24 license rate or fee as to that individual proprietor, shall

1 be entitled to determination of a reasonable license rate
2 or fee as follows:

3 “(1) The individual proprietor may commence
4 such proceeding for determination of a reasonable li-
5 cense rate or fee by filing an application in the ap-
6 plicable district court under paragraph (2) that a
7 rate disagreement exists and by serving a copy of
8 the application on the performing rights society.
9 Such proceeding shall commence in the applicable
10 district court within 90 days after the service of
11 such copy, except that such 90-day requirement shall
12 be subject to the administrative requirements of the
13 court.

14 “(2) The proceeding under paragraph (1) shall
15 be held, at the individual proprietor’s election, in the
16 judicial district of the district court with jurisdiction
17 over the applicable consent decree or in that place
18 of holding court of a district court that is the seat
19 of the Federal circuit (other than the Court of Ap-
20 peals for the Federal Circuit) in which the propri-
21 etor’s establishment is located.

22 “(3) Such proceeding shall be held before the
23 judge of the court with jurisdiction over the consent
24 decree governing the performing rights society. At
25 the discretion of the court, the proceeding shall be

1 held before a special master or magistrate judge ap-
2 pointed by such judge. Should that consent decree
3 provide for the appointment of an advisor or advi-
4 sors to the court for any purpose, any such advisor
5 shall be the special master so named by the court.

6 “(4) In any such proceeding, the industry rate
7 shall be presumed to have been reasonable at the
8 time it was agreed to or determined by the court.
9 Such presumption shall in no way affect a deter-
10 mination of whether the rate is being correctly ap-
11 plied to the individual proprietor.

12 “(5) Pending the completion of such proceed-
13 ing, the individual proprietor shall have the right to
14 perform publicly the copyrighted musical composi-
15 tions in the repertoire of the performing rights soci-
16 ety by paying an interim license rate or fee into an
17 interest bearing escrow account with the clerk of the
18 court, subject to retroactive adjustment when a final
19 rate or fee has been determined, in an amount equal
20 to the industry rate, or, in the absence of an indus-
21 try rate, the amount of the most recent license rate
22 or fee agreed to by the parties.

23 “(6) Any decision rendered in such proceeding
24 by a special master or magistrate judge named
25 under paragraph (3) shall be reviewed by the judge

1 of the court with jurisdiction over the consent decree
2 governing the performing rights society. Such pro-
3 ceeding, including such review, shall be concluded
4 within 6 months after its commencement.

5 “(7) Any such final determination shall be
6 binding only as to the individual proprietor com-
7 mencing the proceeding, and shall not be applicable
8 to any other proprietor or any other performing
9 rights society, and the performing rights society
10 shall be relieved of any obligation of nondiscrimina-
11 tion among similarly situated music users that may
12 be imposed by the consent decree governing its oper-
13 ations.

14 “(8) An individual proprietor may not bring
15 more than one proceeding provided for in this sec-
16 tion for the determination of a reasonable license
17 rate or fee under any license agreement with respect
18 to any one performing rights society.

19 “(9) For purposes of this section, the term ‘in-
20 dustry rate’ means the license fee a performing
21 rights society has agreed to with, or which has been
22 determined by the court for, a significant segment of
23 the music user industry to which the individual pro-
24 prietor belongs.”

1 (b) TECHNICAL AND CONFORMING AMENDMENT.—

2 The table of sections for chapter 5 of title 17, United
3 States Code, is amended by adding after the item relating
4 to section 511 the following:

“512.Determination of reasonable license fees for individual proprietors.”.

5 **SEC. 204. PENALTIES.**

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

8 “(d) ADDITIONAL DAMAGES IN CERTAIN CASES.—In
9 any case in which the court finds that a defendant propri-
10 etor of an establishment who claims as a defense that its
11 activities were exempt under section 110(5) did not have
12 reasonable grounds to believe that its use of a copyrighted
13 work was exempt under such section, the plaintiff shall
14 be entitled to, in addition to any award of damages under
15 this section, an additional award of two times the amount
16 of the license fee that the proprietor of the establishment
17 concerned should have paid the plaintiff for such use dur-
18 ing the preceding period of up to 3 years.”.

19 **SEC. 205. DEFINITIONS.**

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

22 (1) by inserting after the definition of “display”
23 the following:

24 “An ‘establishment’ is a store, shop, or any
25 similar place of business open to the general public

1 for the primary purpose of selling goods or services
2 in which the majority of the gross square feet of
3 space that is nonresidential is used for that purpose,
4 and in which nondramatic musical works are per-
5 formed publicly.

6 “A ‘food service or drinking establishment’ is a
7 restaurant, inn, bar, tavern, or any other similar
8 place of business in which the public or patrons as-
9 semble for the primary purpose of being served food
10 or drink, in which the majority of the gross square
11 feet of space that is nonresidential is used for that
12 purpose, and in which nondramatic musical works
13 are performed publicly.”;

14 (2) by inserting after the definition of “fixed”
15 the following:

16 “The ‘gross square feet of space’ of an estab-
17 lishment means the entire interior space of that es-
18 tablishment, and any adjoining outdoor space used
19 to serve patrons, whether on a seasonal basis or oth-
20 erwise.”;

21 (3) by inserting after the definition of “per-
22 form” the following:

23 “A ‘performing rights society’ is an association,
24 corporation, or other entity that licenses the public
25 performance of nondramatic musical works on behalf

1 of copyright owners of such works, such as the
2 American Society of Composers, Authors and Pub-
3 lishers (ASCAP), Broadcast Music, Inc. (BMI), and
4 SESAC, Inc.”; and

5 (4) by inserting after the definition of “pic-
6 torial, graphic and sculptural works” the following:

7 “A ‘proprietor’ is an individual, corporation,
8 partnership, or other entity, as the case may be, that
9 owns an establishment or a food service or drinking
10 establishment, except that no owner or operator of
11 a radio or television station licensed by the Federal
12 Communications Commission, cable system or sat-
13 ellite carrier, cable or satellite carrier service or pro-
14 grammer, provider of online services or network ac-
15 cess or the operator of facilities therefor, tele-
16 communications company, or any other such audio
17 or audiovisual service or programmer now known or
18 as may be developed in the future, commercial sub-
19 scription music service, or owner or operator of any
20 other transmission service, shall under any cir-
21 cumstances be deemed to be a proprietor.”.

22 **SEC. 206. CONSTRUCTION OF TITLE.**

23 Except as otherwise provided in this title, nothing in
24 this title shall be construed to relieve any performing
25 rights society of any obligation under any State or local

1 statute, ordinance, or law, or consent decree or other court
2 order governing its operation, as such statute, ordinance,
3 law, decree, or order is in effect on the date of the enact-
4 ment of this Act, as it may be amended after such date,
5 or as it may be issued or agreed to after such date.

6 **SEC. 207. EFFECTIVE DATE.**

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

Passed the Senate October 7 (legislative day, Octo-
ber 2), 1998.

Attest:

Secretary.

Document No. 31

One Hundred Fifth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the twenty-seventh day of January, one thousand nine hundred and ninety-eight*

An Act

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

*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 subsections (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)”;

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

(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 2,000 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 2,000 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 1 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 3,750 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 3,750 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.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

Document No. 32

105TH CONGRESS
1ST SESSION

H. R. 2589

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 1, 1997

Mr. COBLE (for himself, Mr. FRANK of Massachusetts, Mr. CONYERS, Mr. GALLEGLY, Mr. GOODLATTE, Mr. BONO, Mr. CANNON, Mr. MCCOLLUM, Mr. CANADY of Florida, Mr. BERMAN, Mr. BOUCHER, Ms. LOFGREN, and Mr. DELAHUNT) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Copyright Term Ex-
5 tension Act”.

6 **SEC. 2. DURATION OF COPYRIGHT PROVISIONS.**

7 (a) **PREEMPTION WITH RESPECT TO OTHER**
8 **LAWS.**—Section 301(c) of title 17, United States Code,

1 is amended by striking "February 15, 2047" each place
2 it appears and inserting "February 15, 2067".

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

6 (1) in subsection (a) by striking "fifty" and in-
7 serting "70";

8 (2) in subsection (b) by striking "fifty" and in-
9 serting "70";

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

11 (A) by striking "seventy-five" and insert-
12 ing "95"; and

13 (B) by striking "one hundred" and insert-
14 ing "120"; and

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

16 (A) by striking "seventy-five" and insert-
17 ing "95";

18 (B) by striking "one hundred" and insert-
19 ing "120"; and

20 (C) by striking "fifty" each place it ap-
21 pears and inserting "70".

22 (c) DURATION OF COPYRIGHT: WORKS CREATED
23 BUT NOT PUBLISHED OR COPYRIGHTED BEFORE JANU-
24 ARY 1, 1978.—Section 303 of title 17, United States

1 Code, is amended in the second sentence by striking “De-
2 cember 31, 2027” and inserting “December 31, 2047”.

3 (d) DURATION OF COPYRIGHT: SUBSISTING COPY-
4 RIGHTS.—

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

7 (A) in subsection (a)—

8 (i) in paragraph (1)—

9 (I) in subparagraph (B) by strik-
10 ing “47” and inserting “67”; and

11 (II) in subparagraph (C) by
12 striking “47” and inserting “67”;

13 (ii) in paragraph (2)—

14 (I) in subparagraph (A) by strik-
15 ing “47” and inserting “67”; and

16 (II) in subparagraph (B) by
17 striking “47” and inserting “67”; and

18 (iii) in paragraph (3)—

19 (I) in subparagraph (A)(i) by
20 striking “47” and inserting “67”; and

21 (II) in subparagraph (B) by
22 striking “47” and inserting “67”;

23 (B) by amending subsection (b) to read as

24 follows:

1 “(b) COPYRIGHTS IN THEIR RENEWAL TERM AT THE
 2 TIME OF THE EFFECTIVE DATE OF THE COPYRIGHT
 3 TERM EXTENSION ACT OF 1997.—Any copyright still in
 4 its renewal term at the time that the Copyright Term Ex-
 5 tension Act of 1997 becomes effective shall have a copy-
 6 right term of 95 years from the date copyright was origi-
 7 nally secured.”;

8 (C) in subsection (c)(4)(A) in the first sen-
 9 tence by inserting “or, in the case of a termi-
 10 nation under subsection (d), within the five-year
 11 period specified by subsection (d)(2),” after
 12 “specified by clause (3) of this subsection,”;
 13 and

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

16 “(d) TERMINATION RIGHTS PROVIDED IN SUB-
 17 SECTION (c) WHICH HAVE EXPIRED ON OR BEFORE THE
 18 EFFECTIVE DATE OF THE COPYRIGHT TERM EXTENSION
 19 ACT OF 1997.—In the case of any copyright other than
 20 a work made for hire, subsisting in its renewal term on
 21 the effective date of the Copyright Term Extension Act
 22 of 1997 for which the termination right provided in sub-
 23 section (c) has expired by such date, where the author or
 24 owner of the termination right has not previously exercised
 25 such termination right, the exclusive or nonexclusive grant

1 of a transfer or license of the renewal copyright or any
 2 right under it, executed before January 1, 1978, by any
 3 of the persons designated in subsection (a)(1)(C) of this
 4 section, other than by will, is subject to termination under
 5 the following conditions:

6 “(1) The conditions specified in subsection (c)
 7 (1), (2), (4), (5), and (6) of this section apply to ter-
 8 minations of the last 20 years of copyright term as
 9 provided by the amendments made by the Copyright
 10 Term Extension Act of 1997.

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

15 (2) COPYRIGHT RENEWAL ACT OF 1992.—Sec-
 16 tion 102 of the Copyright Renewal Act of 1992
 17 (Public Law 102–307; 106 Stat. 266; 17 U.S.C. 304
 18 note) is amended—

19 (A) in subsection (c)—

20 (i) by striking “47” and inserting
 21 “67”;

22 (ii) by striking “(as amended by sub-
 23 section (a) of this section)”; and

24 (iii) by striking “effective date of this
 25 section” each place it appears and insert-

1 ing “effective date of the Copyright Term
2 Extension Act of 1997”; and
3 (B) in subsection (g)(2) in the second sen-
4 tence by inserting before the period the follow-
5 ing: “, except each reference to forty-seven
6 years in such provisions shall be deemed to be
7 67 years”.

8 **SEC. 3. REPRODUCTION BY LIBRARIES AND ARCHIVES.**

9 Section 108 of title 17, United States Code, is
10 amended—

11 (1) by redesignating subsection (h) as sub-
12 section (i); and

13 (2) by inserting after subsection (g) the follow-
14 ing:

15 “(h)(1) For purposes of this section, during the last
16 20 years of any term of copyright of a published work,
17 a library or archives, including a nonprofit educational in-
18 stitution that functions as such, may reproduce, distrib-
19 ute, display, or perform in facsimile or digital form a copy
20 or phonorecord of such work, or portions thereof, for pur-
21 poses of preservation, scholarship, or research, if such li-
22 brary or archives has first determined, on the basis of a
23 reasonable investigation, that none of the conditions set
24 forth in subparagraphs (A), (B), and (C) of paragraph
25 (2) apply.

1 “(2) No reproduction, distribution, display, or per-
2 formance is authorized under this subsection if—

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

5 “(B) a copy or phonorecord of the work can be
6 obtained at a reasonable price; or

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

11 “(3) The exemption provided in this subsection does
12 not apply to any subsequent uses by users other than such
13 library or archives.”.

14 **SEC. 4. VOLUNTARY NEGOTIATION REGARDING DIVISION**
15 **OF ROYALTIES.**

16 It is the sense of the Congress that copyright owners
17 of audiovisual works for which the term of copyright pro-
18 tection is extended by the amendments made by this Act,
19 and the screenwriters, directors, and performers of those
20 audiovisual works, should negotiate in good faith in an ef-
21 fort to reach a voluntary agreement or voluntary agree-
22 ments with respect to the amount of remuneration to be
23 divided among the parties for the exploitation of those
24 audiovisual works.

1 **SEC. 5. EFFECTIVE DATE.**

2 This Act and the amendments made by this Act shall

3 take effect on the date of the enactment of this Act.

○

Document No. 33

Union Calendar No. 258

105TH CONGRESS
2^D SESSION

H. R. 2589

[Report No. 105-452]

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 1, 1997

Mr. COBLE (for himself, Mr. FRANK of Massachusetts, Mr. CONYERS, Mr. GALLEGLY, Mr. GOODLATTE, Mr. BONO, Mr. CANNON, Mr. MCCOLLUM, Mr. CANADY of Florida, Mr. BERMAN, Mr. BOUCHER, Ms. LOFGREN, and Mr. DELAHUNT) introduced the following bill; which was referred to the Committee on the Judiciary

MARCH 18, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on October 1, 1997]

A BILL

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

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the "Copyright Term Exten-*
 3 *sion Act".*

4 **SEC. 2. DURATION OF COPYRIGHT PROVISIONS.**

5 (a) *PREEMPTION WITH RESPECT TO OTHER LAWS.—*

6 *Section 301(c) of title 17, United States Code, is amended*
 7 *by striking "February 15, 2047" each place it appears and*
 8 *inserting "February 15, 2067".*

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

12 (1) *in subsection (a) by striking "fifty" and in-*
 13 *serting "70";*

14 (2) *in subsection (b) by striking "fifty" and in-*
 15 *serting "70";*

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

17 (A) *by striking "seventy-five" and inserting*
 18 *"95"; and*

19 (B) *by striking "one hundred" and insert-*
 20 *ing "120"; and*

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

22 (A) *by striking "seventy-five" and inserting*
 23 *"95";*

24 (B) *by striking "one hundred" and insert-*
 25 *ing "120"; and*

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

3 (c) *DURATION OF COPYRIGHT: WORKS CREATED BUT*
4 *NOT PUBLISHED OR COPYRIGHTED BEFORE JANUARY 1,*
5 *1978.—Section 303 of title 17, United States Code, is*
6 *amended in the second sentence by striking “December 31,*
7 *2027” and inserting “December 31, 2047”.*

8 (d) *DURATION OF COPYRIGHT: SUBSISTING COPY-*
9 *RIGHTS.—*

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

12 (A) *in subsection (a)—*

13 (i) *in paragraph (1)—*

14 (I) *in subparagraph (B) by strik-*
15 *ing “47” and inserting “67”; and*

16 (II) *in subparagraph (C) by strik-*
17 *ing “47” and inserting “67”;*

18 (ii) *in paragraph (2)—*

19 (I) *in subparagraph (A) by strik-*
20 *ing “47” and inserting “67”; and*

21 (II) *in subparagraph (B) by strik-*
22 *ing “47” and inserting “67”; and*

23 (iii) *in paragraph (3)—*

24 (I) *in subparagraph (A)(i) by*
25 *striking “47” and inserting “67”; and*

1 (II) in subparagraph (B) by strik-
 2 ing “47” and inserting “67”;

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

5 “(b) COPYRIGHTS IN THEIR RENEWAL TERM AT THE
 6 TIME OF THE EFFECTIVE DATE OF THE COPYRIGHT TERM
 7 EXTENSION ACT OF 1997.—Any copyright still in its re-
 8 newal term at the time that the Copyright Term Extension
 9 Act of 1997 becomes effective shall have a copyright term
 10 of 95 years from the date copyright was originally se-
 11 cured.”;

12 (C) in subsection (c)(4)(A) in the first sen-
 13 tence by inserting “or, in the case of a termi-
 14 nation under subsection (d), within the five-year
 15 period specified by subsection (d)(2),” after
 16 “specified by clause (3) of this subsection,”; and
 17 (D) by adding at the end the following new
 18 subsection:

19 “(d) TERMINATION RIGHTS PROVIDED IN SUBSECTION
 20 (c) WHICH HAVE EXPIRED ON OR BEFORE THE EFFECTIVE
 21 DATE OF THE COPYRIGHT TERM EXTENSION ACT OF
 22 1997.—In the case of any copyright other than a work made
 23 for hire, subsisting in its renewal term on the effective date
 24 of the Copyright Term Extension Act of 1997 for which the
 25 termination right provided in subsection (c) has expired by

1 such date, where the author or owner of the termination
 2 right has not previously exercised such termination right,
 3 the exclusive or nonexclusive grant of a transfer or license
 4 of the renewal copyright or any right under it, executed
 5 before January 1, 1978, by any of the persons designated
 6 in subsection (a)(1)(C) of this section, other than by will,
 7 is subject to termination under the following conditions:

8 “(1) The conditions specified in subsection (c)
 9 (1), (2), (4), (5), and (6) of this section apply to ter-
 10 minations of the last 20 years of copyright term as
 11 provided by the amendments made by the Copyright
 12 Term Extension Act of 1997.

13 “(2) Termination of the grant may be effected at
 14 any time during a period of 5 years beginning at the
 15 end of 75 years from the date copyright was origi-
 16 nally secured.”

17 (2) COPYRIGHT RENEWAL ACT OF 1992.—Section
 18 102 of the Copyright Renewal Act of 1992 (Public
 19 Law 102-307; 106 Stat. 266; 17 U.S.C. 304 note) is
 20 amended—

21 (A) in subsection (c)—

22 (i) by striking “47” and inserting
 23 “67”;

24 (ii) by striking “(as amended by sub-
 25 section (a) of this section)”; and

1 (iii) by striking “effective date of this
2 section” each place it appears and inserting
3 “effective date of the Copyright Term Exten-
4 sion Act of 1997”; and

5 (B) in subsection (g)(2) in the second sen-
6 tence by inserting before the period the following:
7 “, except each reference to forty-seven years in
8 such provisions shall be deemed to be 67 years”.

9 **SEC. 3. TERMINATION OF TRANSFERS AND LICENSES COV-**
10 **ERING EXTENDED RENEWAL TERM.**

11 Sections 203(a)(2) and 304(c)(2) of title 17, United
12 States Code, are each amended—

13 (1) by striking “by his widow or her widower
14 and his or her children or grandchildren”; and

15 (2) by inserting after subparagraph (C) the fol-
16 lowing:

17 “(D) In the event that the author’s widow,
18 widower, children, and grandchildren are not
19 living, the author’s executors shall own the au-
20 thor’s entire termination interest, or, in the ab-
21 sence of a will of the author, the author’s next
22 of kin shall own the author’s entire termination
23 interest, on a per stirpes basis according to the
24 number of such author’s next of kin represented.
25 The share of the children of a dead next of kin

1 *at the same level of relationship to the author eli-*
 2 *gible to take a share of a termination interest*
 3 *can be exercised only by the action of a majority*
 4 *of them.”.*

5 **SEC. 4. REPRODUCTION BY LIBRARIES AND ARCHIVES.**

6 *Section 108 of title 17, United States Code, is amend-*
 7 *ed—*

8 (1) *by redesignating subsection (h) as subsection*
 9 *(i); and*

10 (2) *by inserting after subsection (g) the follow-*
 11 *ing:*

12 “(h)(1) *For purposes of this section, during the last*
 13 *20 years of any term of copyright of a published work, a*
 14 *library or archives, including a nonprofit educational insti-*
 15 *tution that functions as such, may reproduce, distribute,*
 16 *display, or perform in facsimile or digital form a copy or*
 17 *phonorecord of such work, or portions thereof, for purposes*
 18 *of preservation, scholarship, or research, if such library or*
 19 *archives has first determined, on the basis of a reasonable*
 20 *investigation, that none of the conditions set forth in sub-*
 21 *paragraphs (A), (B), and (C) of paragraph (2) apply.*

22 “(2) *No reproduction, distribution, display, or per-*
 23 *formance is authorized under this subsection if—*

24 “(A) *the work is subject to normal commercial*
 25 *exploitation;*

Document No. 34

105TH CONGRESS
2^D SESSION

H. R. 2589

AN ACT

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives 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”;

1 (B) by striking “one hundred” and insert-
 2 ing “120”; and

3 (C) by striking “fifty” each place it ap-
 4 pears and inserting “70”.

5 (e) DURATION OF COPYRIGHT: WORKS CREATED
 6 BUT NOT PUBLISHED OR COPYRIGHTED BEFORE JANU-
 7 ARY 1, 1978.—Section 303 of title 17, United States
 8 Code, is amended in the second sentence by striking “De-
 9 cember 31, 2027” and inserting “December 31, 2047”.

10 (d) DURATION OF COPYRIGHT: SUBSISTING COPY-
 11 RIGHTS.—

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

14 (A) in subsection (a)—

15 (i) in paragraph (1)—

16 (I) in subparagraph (B) by strik-
 17 ing “47” and inserting “67”; and

18 (II) in subparagraph (C) by
 19 striking “47” and inserting “67”;

20 (ii) in paragraph (2)—

21 (I) in subparagraph (A) by strik-
 22 ing “47” and inserting “67”; and

23 (II) in subparagraph (B) by
 24 striking “47” and inserting “67”; and

25 (iii) in paragraph (3)—

1 (I) in subparagraph (A)(i) by
2 striking “47” and inserting “67”; and

3 (II) in subparagraph (B) by
4 striking “47” and inserting “67”;

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

7 “(b) COPYRIGHTS IN THEIR RENEWAL TERM AT THE
8 TIME OF THE EFFECTIVE DATE OF THE SONNY BONO
9 COPYRIGHT TERM EXTENSION ACT.—Any copyright still
10 in its renewal term at the time that the Sonny Bono Copy-
11 right Term Extension Act becomes effective shall have a
12 copyright term of 95 years from the date copyright was
13 originally secured.”;

14 (C) in subsection (c)(4)(A) in the first sen-
15 tence by inserting “or, in the case of a termi-
16 nation under subsection (d), within the five-year
17 period specified by subsection (d)(2),” after
18 “specified by clause (3) of this subsection,”;
19 and

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

22 “(d) TERMINATION RIGHTS PROVIDED IN SUB-
23 SECTION (c) WHICH HAVE EXPIRED ON OR BEFORE THE
24 EFFECTIVE DATE OF THE SONNY BONO COPYRIGHT
25 TERM EXTENSION ACT.—In the case of any copyright

1 other than a work made for hire, subsisting in its renewal
2 term on the effective date of the Sonny Bono Copyright
3 Term Extension Act for which the termination right pro-
4 vided in subsection (c) has expired by such date, where
5 the author or owner of the termination right has not pre-
6 viously exercised such termination right, the exclusive or
7 nonexclusive grant of a transfer or license of the renewal
8 copyright or any right under it, executed before January
9 1, 1978, by any of the persons designated in subsection
10 (a)(1)(C) of this section, other than by will, is subject to
11 termination under the following conditions:

12 “(1) The conditions specified in subsection
13 (e)(1), (2), (4), (5), and (6) of this section apply to
14 terminations of the last 20 years of copyright term
15 as provided by the amendments made by the Sonny
16 Bono Copyright Term Extension Act.

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

21 (2) COPYRIGHT RENEWAL ACT OF 1992.—Sec-
22 tion 102 of the Copyright Renewal Act of 1992
23 (Public Law 102-307; 106 Stat. 266; 17 U.S.C. 304
24 note) is amended—

25 (A) in subsection (c)—

1 (i) by striking “47” and inserting
2 “67”;

3 (ii) by striking “(as amended by sub-
4 section (a) of this section)”; and

5 (iii) by striking “effective date of this
6 section” each place it appears and insert-
7 ing “effective date of the Sonny Bono
8 Copyright Term Extension Act”; and

9 (B) in subsection (g)(2) in the second sen-
10 tence by inserting before the period the follow-
11 ing: “, except each reference to forty-seven
12 years in such provisions shall be deemed to be
13 67 years”.

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

16 Sections 203(a)(2) and 304(c)(2) of title 17, United
17 States Code, are each amended—

18 (1) by striking “by his widow or her widower
19 and his or her children or grandchildren”; and

20 (2) by inserting after subparagraph (C) the fol-
21 lowing:

22 “(D) In the event that the author’s widow
23 or widower, children, and grandchildren are not
24 living, the author’s executor, administrator, per-

1 sonal representative, or trustee shall own the
2 author's entire termination interest.”.

3 **SEC. 104. REPRODUCTION BY LIBRARIES AND ARCHIVES.**

4 Section 108 of title 17, United States Code, is
5 amended—

6 (1) by redesignating subsection (h) as sub-
7 section (i); and

8 (2) by inserting after subsection (g) the follow-
9 ing:

10 “(h)(1) For purposes of this section, during the last
11 20 years of any term of copyright of a published work,
12 a library or archives, including a nonprofit educational in-
13 stitution that functions as such, may reproduce, distrib-
14 ute, display, or perform in facsimile or digital form a copy
15 or phonorecord of such work, or portions thereof, for pur-
16 poses of preservation, scholarship, or research, if such li-
17 brary or archives has first determined, on the basis of a
18 reasonable investigation, that none of the conditions set
19 forth in subparagraphs (A), (B), and (C) of paragraph
20 (2) apply.

21 “(2) No reproduction, distribution, display, or per-
22 formance is authorized under this subsection if—

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

1 “(B) a copy or phonorecord of the work can be
2 obtained at a reasonable price; or

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

7 “(3) The exemption provided in this subsection does
8 not apply to any subsequent uses by users other than such
9 library or archives.”.

10 **SEC. 105. VOLUNTARY NEGOTIATION REGARDING DIVISION**
11 **OF ROYALTIES.**

12 It is the sense of the Congress that copyright owners
13 of audiovisual works for which the term of copyright pro-
14 tection is extended by the amendments made by this title,
15 and the screenwriters, directors, and performers of those
16 audiovisual works, should negotiate in good faith in an ef-
17 fort to reach a voluntary agreement or voluntary agree-
18 ments with respect to the establishment of a fund or other
19 mechanism for the amount of remuneration to be divided
20 among the parties for the exploitation of those audiovisual
21 works.

1 **SEC. 106. ASSUMPTION OF CONTRACTUAL OBLIGATIONS**
 2 **RELATED TO TRANSFERS OF RIGHTS IN MO-**
 3 **TION PICTURES.**

4 (a) **IN GENERAL.**—Part VI of title 28, United States
 5 Code, is amended by adding at the end the following new
 6 chapter:

7 **“CHAPTER 180—ASSUMPTION OF CERTAIN**
 8 **CONTRACTUAL OBLIGATIONS**

“Sec.

“4001. Assumption of contractual obligations related to transfers of rights in motion pictures.

9 **“§ 4001. Assumption of contractual obligations**
 10 **related to transfers of rights in motion**
 11 **pictures**

12 **“(a) ASSUMPTION OF OBLIGATIONS.**—In the case of
 13 a transfer of copyright ownership in a motion picture (as
 14 defined in section 101 of title 17, United States Code)
 15 that is produced subject to 1 or more collective bargaining
 16 agreements negotiated under the laws of the United
 17 States, if the transfer is executed on or after the effective
 18 date of this Act and is not limited to public performance
 19 rights, the transfer instrument shall be deemed to incor-
 20 porate the assumption agreements applicable to the copy-
 21 right ownership being transferred that are required by the
 22 applicable collective bargaining agreement, and the trans-
 23 feree shall be subject to the obligations under each such
 24 assumption agreement to make residual payments and

1 provide related notices, accruing after the effective date
2 of the transfer and applicable to the exploitation of the
3 rights transferred, and any remedies under each such as-
4 sumption agreement for breach of those obligations, as
5 those obligations and remedies are set forth in the applica-
6 ble collective bargaining agreement, if—

7 “(1) the transferee knows or has reason to
8 know at the time of the transfer that such collective
9 bargaining agreement was or will be applicable to
10 the motion picture; or

11 “(2) in the event of a court order confirming an
12 arbitration award against the transferor under the
13 collective bargaining agreement, the transferor does
14 not have the financial ability to satisfy the award
15 within 90 days after the order is issued.

16 “(b) FAILURE TO NOTIFY.—If the transferor under
17 subsection (a) fails to notify the transferee under sub-
18 section (a) of applicable collective bargaining obligations
19 before the execution of the transfer instrument, and sub-
20 section (a) is made applicable to the transferee solely by
21 virtue of subsection (a)(2), the transferor shall be liable
22 to the transferee for any damages suffered by the trans-
23 feree as a result of the failure to notify.

24 “(c) DETERMINATION OF DISPUTES AND CLAIMS.—
25 Any dispute concerning the application of subsection (a)

1 and any claim made under subsection (b) shall be deter-
 2 mined by an action in United States district court, and
 3 the court in its discretion may allow the recovery of full
 4 costs by or against any party and may also award a rea-
 5 sonable attorney's fee to the prevailing party as part of
 6 the costs.”.

7 (b) CONFORMING AMENDMENT.—The table of chap-
 8 ters for part VI of title 28, United States Code, is amend-
 9 ed by adding at the end the following:

“180. Assumption of Certain Contractual Obligations 4001”.

10 **SEC. 107. EFFECTIVE DATE.**

11 This title and the amendments made by this title
 12 shall take effect on the date of the enactment of this Act.

13 **TITLE II—MUSIC LICENSING**

14 **SEC. 201. SHORT TITLE.**

15 This title may be cited as the “Fairness in Musical
 16 Licensing Act of 1998”.

17 **SEC. 202. EXEMPTION OF CERTAIN MUSIC USES FROM**
 18 **COPYRIGHT PROTECTION.**

19 (a) BUSINESS EXEMPTION.—Section 110(5) of title
 20 17, United States Code, is amended to read as follows:

21 “(5) communication by electronic device of a
 22 transmission embodying a performance or display of
 23 a nondramatic musical work by the public reception
 24 of a broadcast, cable, satellite, or other transmission,
 25 if—

1 “(A)(i) the rooms or areas within the es-
2 tablishment where the transmission is intended
3 to be received by the general public contains
4 less than 3,500 square feet, excluding any space
5 used for customer parking; or

6 “(ii) the rooms or areas within the estab-
7 lishment where the transmission is intended to
8 be received by the general public contains 3,500
9 square feet or more, excluding any space used
10 for customer parking, if—

11 “(I) in the case of performance by
12 audio means only, the performance is
13 transmitted by means of a total of not
14 more than 6 speakers (excluding any
15 speakers in the device receiving the com-
16 munication), of which not more than 4
17 speakers are located in any 1 room or
18 area; or

19 “(II) in the case of a performance or
20 display by visual or audiovisual means, any
21 visual portion of the performance or dis-
22 play is communicated by means of not
23 more than 2 audio visual devices, if no
24 such audio visual device has a diagonal
25 screen size greater than 55 inches, and any

1 audio portion of the performance or dis-
2 play is transmitted by means of a total of
3 not more than 6 speakers (excluding any
4 speakers in the device receiving the com-
5 munication), of which not more than 4
6 speakers are located in any 1 room or
7 area;

8 “(B) no direct charge is made to see or
9 hear the transmission;

10 “(C) the transmission is not further trans-
11 mitted to the public beyond the establishment
12 where it is received; and

13 “(D) the transmission is licensed.”

14 (b) EXEMPTION RELATING TO PROMOTION.—Section
15 110(7) of title 17, United States Code, is amended—

16 (1) by striking “a vending” and inserting “an”;

17 (2) by striking “sole”;

18 (3) by inserting “or of the audio, video, or other
19 devices utilized in the performance,” after
20 “phonorecords of the work,”; and

21 (4) by striking “and is within the immediate
22 area where the sale is occurring”.

1 **SEC. 203. BINDING ARBITRATION OF RATE DISPUTES IN-**
2 **VOLVING PERFORMING RIGHTS SOCIETIES.**

3 (a) IN GENERAL.—Section 504 of title 17, United
4 States Code, is amended by adding at the end the follow-
5 ing new subsection:

6 “(d) PERFORMING RIGHTS SOCIETIES; BINDING AR-
7 BITRATION.—

8 “(1) ARBITRATION OF DISPUTES PRIOR TO
9 COURT ACTION.—

10 “(A) ARBITRATION.—(i) If a general music
11 user and a performing rights society are unable
12 to agree on the appropriate rate or fee to be
13 paid for the user’s past or future performance
14 of musical works in the repertoire of the per-
15 forming rights society, the general music user
16 shall, in lieu of any other dispute-resolution
17 mechanism established by any judgment or de-
18 cree governing the operation of the performing
19 rights society, be entitled to binding arbitration
20 of such disagreement pursuant to the rules of
21 the American Arbitration Association. The
22 music user may initiate such arbitration.

23 “(ii) The arbitrator in such binding arbi-
24 tration shall determine a fair and reasonable
25 rate or fee for the general music user’s past
26 and future performance of musical works in

1 such society's repertoire and shall determine
2 whether the user's past performances of such
3 musical works, if any, infringed the copyrights
4 of works in the society's repertoire. If the arbi-
5 trator determines that the general music user's
6 past performances of such musical works in-
7 fringed the copyrights of works in the society's
8 repertoire, the arbitrator shall impose a penalty
9 for such infringement. Such penalty shall not
10 exceed the arbitrator's determination of the fair
11 and reasonable license fee for the performances
12 at issue.

13 “(B) DEFINITIONS.—(i) For purposes of
14 this paragraph, a ‘general music user’ is any
15 person who performs musical works publicly but
16 is not engaged in the transmission of musical
17 works to the general public or to subscribers
18 through broadcast, cable, satellite, or other
19 transmission.

20 “(ii) For purposes of this paragraph,
21 transmissions within a single commercial estab-
22 lishment or within establishments under com-
23 mon ownership or control are not transmissions
24 to the general public.

1 “(iii) For purposes of clause (ii), an ‘estab-
2 lishment’ is a retail business, restaurant, bar,
3 inn, tavern, or any other place of business in
4 which the public may assemble.

5 “(C) ENFORCEMENT OF ARBITRATOR’S
6 DETERMINATIONS.—An arbitrator’s determina-
7 tion under this paragraph is binding on the
8 parties and may be enforced pursuant to sec-
9 tions 9 through 13 of title 9, United States
10 Code.

11 “(2) COURT-ANNEXED ARBITRATION.—(A) In
12 any civil action brought against a general music
13 user, as defined in paragraph (1) for infringement of
14 the right granted in section 106(4) involving a musi-
15 cal work that is in the repertoire of a performing
16 rights society, if the general music user admits the
17 prior public performance of one or more works in
18 the repertoire of the performing rights society but
19 contests the rate or the amount of the license fee de-
20 manded by such society for such performance, the
21 dispute shall, if requested by the general music user,
22 be submitted to arbitration under section 652(e) of
23 title 28. In such arbitration proceeding, the arbitra-
24 tor shall determine the appropriate rate and amount
25 owed by the music user to the performing rights so-

1 ciety for all past public performances of musical
2 works in the society's repertoire. The amount of the
3 license fee shall not exceed two times the amount of
4 the blanket license fee that would be applied by the
5 society to the music user for the year or years in
6 which the performances occurred. In addition, the
7 arbitrator shall, if requested by the music user, de-
8 termine a fair and reasonable rate or license fee for
9 the music user's future public performances of the
10 musical works in such society's repertoire.

11 “(B) As used in this paragraph, the term ‘blan-
12 ket license’ means a license provided by a perform-
13 ing rights society that authorizes the unlimited per-
14 formance of musical works in the society's rep-
15 ertoire, for a fee that does not vary with the quan-
16 tity or type of performances of musical works in the
17 society's repertoire.

18 “(3) TERM OF LICENSE FEE DETERMINA-
19 TION.—In any arbitration proceeding initiated under
20 this subsection, the arbitrator's determination of a
21 fair and reasonable rate or license fee for the per-
22 formance of the music in the repertoire of the per-
23 forming rights society concerned shall apply for a
24 period of not less than 3 years nor more than 5

1 years after the date of the arbitrator's determina-
2 tion.”.

3 (b) ACTIONS THAT SHALL BE REFERRED TO ARBI-
4 TRATION.—Section 652 of title 28, United States Code,
5 is amended by adding at the end the following:

6 “(e) ACTIONS THAT SHALL BE REFERRED TO ARBI-
7 TRATION.—In any civil action against a general music
8 user for infringement of the right granted in section
9 106(4) of title 17 involving a musical work that is in the
10 repertoire of a performing rights society, if the general
11 music user admits the public performance of any musical
12 work in the repertoire of the performing rights society but
13 contests the rate or the amount of the license fee de-
14 manded by the society for such performance, the district
15 court shall, if requested by the general music user, refer
16 the dispute to arbitration, which shall be conducted in ac-
17 cordance with section 504(d)(2) of title 17. Each district
18 court shall establish procedures by local rule authorizing
19 the use of arbitration under this subsection. The defini-
20 tions set forth in title 17 apply to the terms used in this
21 subsection.”.

22 **SEC. 204. VICARIOUS LIABILITY PROHIBITED.**

23 Section 501 of title 17, United States Code, is
24 amended by adding at the end the following:

1 “(f) A landlord, an organizer or sponsor of a conven-
2 tion, exposition, or meeting, a facility owner, or any other
3 person making space available to another party by con-
4 tract, shall not be liable under any theory of vicarious or
5 contributory infringement with respect to an infringing
6 public performance of a copyrighted work by a tenant, les-
7 see, subtenant, sublessee, licensee, exhibitor, or other user
8 of such space on the ground that—

9 “(1) a contract for such space provides the
10 landlord, organizer or sponsor, facility owner, or
11 other person a right or ability to control such space
12 and compensation for the use of such space; or

13 “(2) the landlord, organizer or sponsor, facility
14 owner, or other person has or had at the time of the
15 infringing performance actual control over some as-
16 pects of the use of such space,

17 if the contract for the use of such space prohibits infring-
18 ing public performances and the landlord, organizer or
19 sponsor, facility owner, or other person does not exercise
20 control over the selection of works performed.”.

21 **SEC. 205. CONFORMING AMENDMENTS.**

22 Section 101 of title 17, United States Code, is
23 amended by inserting after the undesignated paragraph
24 relating to the definition of “perform” the following:

1 “A ‘performing rights society’ is an association,
2 corporation, or other entity that licenses the public
3 performance of nondramatic musical works on behalf
4 of copyright owners of such works, such as the
5 American Society of Composers, Authors, and Pub-
6 lishers, Broadcast Music, Inc., and SESAC, Inc. The
7 ‘repertoire’ of a performing rights society consists of
8 those works for which the society provides licenses
9 on behalf of the owners of copyright in the works.”.

10 **SEC. 206. CONSTRUCTION OF TITLE.**

11 Except as provided in section 504(d)(1) of title 17,
12 United States Code, as added by section 203(a) of this
13 Act, nothing in this title shall be construed to relieve any
14 performing rights society (as defined in section 101 of title
15 17, United States Code) of any obligation under any con-
16 sent decree, State statute, or other court order governing
17 its operation, as such statute, decree, or order is in effect
18 on the date of the enactment of this Act, as it may be
19 amended after such date, or as it may be enacted, issued,
20 or agreed to after such date.

1 **SEC. 207. EFFECTIVE DATE.**

2 This title and the amendments made by this title
3 shall take effect on the date of the enactment of this Act,
4 and shall apply to actions filed on or after such date.

 Passed the House of Representatives March 25,
1998.

Attest:

Clerk.

Document No. 35

105TH CONGRESS
2^D SESSION

H. R. 2589

IN THE SENATE OF THE UNITED STATES

MARCH 26, 1989

Received; read twice and referred to the Committee on the Judiciary

AN ACT

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **TITLE I—COPYRIGHT TERM**
2 **EXTENSION**

3 **SEC. 101. SHORT TITLE.**

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

6 **SEC. 102. DURATION OF COPYRIGHT PROVISIONS.**

7 (a) **PREEMPTION WITH RESPECT TO OTHER**
8 **LAWS.**—Section 301(e) of title 17, United States Code,
9 is amended by striking “February 15, 2047” each place
10 it appears and inserting “February 15, 2067”.

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

14 (1) in subsection (a) by striking “fifty” and in-
15 sserting “70”;

16 (2) in subsection (b) by striking “fifty” and in-
17 sserting “70”;

18 (3) in subsection (e) in the first sentence—

19 (A) by striking “seventy-five” and insert-
20 ing “95”; and

21 (B) by striking “one hundred” and insert-
22 ing “120”; and

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

24 (A) by striking “seventy-five” and insert-
25 ing “95”;

1 (B) by striking “one hundred” and insert-
2 ing “120”; and

3 (C) by striking “fifty” each place it ap-
4 pears and inserting “70”.

5 (c) DURATION OF COPYRIGHT: WORKS CREATED
6 BUT NOT PUBLISHED OR COPYRIGHTED BEFORE JANU-
7 ARY 1, 1978.—Section 303 of title 17, United States
8 Code, is amended in the second sentence by striking “De-
9 cember 31, 2027” and inserting “December 31, 2047”.

10 (d) DURATION OF COPYRIGHT: SUBSISTING COPY-
11 RIGHTS.—

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

14 (A) in subsection (a)—

15 (i) in paragraph (1)—

16 (I) in subparagraph (B) by strik-
17 ing “47” and inserting “67”; and

18 (II) in subparagraph (C) by
19 striking “47” and inserting “67”;

20 (ii) in paragraph (2)—

21 (I) in subparagraph (A) by strik-
22 ing “47” and inserting “67”; and

23 (II) in subparagraph (B) by
24 striking “47” and inserting “67”; and

25 (iii) in paragraph (3)—

1 (I) in subparagraph (A)(i) by
2 striking “47” and inserting “67”; and

3 (II) in subparagraph (B) by
4 striking “47” and inserting “67”;

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

7 “(b) COPYRIGHTS IN THEIR RENEWAL TERM AT THE
8 TIME OF THE EFFECTIVE DATE OF THE SONNY BONO
9 COPYRIGHT TERM EXTENSION ACT.—Any copyright still
10 in its renewal term at the time that the Sonny Bono Copy-
11 right Term Extension Act becomes effective shall have a
12 copyright term of 95 years from the date copyright was
13 originally secured.”;

14 (C) in subsection (c)(4)(A) in the first sen-
15 tence by inserting “or, in the case of a termi-
16 nation under subsection (d), within the five-year
17 period specified by subsection (d)(2),” after
18 “specified by clause (3) of this subsection,”;
19 and

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

22 “(d) TERMINATION RIGHTS PROVIDED IN SUB-
23 SECTION (c) WHICH HAVE EXPIRED ON OR BEFORE THE
24 EFFECTIVE DATE OF THE SONNY BONO COPYRIGHT
25 TERM EXTENSION ACT.—In the case of any copyright

1 other than a work made for hire, subsisting in its renewal
2 term on the effective date of the Sonny Bono Copyright
3 Term Extension Act for which the termination right pro-
4 vided in subsection (c) has expired by such date, where
5 the author or owner of the termination right has not pre-
6 viously exercised such termination right, the exclusive or
7 nonexclusive grant of a transfer or license of the renewal
8 copyright or any right under it, executed before January
9 1, 1978, by any of the persons designated in subsection
10 (a)(1)(C) of this section, other than by will, is subject to
11 termination under the following conditions:

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

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

21 (2) COPYRIGHT RENEWAL ACT OF 1992.—Sec-
22 tion 102 of the Copyright Renewal Act of 1992
23 (Public Law 102-307; 106 Stat. 266; 17 U.S.C. 304
24 note) is amended—

25 (A) in subsection (c)—

1 (i) by striking “47” and inserting
2 “67”;

3 (ii) by striking “(as amended by sub-
4 section (a) of this section)”; and

5 (iii) by striking “effective date of this
6 section” each place it appears and insert-
7 ing “effective date of the Sonny Bono
8 Copyright Term Extension Act”; and

9 (B) in subsection (g)(2) in the second sen-
10 tence by inserting before the period the follow-
11 ing: “, except each reference to forty-seven
12 years in such provisions shall be deemed to be
13 67 years”.

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

16 Sections 203(a)(2) and 304(c)(2) of title 17, United
17 States Code, are each amended—

18 (1) by striking “by his widow or her widower
19 and his or her children or grandchildren”; and

20 (2) by inserting after subparagraph (C) the fol-
21 lowing:

22 “(D) In the event that the author’s widow
23 or widower, children, and grandchildren are not
24 living, the author’s executor, administrator, per-

1 sonal representative, or trustee shall own the
2 author's entire termination interest.”.

3 **SEC. 104. REPRODUCTION BY LIBRARIES AND ARCHIVES.**

4 Section 108 of title 17, United States Code, is
5 amended—

6 (1) by redesignating subsection (h) as sub-
7 section (i); and

8 (2) by inserting after subsection (g) the follow-
9 ing:

10 “(h)(1) For purposes of this section, during the last
11 20 years of any term of copyright of a published work,
12 a library or archives, including a nonprofit educational in-
13 stitution that functions as such, may reproduce, distrib-
14 ute, display, or perform in facsimile or digital form a copy
15 or phonorecord of such work, or portions thereof, for pur-
16 poses of preservation, scholarship, or research, if such li-
17 brary or archives has first determined, on the basis of a
18 reasonable investigation, that none of the conditions set
19 forth in subparagraphs (A), (B), and (C) of paragraph
20 (2) apply.

21 “(2) No reproduction, distribution, display, or per-
22 formance is authorized under this subsection if—

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

1 “(B) a copy or phonorecord of the work can be
2 obtained at a reasonable price; or

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

7 “(3) The exemption provided in this subsection does
8 not apply to any subsequent uses by users other than such
9 library or archives.”.

10 **SEC. 105. VOLUNTARY NEGOTIATION REGARDING DIVISION**
11 **OF ROYALTIES.**

12 It is the sense of the Congress that copyright owners
13 of audiovisual works for which the term of copyright pro-
14 tection is extended by the amendments made by this title,
15 and the screenwriters, directors, and performers of those
16 audiovisual works, should negotiate in good faith in an ef-
17 fort to reach a voluntary agreement or voluntary agree-
18 ments with respect to the establishment of a fund or other
19 mechanism for the amount of remuneration to be divided
20 among the parties for the exploitation of those audiovisual
21 works.

1 **SEC. 106. ASSUMPTION OF CONTRACTUAL OBLIGATIONS**
 2 **RELATED TO TRANSFERS OF RIGHTS IN MO-**
 3 **TION PICTURES.**

4 (a) IN GENERAL.—Part VI of title 28, United States
 5 Code, is amended by adding at the end the following new
 6 chapter:

7 **“CHAPTER 180—ASSUMPTION OF CERTAIN**
 8 **CONTRACTUAL OBLIGATIONS**

“Sec.

“4001. Assumption of contractual obligations related to transfers of rights in motion pictures.

9 **“§ 4001. Assumption of contractual obligations**
 10 **related to transfers of rights in motion**
 11 **pictures**

12 “(a) ASSUMPTION OF OBLIGATIONS.—In the case of
 13 a transfer of copyright ownership in a motion picture (as
 14 defined in section 101 of title 17, United States Code)
 15 that is produced subject to 1 or more collective bargaining
 16 agreements negotiated under the laws of the United
 17 States, if the transfer is executed on or after the effective
 18 date of this Act and is not limited to public performance
 19 rights, the transfer instrument shall be deemed to incor-
 20 porate the assumption agreements applicable to the copy-
 21 right ownership being transferred that are required by the
 22 applicable collective bargaining agreement, and the trans-
 23 feree shall be subject to the obligations under each such
 24 assumption agreement to make residual payments and

1 provide related notices, accruing after the effective date
2 of the transfer and applicable to the exploitation of the
3 rights transferred, and any remedies under each such as-
4 sumption agreement for breach of those obligations, as
5 those obligations and remedies are set forth in the applica-
6 ble collective bargaining agreement, if—

7 “(1) the transferee knows or has reason to
8 know at the time of the transfer that such collective
9 bargaining agreement was or will be applicable to
10 the motion picture; or

11 “(2) in the event of a court order confirming an
12 arbitration award against the transferor under the
13 collective bargaining agreement, the transferor does
14 not have the financial ability to satisfy the award
15 within 90 days after the order is issued.

16 “(b) FAILURE TO NOTIFY.—If the transferor under
17 subsection (a) fails to notify the transferee under sub-
18 section (a) of applicable collective bargaining obligations
19 before the execution of the transfer instrument, and sub-
20 section (a) is made applicable to the transferee solely by
21 virtue of subsection (a)(2), the transferor shall be liable
22 to the transferee for any damages suffered by the trans-
23 feree as a result of the failure to notify.

24 “(c) DETERMINATION OF DISPUTES AND CLAIMS.—
25 Any dispute concerning the application of subsection (a)

1 and any claim made under subsection (b) shall be deter-
 2 mined by an action in United States district court, and
 3 the court in its discretion may allow the recovery of full
 4 costs by or against any party and may also award a rea-
 5 sonable attorney's fee to the prevailing party as part of
 6 the costs.”.

7 (b) CONFORMING AMENDMENT.—The table of chap-
 8 ters for part VI of title 28, United States Code, is amend-
 9 ed by adding at the end the following:

“180. Assumption of Certain Contractual Obligations 4001”.

10 **SEC. 107. EFFECTIVE DATE.**

11 This title and the amendments made by this title
 12 shall take effect on the date of the enactment of this Act.

13 **TITLE II—MUSIC LICENSING**

14 **SEC. 201. SHORT TITLE.**

15 This title may be cited as the “Fairness in Musical
 16 Licensing Act of 1998”.

17 **SEC. 202. EXEMPTION OF CERTAIN MUSIC USES FROM**
 18 **COPYRIGHT PROTECTION.**

19 (a) BUSINESS EXEMPTION.—Section 110(5) of title
 20 17, United States Code, is amended to read as follows:

21 “(5) communication by electronic device of a
 22 transmission embodying a performance or display of
 23 a nondramatic musical work by the public reception
 24 of a broadcast, cable, satellite, or other transmission,
 25 if—

1 “(A)(i) the rooms or areas within the es-
2 tablishment where the transmission is intended
3 to be received by the general public contains
4 less than 3,500 square feet, excluding any space
5 used for customer parking; or

6 “(ii) the rooms or areas within the estab-
7 lishment where the transmission is intended to
8 be received by the general public contains 3,500
9 square feet or more, excluding any space used
10 for customer parking, if—

11 “(I) in the case of performance by
12 audio means only, the performance is
13 transmitted by means of a total of not
14 more than 6 speakers (excluding any
15 speakers in the device receiving the com-
16 munication), of which not more than 4
17 speakers are located in any 1 room or
18 area; or

19 “(II) in the case of a performance or
20 display by visual or audiovisual means, any
21 visual portion of the performance or dis-
22 play is communicated by means of not
23 more than 2 audio visual devices, if no
24 such audio visual device has a diagonal
25 screen size greater than 55 inches, and any

1 audio portion of the performance or dis-
2 play is transmitted by means of a total of
3 not more than 6 speakers (excluding any
4 speakers in the device receiving the com-
5 munication), of which not more than 4
6 speakers are located in any 1 room or
7 area;

8 “(B) no direct charge is made to see or
9 hear the transmission;

10 “(C) the transmission is not further trans-
11 mitted to the public beyond the establishment
12 where it is received; and

13 “(D) the transmission is licensed.”.

14 (b) EXEMPTION RELATING TO PROMOTION.—Section
15 110(7) of title 17, United States Code, is amended—

16 (1) by striking “a vending” and inserting “an”;

17 (2) by striking “sole”;

18 (3) by inserting “or of the audio, video, or other
19 devices utilized in the performance,” after
20 “phonorecords of the work,”; and

21 (4) by striking “and is within the immediate
22 area where the sale is occurring”.

1 **SEC. 203. BINDING ARBITRATION OF RATE DISPUTES IN-**
2 **VOLVING PERFORMING RIGHTS SOCIETIES.**

3 (a) **IN GENERAL.**—Section 504 of title 17, United
4 States Code, is amended by adding at the end the follow-
5 ing new subsection:

6 “(d) **PERFORMING RIGHTS SOCIETIES; BINDING AR-**
7 **BITRATION.**—

8 “(1) **ARBITRATION OF DISPUTES PRIOR TO**
9 **COURT ACTION.**—

10 “(A) **ARBITRATION.**—(i) If a general music
11 user and a performing rights society are unable
12 to agree on the appropriate rate or fee to be
13 paid for the user’s past or future performance
14 of musical works in the repertoire of the per-
15 forming rights society, the general music user
16 shall, in lieu of any other dispute-resolution
17 mechanism established by any judgment or de-
18 cree governing the operation of the performing
19 rights society, be entitled to binding arbitration
20 of such disagreement pursuant to the rules of
21 the American Arbitration Association. The
22 music user may initiate such arbitration.

23 “(ii) The arbitrator in such binding arbi-
24 tration shall determine a fair and reasonable
25 rate or fee for the general music user’s past
26 and future performance of musical works in

1 such society's repertoire and shall determine
2 whether the user's past performances of such
3 musical works, if any, infringed the copyrights
4 of works in the society's repertoire. If the arbi-
5 trator determines that the general music user's
6 past performances of such musical works in-
7 fringed the copyrights of works in the society's
8 repertoire, the arbitrator shall impose a penalty
9 for such infringement. Such penalty shall not
10 exceed the arbitrator's determination of the fair
11 and reasonable license fee for the performances
12 at issue.

13 “(B) DEFINITIONS.—(i) For purposes of
14 this paragraph, a ‘general music user’ is any
15 person who performs musical works publicly but
16 is not engaged in the transmission of musical
17 works to the general public or to subscribers
18 through broadcast, cable, satellite, or other
19 transmission.

20 “(ii) For purposes of this paragraph,
21 transmissions within a single commercial estab-
22 lishment or within establishments under com-
23 mon ownership or control are not transmissions
24 to the general public.

1 “(iii) For purposes of clause (ii), an ‘estab-
2 lishment’ is a retail business, restaurant, bar,
3 inn, tavern, or any other place of business in
4 which the public may assemble.

5 “(C) ENFORCEMENT OF ARBITRATOR’S
6 DETERMINATIONS.—An arbitrator’s determina-
7 tion under this paragraph is binding on the
8 parties and may be enforced pursuant to sec-
9 tions 9 through 13 of title 9, United States
10 Code.

11 “(2) COURT-ANNEXED ARBITRATION.—(A) In
12 any civil action brought against a general music
13 user, as defined in paragraph (1) for infringement of
14 the right granted in section 106(4) involving a musi-
15 cal work that is in the repertoire of a performing
16 rights society, if the general music user admits the
17 prior public performance of one or more works in
18 the repertoire of the performing rights society but
19 contests the rate or the amount of the license fee de-
20 manded by such society for such performance, the
21 dispute shall, if requested by the general music user,
22 be submitted to arbitration under section 652(e) of
23 title 28. In such arbitration proceeding, the arbitra-
24 tor shall determine the appropriate rate and amount
25 owed by the music user to the performing rights so-

1 ciety for all past public performances of musical
2 works in the society's repertoire. The amount of the
3 license fee shall not exceed two times the amount of
4 the blanket license fee that would be applied by the
5 society to the music user for the year or years in
6 which the performances occurred. In addition; the
7 arbitrator shall, if requested by the music user, de-
8 termine a fair and reasonable rate or license fee for
9 the music user's future public performances of the
10 musical works in such society's repertoire.

11 “(B) As used in this paragraph, the term ‘blan-
12 ket license’ means a license provided by a perform-
13 ing rights society that authorizes the unlimited per-
14 formance of musical works in the society's rep-
15 ertoire, for a fee that does not vary with the quan-
16 tity or type of performances of musical works in the
17 society's repertoire.

18 “(3) TERM OF LICENSE FEE DETERMINA-
19 TION.—In any arbitration proceeding initiated under
20 this subsection, the arbitrator's determination of a
21 fair and reasonable rate or license fee for the per-
22 formance of the music in the repertoire of the per-
23 forming rights society concerned shall apply for a
24 period of not less than 3 years nor more than 5

1 years after the date of the arbitrator's determina-
2 tion.”.

3 (b) ACTIONS THAT SHALL BE REFERRED TO ARBI-
4 TRATION.—Section 652 of title 28, United States Code,
5 is amended by adding at the end the following:

6 “(e) ACTIONS THAT SHALL BE REFERRED TO ARBI-
7 TRATION.—In any civil action against a general music
8 user for infringement of the right granted in section
9 106(4) of title 17 involving a musical work that is in the
10 repertoire of a performing rights society, if the general
11 music user admits the public performance of any musical
12 work in the repertoire of the performing rights society but
13 contests the rate or the amount of the license fee de-
14 manded by the society for such performance, the district
15 court shall, if requested by the general music user, refer
16 the dispute to arbitration, which shall be conducted in ac-
17 cordance with section 504(d)(2) of title 17. Each district
18 court shall establish procedures by local rule authorizing
19 the use of arbitration under this subsection. The defini-
20 tions set forth in title 17 apply to the terms used in this
21 subsection.”.

22 **SEC. 204. VICARIOUS LIABILITY PROHIBITED.**

23 Section 501 of title 17, United States Code, is
24 amended by adding at the end the following:

1 “(f) A landlord, an organizer or sponsor of a conven-
2 tion, exposition, or meeting, a facility owner, or any other
3 person making space available to another party by con-
4 tract, shall not be liable under any theory of vicarious or
5 contributory infringement with respect to an infringing
6 public performance of a copyrighted work by a tenant, les-
7 see, subtenant, sublessee, licensee, exhibitor, or other user
8 of such space on the ground that—

9 “(1) a contract for such space provides the
10 landlord, organizer or sponsor, facility owner, or
11 other person a right or ability to control such space
12 and compensation for the use of such space; or

13 “(2) the landlord, organizer or sponsor, facility
14 owner, or other person has or had at the time of the
15 infringing performance actual control over some as-
16 pects of the use of such space,

17 if the contract for the use of such space prohibits infring-
18 ing public performances and the landlord, organizer or
19 sponsor, facility owner, or other person does not exercise
20 control over the selection of works performed.”.

21 **SEC. 205. CONFORMING AMENDMENTS.**

22 Section 101 of title 17, United States Code, is
23 amended by inserting after the undesignated paragraph
24 relating to the definition of “perform” the following:

1 “A ‘performing rights society’ is an association,
2 corporation, or other entity that licenses the public
3 performance of nondramatic musical works on behalf
4 of copyright owners of such works, such as the
5 American Society of Composers, Authors, and Pub-
6 lishers, Broadcast Music, Inc., and SESAC, Inc. The
7 ‘repertoire’ of a performing rights society consists of
8 those works for which the society provides licenses
9 on behalf of the owners of copyright in the works.”.

10 **SEC. 206. CONSTRUCTION OF TITLE.**

11 Except as provided in section 504(d)(1) of title 17,
12 United States Code, as added by section 203(a) of this
13 Act, nothing in this title shall be construed to relieve any
14 performing rights society (as defined in section 101 of title
15 17, United States Code) of any obligation under any con-
16 sent decree, State statute, or other court order governing
17 its operation, as such statute, decree, or order is in effect
18 on the date of the enactment of this Act, as it may be
19 amended after such date, or as it may be enacted, issued,
20 or agreed to after such date.

1 **SEC. 207. EFFECTIVE DATE.**

2 This title and the amendments made by this title
3 shall take effect on the date of the enactment of this Act,
4 and shall apply to actions filed on or after such date.

 Passed the House of Representatives March 25,
1998.

Attest:

ROBIN H. CARLE,

Clerk.

Document No. 36

104TH CONGRESS
1ST SESSION

S. 483

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

IN THE SENATE OF THE UNITED STATES

MARCH 2 (legislative day, FEBRUARY 22), 1995

Mr. HATCH (for himself, Mrs. FEINSTEIN, and Mr. THOMPSON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Copyright Term Ex-
5 tension Act of 1995”.

6 **SEC. 2. DURATION OF COPYRIGHT PROVISIONS.**

7 (a) **PREEMPTION WITH RESPECT TO OTHER**
8 **LAWS.**—Section 301(c) of title 17, United States Code,

9 is amended by striking out “February 15, 2047” in each

1 place it appears and inserting “February 15, 2067” in
2 each such place.

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

6 (1) in subsection (a) by striking out “fifty” and
7 inserting in lieu thereof “seventy”;

8 (2) in subsection (b) by striking out “fifty” and
9 inserting in lieu thereof “seventy”;

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

11 (A) by striking out “seventy-five” and in-
12 serting in lieu thereof “ninety-five”; and

13 (B) by striking out “one hundred” and in-
14 serting in lieu thereof “one hundred and twen-
15 ty”; and

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

17 (A) by striking out “seventy-five” and in-
18 serting in lieu thereof “ninety-five”;

19 (B) by striking out “one hundred” and in-
20 serting in lieu thereof “one hundred and twen-
21 ty”; and

22 (C) by striking out “fifty” in each place it
23 appears and inserting “seventy” in each such
24 place.

1 (c) DURATION OF COPYRIGHT: WORKS CREATED
2 BUT NOT PUBLISHED OR COPYRIGHTED BEFORE JANU-
3 ARY 1, 1978.—Section 303 of title 17, United States
4 Code, is amended in the second sentence—

5 (1) by striking out “December 31, 2002” in
6 each place it appears and inserting “December 31,
7 2012” in each such place; and

8 (2) by striking out “December 31, 2027” and
9 inserting in lieu thereof “December 31, 2047”.

10 (d) DURATION OF COPYRIGHT: SUBSISTING COPY-
11 RIGHTS.—

12 (1) Section 304 of title 17, United States Code,
13 is amended—

14 (A) in subsection (a)—

15 (i) in paragraph (1)—

16 (I) in subparagraph (B) by strik-
17 ing out “47” and inserting in lieu
18 thereof “67”; and

19 (II) in subparagraph (C) by
20 striking out “47” and inserting in lieu
21 thereof “67”;

22 (ii) in paragraph (2)—

23 (I) in subparagraph (A) by strik-
24 ing out “47” and inserting in lieu
25 thereof “67”; and

1 (II) in subparagraph (B) by
2 striking out “47 and inserting in lieu
3 thereof “67”; and

4 (iii) in paragraph (3)—

5 (I) in subparagraph (A)(i) by
6 striking out “47” and inserting in lieu
7 thereof “67”; and

8 (II) in subparagraph (B) by
9 striking out “47” and inserting in lieu
10 thereof “67”; and

11 (B) in subsection (b) by striking out “sev-
12 enty-five” and inserting in lieu thereof “ninety-
13 five”.

14 (2) Section 102 of the Copyright Renewal Act
15 of 1992 (Public Law 102-307; 106 Stat. 266; 17
16 U.S.C. 304 note) is amended—

17 (A) in subsection (c)—

18 (i) by striking out “47” and inserting
19 in lieu thereof “67”;

20 (ii) by striking out “(as amended by
21 subsection (a) of this section)”; and

22 (iii) by striking out “effective date of
23 this section” each place it appears and in-
24 serting in each such place “effective date

1 of the Copyright Term Extension Act of
2 1995”; and

3 (B) in subsection (g)(2) in the second sen-
4 tence by inserting before the period the follow-
5 ing: “, except each reference to forty-seven
6 years in such provisions shall be deemed to be
7 sixty-seven years”.

8 **SEC. 3. EFFECTIVE DATE.**

9 This Act and the amendments made by this Act shall
10 take effect on the date of the enactment of this Act.

○

Document No. 37

Calendar No. 491104TH CONGRESS
2^D SESSION**S. 483****[Report No. 104-315]**

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

IN THE SENATE OF THE UNITED STATES

MARCH 2 (legislative day, FEBRUARY 22), 1995

Mr. HATCH (for himself, Mrs. FEINSTEIN, Mr. THOMPSON, Mr. SIMPSON, Mrs. BOXER, Mr. ABRAHAM, Mr. HEFLIN, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 10, 1996

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in italics]

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Copyright Term Ex-
3 tension Act of 1995".

4 **SEC. 2. DURATION OF COPYRIGHT PROVISIONS.**

5 (a) **PREEMPTION WITH RESPECT TO OTHER**
6 **LAWS.**—Section 301(e) of title 17, United States Code,
7 is amended by striking out "February 15, 2047" in each
8 place it appears and inserting "February 15, 2067" in
9 each such place.

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

13 (1) in subsection (a) by striking out "fifty" and
14 inserting in lieu thereof "seventy";

15 (2) in subsection (b) by striking out "fifty" and
16 inserting in lieu thereof "seventy";

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

18 (A) by striking out "seventy-five" and in-
19 serting in lieu thereof "ninety-five"; and

20 (B) by striking out "one hundred" and in-
21 serting in lieu thereof "one hundred and twen-
22 ty"; and

23 (4) in subsection (c) in the first sentence—

24 (A) by striking out "seventy-five" and in-
25 serting in lieu thereof "ninety-five";

1 (B) by striking out “one hundred” and in-
 2 serting in lieu thereof “one hundred and twen-
 3 ty”; and

4 (C) by striking out “fifty” in each place it
 5 appears and inserting “seventy” in each such
 6 place.

7 (e) DURATION OF COPYRIGHT: WORKS CREATED
 8 BUT NOT PUBLISHED OR COPYRIGHTED BEFORE JANU-
 9 ARY 1, 1978.—Section 303 of title 17, United States
 10 Code, is amended in the second sentence—

11 (1) by striking out “December 31, 2002” in
 12 each place it appears and inserting “December 31,
 13 2012” in each such place; and

14 (2) by striking out “December 31, 2027” and
 15 inserting in lieu thereof “December 31, 2047”.

16 (d) DURATION OF COPYRIGHT: SUBSISTING COPY-
 17 RIGHTS.—

18 (1) Section 304 of title 17, United States Code,
 19 is amended—

20 (A) in subsection (a)—

21 (i) in paragraph (1)—

22 (I) in subparagraph (B) by strik-
 23 ing out “47” and inserting in lieu
 24 thereof “67”; and

1 (ii) in subparagraph (C) by
2 striking out “47” and inserting in lieu
3 thereof “67”;

4 (ii) in paragraph (2)—

5 (I) in subparagraph (A) by strik-
6 ing out “47” and inserting in lieu
7 thereof “67”; and

8 (ii) in subparagraph (B) by
9 striking out “47 and inserting in lieu
10 thereof “67”; and

11 (iii) in paragraph (3)—

12 (I) in subparagraph (A)(i) by
13 striking out “47” and inserting in lieu
14 thereof “67”; and

15 (ii) in subparagraph (B) by
16 striking out “47” and inserting in lieu
17 thereof “67”; and

18 (B) in subsection (b) by striking out “sev-
19 enty-five” and inserting in lieu thereof “ninety-
20 five”.

21 (2) Section 102 of the Copyright Renewal Act
22 of 1992 (Public Law 102-307; 106 Stat. 266; 17
23 U.S.C. 304 note) is amended—

24 (A) in subsection (c)—

1 (i) by striking out “47” and inserting
2 in lieu thereof “67”;

3 (ii) by striking out “(as amended by
4 subsection (a) of this section)”;

5 (iii) by striking out “effective date of
6 this section” each place it appears and in-
7 serting in each such place “effective date
8 of the Copyright Term Extension Act of
9 1995”; and

10 (B) in subsection (g)(2) in the second sen-
11 tence by inserting before the period the follow-
12 ing: “, except each reference to forty-seven
13 years in such provisions shall be deemed to be
14 ~~sixty-seven years~~”.

15 **SEC. 3. EFFECTIVE DATE.**

16 This Act and the amendments made by this Act shall
17 take effect on the date of the enactment of this Act.

18 **SECTION 1. SHORT TITLE.**

19 *This Act may be cited as the “Copyright Term*
20 *Extension Act of 1996”.*

21 **SEC. 2. DURATION OF COPYRIGHT PROVISIONS.**

22 (a) **CLARIFICATION OF LIBRARY EXEMPTION OF**
23 **EXCLUSIVE RIGHTS.—**

24 *Section 108 of title 17, United States Code, is amend-*
25 *ed—*

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

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

5 “(h)(1) Notwithstanding any other limitation in this
6 title, for purposes of this section, during the last 20 years
7 of any term of a copyright of a published work, a library,
8 archives, or nonprofit educational institution may repro-
9 duce or distribute a copy or a phonorecord of such work,
10 or portions thereof, for purposes of preservation, scholar-
11 ship, teaching, or research, if the library, archives or non-
12 profit educational institution has first determined, on the
13 basis of a reasonable investigation of reasonably available
14 sources, that the work—

15 “(A) is not subject to normal commercial exploi-
16 tation; and

17 “(B) cannot be obtained at a reasonable price.

18 “(2) No reproduction or distribution under this sub-
19 section is authorized if the copyright owner or its agent pro-
20 vides notice to the Copyright Office that the condition in
21 paragraph (1)(A) or the condition in paragraph (1)(B) does
22 not apply.”.

23 (b) *PREEMPTION WITH RESPECT TO OTHER LAWS.*—
24 Section 301(c) of title 17, United States Code, is amended

1 *by striking “February 15, 2047” each place it appears and*
 2 *inserting “February 15, 2067”.*

3 (c) *DURATION OF COPYRIGHT: WORKS CREATED ON*
 4 *OR AFTER JANUARY 1, 1978.—Section 302 of title 17, Unit-*
 5 *ed States Code, is amended—*

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

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

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

11 (A) *by striking “seventy-five” and inserting*
 12 *“95”; and*

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

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

16 (A) *by striking “seventy-five” and inserting*
 17 *“95”;*

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

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

22 (d) *DURATION OF COPYRIGHT: WORKS CREATED BUT*
 23 *NOT PUBLISHED OR COPYRIGHTED BEFORE JANUARY 1,*
 24 *1978.—Section 303 of title 17, United States Code, is*

1 *amended in the second sentence by striking “December 31,*
 2 *2027” and inserting “December 31, 2047”.*

3 (e) *DURATION OF COPYRIGHT: SUBSISTING COPY-*
 4 *RIGHTS.—*

5 (1) *Section 304 of title 17, United States Code,*
 6 *is amended—*

7 (A) *in subsection (a)—*

8 (i) *in paragraph (1)—*

9 (I) *in subparagraph (B) by strik-*
 10 *ing “47” and inserting “67”; and*

11 (II) *in subparagraph (C) by strik-*
 12 *ing “47” and inserting “67”;*

13 (ii) *in paragraph (2)—*

14 (I) *in subparagraph (A) by strik-*
 15 *ing “47” and inserting “67”; and*

16 (II) *in subparagraph (B) by strik-*
 17 *ing “47” and inserting “67”; and*

18 (iii) *in paragraph (3)—*

19 (I) *in subparagraph (A)(i) by*
 20 *striking “47” and inserting “67”; and*

21 (II) *in subparagraph (B) by strik-*
 22 *ing “47” and inserting “67”;*

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

1 “(b) *COPYRIGHTS IN THEIR RENEWAL TERM AT THE*
2 *TIME OF THE EFFECTIVE DATE OF THE COPYRIGHT TERM*
3 *EXTENSION ACT OF 1996.—Any copyright still in its re-*
4 *newal term at the time that the Copyright Term Extension*
5 *Act of 1996 becomes effective shall have a copyright term*
6 *of 95 years from the date copyright was originally se-*
7 *cured.”;*

8 (C) *in subsection (c)(4)(A) in the first sen-*
9 *tence by inserting “or, in the case of a termi-*
10 *nation under subsection (d), within the five-year*
11 *period specified by subsection (d)(2),” after*
12 *“specified by clause (3) of this subsection,”; and*

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

15 “(d) *TERMINATION RIGHTS PROVIDED IN SUBSECTION*
16 *(c) WHICH HAVE EXPIRED ON OR BEFORE THE EFFECTIVE*
17 *DATE OF THE COPYRIGHT TERM EXTENSION ACT OF*
18 *1996.—In the case of any copyright other than a work made*
19 *for hire, subsisting in its renewal term on the effective date*
20 *of the Copyright Term Extension Act of 1996 for which the*
21 *termination right provided in subsection (c) has expired by*
22 *such date, where the author or owner of the termination*
23 *right has not previously exercised such termination right,*
24 *the exclusive or nonexclusive grant of a transfer or license*
25 *of the renewal copyright or any right under it, executed*

1 before January 1, 1978, by any of the persons designated
2 in subsection (a)(1)(C) of this section, other than by will,
3 is subject to termination under the following conditions:

4 “(1) The conditions specified in subsection (c)
5 (1), (2), (4), (5), and (6) of this section apply to ter-
6 minations of the last 20 years of copyright term as
7 provided by the amendments made by the Copyright
8 Term Extension Act of 1996.

9 “(2) Termination of the grant may be effected at
10 any time during a period of 5 years beginning at the
11 end of 75 years from the date copyright was origi-
12 nally secured.”.

13 (2) Section 102 of the Copyright Renewal Act of
14 1992 (Public Law 102-307; 106 Stat. 266; 17 U.S.C.
15 304 note) is amended—

16 (A) in subsection (c)—

17 (i) by striking “47” and inserting
18 “67”;

19 (ii) by striking “(as amended by sub-
20 section (a) of this section)”;

21 (iii) by striking “effective date of this
22 section” each place it appears and inserting
23 “effective date of the Copyright Term Exten-
24 sion Act of 1995”; and

1 (B) in subsection (g)(2) in the second sen-
2 tence by inserting before the period the following:
3 “, except each reference to forty-seven years in
4 such provisions shall be deemed to be 67 years”.

5 **SEC. 3. EFFECTIVE DATE.**

6 This Act and the amendments made by this Act shall
7 take effect on the date of the enactment of this Act.

Document No. 38

104TH CONGRESS
1ST SESSION

H. R. 989

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 1995

Mr. MOORHEAD (for himself, Mrs. SCHROEDER, Mr. COBLE, Mr. GOODLATTE, Mr. BONO, Mr. GEKAS, Mr. BERMAN, Mr. NADLER, Mr. CLEMENT, and Mr. GALLEGLY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

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2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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13 (B) by striking "one hundred" and insert-
14 ing "120"; and

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17 ing "95";

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20 (C) by striking "fifty" each place it ap-
21 pears and inserting "70".

22 (c) DURATION OF COPYRIGHT: WORKS CREATED
23 BUT NOT PUBLISHED OR COPYRIGHTED BEFORE JANU-
24 ARY 1, 1978.—Section 303 of title 17, United States
25 Code, is amended in the second sentence—

1 (1) by striking “December 31, 2002” each
2 place it appears and inserting “December 31,
3 2012”; and

4 (2) by striking “December 31, 2027” and in-
5 serting “December 31, 2047”.

6 (d) DURATION OF COPYRIGHT: SUBSISTING COPY-
7 RIGHTS.—

8 (1) Section 304 of title 17, United States Code,
9 is amended—

10 (A) in subsection (a)—

11 (i) in paragraph (1)—

12 (I) in subparagraph (B) by strik-
13 ing “47” and inserting “67”; and

14 (II) in subparagraph (C) by
15 striking “47” and inserting “67”;

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18 ing “47” and inserting “67”; and

19 (II) in subparagraph (B) by
20 striking “47” and inserting “67”; and

21 (iii) in paragraph (3)—

22 (I) in subparagraph (A)(i) by
23 striking “47” and inserting “67”; and

24 (II) in subparagraph (B) by
25 striking “47” and inserting “67”; and

1 (B) in subsection (b) by striking “seventy-
2 five” and inserting “95”.

3 (2) Section 102 of the Copyright Renewal Act
4 of 1992 (Public Law 102-307; 106 Stat. 266; 17
5 U.S.C. 304 note) is amended—

6 (A) in subsection (c)—

7 (i) by striking “47” and inserting
8 “67”;

9 (ii) by striking “(as amended by sub-
10 section (a) of this section)”; and

11 (iii) by striking “effective date of this
12 section” each place it appears and insert-
13 ing “effective date of the Copyright Term
14 Extension Act of 1995”; and

15 (B) in subsection (g) (2) in the second sen-
16 tence by inserting before the period the follow-
17 ing: “, except each reference to forty-seven
18 years in such provisions shall be deemed to be
19 67 years”.

20 **SEC. 3. EFFECTIVE DATE.**

21 This Act and the amendments made by this Act shall
22 take effect on the date of the enactment of this Act.

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