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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

