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States Government, State and local governments, and the private sector of implementing and complying with the regulation.

(b) SUBSTANTIALLY SIMILAR FINAL REGULATIONS.—If the Administrator determines that a final major regulation is substantially similar to the proposed version of the regulation with respect to each of the matters referred to in subsection (a), the Administrator may publish in the Federal Register a reference to the statement published under subsection (a) for the proposed regulation in lieu of publishing a new statement for the final regulation.

(c) REPORTING.—If the Administrator cannot certify with respect to one or more of the matters addressed in subsection (a)(4), the Administrator shall identify those matters for which certification cannot be made, and shall include a statement of the reasons therefor in the Federal Register along with the regulation. Not later than March 1 of each year, the Administrator shall submit a report to Congress identifying those major regulations promulgated during the previous calendar year for which complete certification was not made, and summarizing the reasons therefor.

(d) OTHER REQUIREMENTS.—Nothing in this section affects any other provision of Federal law, or changes the factors that the Administrator is authorized to consider in promulgating a regulation pursuant to any statute, or shall delay any action required to meet a deadline imposed by statute or a court.

(e) JUDICIAL REVIEW.—Nothing in this section creates any right to judicial or administrative review, nor creates any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person. If a major regulation is subject to judicial or administrative review under any other provision of law, the adequacy of the certification prepared pursuant to this section, and any alleged failure to comply with this section, may not be used as grounds for affecting or invalidating such major regulation, although the statements and information prepared pursuant to this section, including statements contained in the certification, may be considered as part of the record for judicial or administrative review conducted under such other provision of law.

(f) DEFINITION OF MAJOR REGULATION.—For purposes of this section, "major regulation" means a regulation that the Administrator determines may have an effect on the economy of $100,000,000 or more in any one year.

(g) EFFECTIVE DATE.—This section shall take effect 180 days after the date of enactment of this Act.•

By Mr. HATCH (for himself and Mrs. FEINSTEIN):

S. 227. A bill to amend title 17, United States Code, to provide an exclusive right to perform sound recordings publicly by means of digital transmissions and for other purposes; to the Committee on the Judiciary.

THE PERFORMANCE RIGHTS IN SOUND RECORDINGS ACT OF 1995

• Mr. HATCH.

Mr. President, today, together with my distinguished colleague from California, Senator FEINSTEIN, I am introducing the Performance Rights in Sound Recordings Act of 1995.

Despite that complicated title this legislation is in fact a simple bill that amends the Copyright Act by giving those who create sound recordings the basic copyright protections that current law gives to all other creators. Specifically, the bill provides that the copyright owners of sound recordings have the right to benefit from the digital transmissions that may be made of their music.

Thus, like other copyright owners, such as film and video producers, those who create sound recordings will, on passage of this bill, be able to license many of the digital transmissions made of their works.

One common illustration of how this disparity in treatment operates in practice will demonstrate the irrationality of our current law: Many new recordings are released in video formats as well as in traditional audio only form. When the video is broadcast on television or cable, the composer of the music, the publisher of the music, the producer of the video, and the performer of the work are all entitled to a performance right royalty. However, when only the audio recording is played on the radio or delivered by means of a satellite or other subscription service, only the composer and publisher have performance rights that must be respected—even though the audio recording may be identical to the video soundtrack. The producer's and performer's interests are ignored.

It should be initially noted, Mr. President, that this bill does not impose new financial burdens on broadcasters or on any other broad class of users who traditionally perform sound recordings. Those users will instead continue to be subject only to those financial burdens that they voluntarily undertake. The aim of this bill is simply to level the playing field by according to sound recordings most of the same performance rights that all other works capable of performance have long enjoyed.

As I noted last Congress, sound recordings are not the only source of music available to broadcasters, nor is music programming the only format. Should those who may be granted new performance rights in the digital transmission of sound recordings be so unwise as to unfairly and unrealistically charge for licensing their works or to actually withhold their works from the public, then the detriment will fall principally on the very copyright owners that the law is designed to protect. But, in any event, the bill ensures that most digital transmissions of sound recordings will have the right to a license, on terms to be negotiated, or if necessary, arbitrated.

The basic issue raised by the Performance Rights Act is not new, Mr. President. The importance of the performance right issue was recognized when the Copyright Act of 1976 was debated by us, though it was not ultimately addressed by that act. Congress did, however, request a study of the issue to be made by the Copyright Office, and that study, released in 1978, did conclude that a performance right in sound recordings was warranted. This was at a time, it should be noted, when few could have anticipated the widespread availability of digital technology and the possibility for flawless copying that is now a reality.

A subsequent study of this issue was provided to the Subcommittee on Patents, Copyrights and Trademarks in October 1991, in response to a joint request by Chairman DeConcini and Representative Hughes, chairman of the House Subcommittee on Intellectual Property. Their request was for an assessment of the effect of digital audio technology on copyright holders and their works. Again, the Copyright Office concluded that sound recordings should, for copyright purposes, be equated with other works protected by copyright. From this premise flows the inevitable conclusion that the producers and performers of sound recordings are entitled to a public performance right, just as are all other authors of works capable of performance. Thus, it should not be surprising that the Copyright Office recommended in 1991 that Congress enact legislation recognizing the performance right. Senator FEINSTEIN and I responded to that recommendation when, in the 103d Congress, we filed S. 1421, the Performance Rights in Sound Recordings Act of 1993.

In the months following introduction of S. 1421, a number of highly productive roundtable discussions were held, along with full hearings by the House Subcommittee on Intellectual Property and the Administration of Justice. In these forums, and in private discussions and negotiations, a remarkable variety of viewpoints were aired. As a result of this exchange numerous additions to the original text of S. 1421 have been incorporated in this year's bill, in response to the legitimate concerns of interested parties, including, but not limited to, music publishers, composers and songwriters, musicians, broadcasters, cable operators, background music suppliers, and performing rights societies.

Principal among these changes is the decision to give the bill a more limited scope. Unlike S. 1421, today's bill does not affect the interests of broadcasters, as that industry has traditionally been understood. While strong arguments can be made in favor of attaching a performance right to every performance of a sound recording, including analog and digital broadcasts, it is also true that long-established business practices within the music and broadcasting industries represent a highly complex system of interlocking relationships which function effectively for the most part and should not be lightly upset.

Of equal importance is the fact that traditional broadcasting does not,

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esent a threat to displace sales of und recordings to the same extent at pay-per-listen, direct satellite, d subscription services do.

Currently, sales of recordings in cord stores and other retail outlets present virtually the only avenue for e recovery of the very substantial instment required to bring to life a und recording. There are no royalties yable to the creators of the sound reording for the broadcast or other pubc performance of the work.

If the technological status quo could maintained, it might well be that e current laws could be tolerated. it, we know that technological develments such as satellite and digital ansmission of recordings make sound cordings vulnerable to exposure to a st audience through the initial sale only a potential handful of records. ince digital technology permits the aking of virtually flawless copies of e original work transmitted, a potenal depression of sales is clearly reatened, particularly when the pyright owner cannot control public erformance of the work. And new chnologies such as audio on demand nd pay-per-listen will permit instant cess to music, thus negating even the eed to make a copy.

But, Mr. President, even if this ecoomic argument were not persuasive, irness and responsible copyright poly nonetheless dictate the recognition f the rights embodied in today's bill. s the Copyright Office has noted:

> Even if the widespread dissemination by atellite and digital means does not depress ales of records, the authors and copyright wners of sound recordings are unfairly derived by existing law of their fair share of he market for performance of their works.

Report on Copyright Implications of Digital Audio Transmission Services, Oct. 1991, pp. 156–157).

Mr. President, the bill that Senator EINSTEIN and I are introducing today s about fairness, plain and simple. Unless Congress is prepared to create a hierarchy of artists based on a theory of ewarding some forms of creativity but ot others, it must adopt a policy of ondiscrimination among artists. This hould be true whether we are tempted o discriminate among artists based on he content of their creations, based on he nature of the works created, or based on the medium in which the works are made available to the public.

For too long, American law has tolerated an irrational discrimination against the creators of sound recordings. Every other copyrighted work that is capable of performance—including plays, operas, ballets, films, and pantomimes—is entitled to the performance right. It is denied only for sound recordings.

It is frankly difficult, Mr. President, to understand the historical failure to accord to the creators of sound recordings the rights seen as fundamental to other creators. I acknowledge that in other nations some have advanced the theory that copyright protection should not extend to sound recordings. This theory is based on the view that the act of embodying a musical work on a disc or tape is more an act of technical recordation than a creative enterprise. But, this has not been the American view, nor the view of most nations with advanced copyright systems. Since 1971, Congress has clearly recognized sound recordings as works entitled to copyright on an equal basis with all other works.

Thus, the joint authors of sound recordings—those who produce them and those who perform on them—must be seen as creators fully entitled to those rights of reproduction, distribution, adaptation, and public performance that all other authors enjoy. It is, I believe, no longer possible to deny the true creative work of the producers of sound recordings. While few are so well known as their stage and film counterparts, there are significant exceptions. In the field of operatic recording alone, one could cite legendary figures such as Walter Legge, Richard Mohr, or John Culshaw. As the "New Grove Dictionary of Opera" states with reference to the latter's landmark Wagner recordings of the 1950's, "Mr. Culshaw's great achievement was to develop the concept of opera recording as an art form distinct from live performance." (Vol. I, p. 1026; Macmillan Press, 1992). The events referred to occurred over 30 years ago, yet American law still fails fully to recognize the sound recording as an art form entitled to the full range of copyright protections enjoyed by live performances.

Similarly, the unique creative input of the performing artist as a joint author cannot be casually discounted as a proper subject of copyright protection. It has been said that the recording industry was almost single-handedly launched by the public demand for one performer's renditions of works largely in the public domain. Indeed, Enrico Caruso's recordings from the early years of this century are almost all still in print today. To take a more contemporary example, it could be noted that Willie Nelson authored a country music standard when he composed "Crazy," a song he has also recorded. But, Patsy Cline made the song a classic, by her inimitable performance of it.

It should be carefully noted, Mr. President, that today's bill is, frankly, compromise legislation. It does not seek to create a full performance right in sound recordings, a right that would extend to the more common analog mode of recording. Also, the digital right that the bill does create is limited to subscription transmissions. Other public performances of digital recordings are still exempted from the public performance right that the bill would create.

I believe that these major limitations on the rights that we seek to create today will limit as much as possible the dislocations and alterations of prevailing contractual arrangements in the music and broadcasting industries. I am sure I speak for Senator FEINSTEIN as well when I say that we are open to the consideration of additional means of ensuring that this bill does not have unintended consequences for other copyright owners, be they songwriters, music publishers, broadcasters, or others.

Mr. President, while today's bill is landmark legislation, it should also be noted that the bill only proposes to give the creators of sound recordings something approaching the minimum rights that more than 60 countries already give their creators. In so doing, the legislation should also have extremely beneficial consequences in the international sphere by strengthening America's bargaining position as it continues to campaign for strong levels of protection for all forms of intellectual property and by allowing American copyright owners to access foreign royalty pools that currently deny distributions of performance royalties to American creators due to the lack of a reciprocal right in the United States.

The absence of a performance right undoubtedly, hindered the efforts of U.S. trade negotiators in addressing matters such as the Uruguay round of the General Agreement on Tariffs and Trade [GATT] and will continue to hinder the current efforts of the World Intellectual Property Organization to develop a new instrument to settle the rights of producers and performers of sound recordings. In each instance, U.S. negotiators have been faced with the argument from our trading partners that the United States cannot expect other countries to provide increased protection when U.S. law is itself inadequate.

Furthermore, in many countries that do provide performance rights for sound recordings, there is often a refusal to share any collected royalties with American artists and record companies for the public performance of their recordings in those foreign countries. This is based on the argument that these rights should be recognized only on a reciprocal basis. For as long as foreign artists receive no royalties for the public performance of their works in the United States, American artists will continue to receive no royalties for the performance of American works in those foreign countries that insist on reciprocity.

The royalty pools we are talking about here, Mr. President, are, in fact, considerable. The Recording Industry Association of America has estimated that in 1992 American recording artists and musicians were excluded from royalty pools that distributed performance royalties in excess of $120 million. It is

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likely that this figure has increased in recent years and will continue to grow.

The insistance of certain foreign nations on reciprocity of rights as a condition to the receipt of performance royalties is inconsistent with the fundamental obligation of those nations to provide national treatment under the Berne Convention on the Protection of Literacy and Artistic Property or under the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations. It is nonetheless an economic fact of life that seriously disadvantages American producers and performers and therefore must be dealt with. If passed, the Performance Rights in Sound Recordings Act should make it more likely that Americans who are entitled to royalties from foreign performances will be able to recover those funds. Thus, the direct economic benefits to be derived from the legislation are considerable.

Before concluding, Mr. President, I would like to thank my colleague from California, Senator FEINSTEIN, for joining me again this year in introducing this important legislation and for drawing our attention to the significant economic consequences involved.•

• Mrs. FEINSTEIN. Mr. President, I am joining my distinguished colleague, the chairman of the Senate Judiciary Committee, Senator HATCH of Utah, to introduce once again the Digital Performance Rights in Sound Recordings Act. Just as the version on which we collaborated last year did, this bill will—for the first time—provide recording companies and musical artists with the same protection under copyright law already enjoyed by songwriters and composers with respect to the performance of digital sound recordings.

Senator HATCH and I introduced similar language in the last Congress for the express purpose of beginning in earnest the debate over how to redress the current imbalance in copyright law. I'm very pleased that, although time did not permit final congressional action on the bill last year, virtually all of the affected industries accepted our invitation—and that extended by former Congressman Hughes—to fully explore the complicated legal and commercial issues presented by technology's inevitable advance.

Mr. Hughes, then chair of the House's Subcommittee on Intellectual Property and Judicial Administration, organized two highly effective roundtables that brought cable, broadcast, satellite, restaurant, and music industry leaders together with other copyright holder and labor organizations. I also met at great length with many of those principals last February, as did Chairman HATCH and his staff on many, many occasions. These efforts, I am pleased to say, produced a sweeping agreement on most major aspects of this issue last May.

That agreement provided the framework for the bill we have introduced today. This legislation creates a digital public performance right in sound recordings that is applicable to transmissions for which subscribers are charged a fee. Most of these transmissions are subject to statutory licensing, at rates to be negotiated, or if necessary, arbitrated. However, interactive services remain subject to an exclusive right, in keeping with the bill as originally introduced last Congress. The bill contains protections for licensing of copyrighted works in vertically integrated companies and contains language to make clear that the new performance right does not impair any of the other copyright rights under existing law.

Ditigal technology, and the industries built around its use to distribute sound recordings, have evolved and advanced dramatically in the 17 months since this legislation was first introduced, Mr. President. The need to keep America's copyright law current, therefore, has only become more acute.

Accordingly, I believe that this Congress has not merely an opportunity, but a responsibility, to build on the tremendous bipartisan strides made last year by expeditiously considering, amending if need be, and passing the bill that Senator HATCH and I have introduced today.

For those who have not reviewed this issue since the last Congress or are new to it, let me briefly review the principal reasons to adopt this legislation:

First, it is the fair thing to do. Owners of almost every type of copyrighted work—movies, books, plays, magazines, advertising, and artwork, for example—have the exclusive right to authorize the public performance of their copyrighted work. Sound recordings, and the artists and companies that make them, however, have no such performance right.

Accordingly, when a song is played over the radio, or, as is increasingly the case, over a new digital audio cable service, the artist who sings the song, the musicians and backup singers, and the record company whose investment made the recording possible have no legal right to control or to receive compensation for this public performance of their work.

The artists who made the music, and the companies that underwrote its production and promotion, don't see a dime of the revenue realized by the ditigal transmitter. And, without a right of public performance for sound recordings by means of digital transmissions, they will not. That is just not fair, and this inequity will not be corrected unless and until this legislation is passed.

Second, the advent of digital technology and the emergence of a whole new industry to distribute them directly to the home make prompt protection of artists and record companies critical.

Let me explain why. Ordinary, or analog, radio signals are waves and, as such, they vary in strength and break down over distance. That breakdown greatly diminishes sound quality.

In the past, therefore, the sale of comparatively high-quality recordings on cassette tapes and record albums was not jeopardized by the casual home recording of music played over the radio. The quality of home recording over-the-air simply did not compare with what a record or tape sounded like over a home stereo system.

Today, however, the same technology that has given us compact discs now allows perfect reproductions of music to be digitized—turned into computer ones and zeros—that can be sent by satellite or over cable TV wires around the globe, and reassembled into concert hall quality music in our homes. Predictably, and quite legally, this quantum leap in sound technology has had a revolutionary impact on the way that music is marketed.

New subscription digital audio services have sprung up in cities, towns, and rural communities across the country. For a modest monthly fee, they deliver multiple channels of CD-quality music to customers in their homes—primarily through subscribers' cable TV wiring.

Other companies are experimenting with similar services to be provided through home computers, or more sophisticated systems that will permit the customer at home to custom-order whatever music he or she would like to hear and record. Although it is extremely time-consuming to download a CD today, soon compression technology and high-speed transmission will permit virtual instantaneous access. All one will need is a modem.

As the market is now configured, however, these companies need merely go to a local record store, buy a single copy of a compact disc which they can then transmit for a fee to tens of thousands, potentially millions, of subscribers. Because our copyright law is behind the technological times, record companies and recording artists do not see a penny of compensation from even one of those thousands of performances.

It is thus no exaggeration to say that, without the change in copyright law proposed today, these wonderful new services have the potential to put the current recording industry out of business. Why travel to a store to buy a record, tape, or compact disc when you can get the same, or custom-tailored musical packages, in your living room at the touch of a button?

Frankly, that would be a tolerable evolution of the marketplace if artists

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and record companies were compensated for the use of their sound recordings by the new digital transmission services and on-line and interactive services. Right now, however, because of skewed copyright law, that is not the way the market works.

Neither Senator HATCH nor I suggest that digital audio services should not be able to operate just as they do now to bring top-quality digital signals to American homes. Our bill does insist, however, that such services not be able to take advantage of a redressable gap in our copyright laws to avoid compensating record companies and artists fairly.

Third, copyright experts have consistently urged Congress to create a right of public performance in sound recordings.

The U.S. Copyright Office has recommended since 1978 that a performance right in sound recordings be granted in all public performances, not just digital transmissions, and recently reiterated the urgency of the need for such reform created by the advent of digital audio technology. Indeed, the Copyright Office testified before the House Judiciary Subcommittee on Intellectual Property and Judicial Administration in the last Congress, urgently calling for enactment of such legislation.

In addition, the administration's working group on intellectual property rights of the information infrastructure task force, in its preliminary draft report, recently wrote:

* * * the lack of a public performance right in sound recordings under U.S. law is an historical anomaly that does not have a strong policy justification—and certainly not a legal one.

The report also reiterated the administration's support for the bill that Senator HATCH and I introduced in the 103d Congress and for H.R. 2575, its House counterpart introduced by Representatives William Hughes and HOWARD BERMAN.

It is time to heed these expert calls.

Fourth, taking the experts' advice also will help U.S. trade negotiators obtain greater protection for American copyright holders overseas than they are now able to demand.

More than 60 countries around the world extend similar rights to producers and their artists, and have for many years. American negotiators' efforts to obtain protection for our own companies and artists have been hampered, as they have said repeatedly, by our inability to reciprocate. It is long past time to provide our trade representatives with this valuable bargaining chip.

Finally, Mr. President, I want to reiterate that the legislation we are introducing today is no different in intent than S. 1421, although the content is somewhat different. We have attempted to continue the work of the last Congress. Furthermore, we are introducing this legislation in the same spirit with which last year's bill was submitted. Chairman HATCH and I want to continue to work closely with all the affected industries to make this as strong and properly tailored a piece of legislation as possible.

We are standing at the cusp of an exciting digital age. Technological advances, however, must not come at the expense of American creators of intellectual property. This country's artists, musicians, and businesses that bring them to us are truly among our greatest cultural assets. This bill recognizes the important contribution that they make and provides protection for their creative works, both at home and abroad.

I am once again very pleased to be working with Senator HATCH to correct an increasingly dangerous and inappropriate imbalance in our Nation's copyright laws.●

By Mr. DOLE (for himself, Mr. SIMON, Mr. HELMS, Mr. ROBB, Mr. MCCAIN, Mr. D'AMATO, Mr. KENNEDY, Mr. GRAMM, and Mr. HATFIELD):

S. 230. A bill to prohibit United States assistance to countries that prohibit or restrict the transport or delivery of United States humanitarian assistance; to the Committee on Foreign Relations.

HUMANITARIAN AID CORRIDOR ACT

Mr. DOLE. Mr. President, I rise to speak briefly today to reintroduce the Humanitarian Aid Corridor Act. I am joined again by the distinguished Senator from Illinois, Senator SIMON, in addition to the following cosponsors: Senator MCCAIN, Senator D'AMATO, Senator KENNEDY, and Senator GRAMM. In my view, our legislation will further an important American foreign policy objective: To facilitate the prompt delivery of humanitarian aid. This would be achieved by establishing the principle that if a government obstructs humanitarian aid to other countries, it should not receive U.S. assistance. It seems to me that this is a principle that could be readily accepted by everyone. Very simply, our legislation would prohibit U.S. foreign assistance to countries which prohibit or impede the delivery or transport of U.S. humanitarian assistance to other countries. It makes a lot of sense to me.

The intended effect of this legislation is to ensure the efficient and timely delivery of U.S. humanitarian assistance to people in need. It will help deter interference with humanitarian relief, as well as provide for the appropriate response in the event of interference or obstructionism.

Mr. President, our legislation would be universally applicable—the Humanitarian Aid Corridor Act does not single out any one country. It would apply to all relief situations. Currently, however, there is one country that would clearly be affected. Turkey continues to receive large amounts of assistance in the form of grants and concessional loans financed by the American taxpayer while at the same time, it is enforcing an immoral blockade of Armenia. As a result, outside relief supplies must travel circuitous routes, thereby greatly increasing the cost of delivery. Moreover, many supplies never make it at all. This same blockade prevents care packages from the American Red Cross from entering Armenia, as an example.

In sum, United States aid to Armenia is far less effective and much more expensive because of Turkey's blockade. More importantly, Armenians freeze and go hungry as a result of actions taken by the Turkish Government. The delivery of humanitarian assistance to aid those in need, like the Armenians—is consistent with the fundamental values of our Nation. This legislation will strengthen our ability to deliver such assistance which is an important component of our foreign policy.

Let me repeat, this bill does not name names. The legislation could apply to many other relief operations. Indeed the United States conducts relief operations around the world, operations that depend on the cooperation of other countries. I recognize that Turkey has been a valuable ally in NATO and recently in Operation Desert Storm.

Mr. President, this legislation recognizes that there may be a compelling U.S. National Security interest which would override the principle of noninterference with Humanitarian aid. For this reason, U.S. foreign aid to nations in violation of this act may be continued if the president determines that such assistance is in the National Security Interest of the United States.

Mr. President, it does not make sense to me to offer U.S. taxpayer dollars unconditionally to countries that hinder our humantiarian relief efforts. In light of budgetary constraints, it is imperative that U.S. relief efforts be timely and efficient. The bottom line is that countries that prevent the delivery of such assistance, or intentionally increase the cost of delivering such assistance, do not deserve unrestricted American assistance.

Mr. President, this legislation will be referred to the Committee on Foreign Relations where I hope it will get rapid and positive consideration and a good rapid hearing. Similar legislation will be introduced in the House. I hope that Congress will quickly enact this legislation and send it to the White House for approval.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

We are just simply saying if a country blocks humanitarian aid, they do not get any assistance. It seems to me

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