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105TH CONGRESS
2D 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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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";

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(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)—

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(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

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other than a work made for hire, subsisting in its renewal term on the effective date of the Sonny Bono Copyright Term Extension Act for which the termination right provided in subsection (c) has expired by such date, where the author or owner of the termination right has not previously exercised such termination right, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated in subsection (a)(1)(C) of this section, other than by will, is subject to termination under the following conditions:

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

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

(2) COPYRIGHT 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)—

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

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

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

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

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

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

(1) by striking "by his widow or her widower and his or her children or grandchildren"; and

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

"(D) In the event that the author's widow or widower, children, and grandchildren are not living, the author's executor, administrator, per-

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sonal 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;

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"(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.

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SEC. 106. ASSUMPTION OF CONTRACTUAL OBLIGATIONS RELATED TO TRANSFERS OF RIGHTS IN MOTION PICTURES.

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

"CHAPTER 180—ASSUMPTION OF CERTAIN CONTRACTUAL OBLIGATIONS

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

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

"(a) ASSUMPTION OF OBLIGATIONS.—In the case of a transfer of copyright ownership in a motion picture (as defined in section 101 of title 17, United States Code) that is produced subject to 1 or more collective bargaining agreements negotiated under the laws of the United States, if the transfer is executed on or after the effective date of this Act and is not limited to public performance rights, the transfer instrument shall be deemed to incorporate the assumption agreements applicable to the copyright ownership being transferred that are required by the applicable collective bargaining agreement, and the transferee shall be subject to the obligations under each such assumption agreement to make residual payments and

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provide related notices, accruing after the effective date of the transfer and applicable to the exploitation of the rights transferred, and any remedies under each such assumption agreement for breach of those obligations, as those obligations and remedies are set forth in the applicable collective bargaining agreement, if—

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

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

"(b) FAILURE TO NOTIFY.—If the transferor under subsection (a) fails to notify the transferee under subsection (a) of applicable collective bargaining obligations before the execution of the transfer instrument, and subsection (a) is made applicable to the transferee solely by virtue of subsection (a)(2), the transferor shall be liable to the transferee for any damages suffered by the transferee as a result of the failure to notify.

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

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and any claim made under subsection (b) shall be determined by an action in United States district court, and the court in its discretion may allow the recovery of full costs by or against any party and may also award a reasonable attorney's fee to the prevailing party as part of the costs.".

(b) CONFORMING AMENDMENT.—The table of chapters for part VI of title 28, United States Code, is amended by adding at the end the following:

"180. Assumption of Certain Contractual Obligations ..... 4001".

SEC. 107. 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

SEC. 201. SHORT TITLE.

This title may be cited as the "Fairness in Musical Licensing Act of 1998".

SEC. 202. EXEMPTION OF CERTAIN MUSIC USES FROM COPYRIGHT PROTECTION.

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

"(5) communication by electronic device of a transmission embodying a performance or display of a nondramatic musical work by the public reception of a broadcast, cable, satellite, or other transmission, if—

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"(A)(i) the rooms or areas within the establishment where the transmission is intended to be received by the general public contains less than 3,500 square feet, excluding any space used for customer parking; or

"(ii) the rooms or areas within the establishment where the transmission is intended to be received by the general public contains 3,500 square feet or more, excluding any space used for customer parking, if—

"(I) in the case of performance by audio means only, the performance is transmitted by means of a total of not more than 6 speakers (excluding any speakers in the device receiving the communication), of which not more than 4 speakers are located in any 1 room or area; or

"(II) in the case of a performance or display by visual or audiovisual means, any visual portion of the performance or display is communicated by means of not more than 2 audio visual devices, if no such audio visual device has a diagonal screen size greater than 55 inches, and any

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audio portion of the performance or display is transmitted by means of a total of not more than 6 speakers (excluding any speakers in the device receiving the communication), of which not more than 4 speakers are located in any 1 room or area;

"(B) no direct charge is made to see or hear the transmission;

"(C) the transmission is not further transmitted to the public beyond the establishment where it is received; and

"(D) the transmission is licensed.".

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

(1) by striking "a vending" and inserting "an";

(2) by striking "sole";

(3) by inserting "or of the audio, video, or other devices utilized in the performance," after "phonorecords of the work,"; and

(4) by striking "and is within the immediate area where the sale is occurring".

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SEC. 203. BINDING ARBITRATION OF RATE DISPUTES INVOLVING PERFORMING RIGHTS SOCIETIES.

(a) IN GENERAL.—Section 504 of title 17, United States Code, is amended by adding at the end the following new subsection:

"(d) PERFORMING RIGHTS SOCIETIES; BINDING ARBITRATION.—

"(1) ARBITRATION OF DISPUTES PRIOR TO COURT ACTION.—

"(A) ARBITRATION.—(i) If a general music user and a performing rights society are unable to agree on the appropriate rate or fee to be paid for the user's past or future performance of musical works in the repertoire of the performing rights society, the general music user shall, in lieu of any other dispute-resolution mechanism established by any judgment or decree governing the operation of the performing rights society, be entitled to binding arbitration of such disagreement pursuant to the rules of the American Arbitration Association. The music user may initiate such arbitration.

"(ii) The arbitrator in such binding arbitration shall determine a fair and reasonable rate or fee for the general music user's past and future performance of musical works in

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such society's repertoire and shall determine whether the user's past performances of such musical works, if any, infringed the copyrights of works in the society's repertoire. If the arbitrator determines that the general music user's past performances of such musical works infringed the copyrights of works in the society's repertoire, the arbitrator shall impose a penalty for such infringement. Such penalty shall not exceed the arbitrator's determination of the fair and reasonable license fee for the performances at issue.

"(B) DEFINITIONS.—(i) For purposes of this paragraph, a 'general music user' is any person who performs musical works publicly but is not engaged in the transmission of musical works to the general public or to subscribers through broadcast, cable, satellite, or other transmission.

"(ii) For purposes of this paragraph, transmissions within a single commercial establishment or within establishments under common ownership or control are not transmissions to the general public.

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"(iii) For purposes of clause (ii), an 'establishment' is a retail business, restaurant, bar, inn, tavern, or any other place of business in which the public may assemble.

"(C) ENFORCEMENT OF ARBITRATOR'S DETERMINATIONS.—An arbitrator's determination under this paragraph is binding on the parties and may be enforced pursuant to sections 9 through 13 of title 9, United States Code.

"(2) COURT-ANNEXED ARBITRATION.—(A) In any civil action brought against a general music user, as defined in paragraph (1) for infringement of the right granted in section 106(4) involving a musical work that is in the repertoire of a performing rights society, if the general music user admits the prior public performance of one or more works in the repertoire of the performing rights society but contests the rate or the amount of the license fee demanded by such society for such performance, the dispute shall, if requested by the general music user, be submitted to arbitration under section 652(e) of title 28. In such arbitration proceeding, the arbitrator shall determine the appropriate rate and amount owed by the music user to the performing rights so-

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ciety for all past public performances of musical works in the society's repertoire. The amount of the license fee shall not exceed two times the amount of the blanket license fee that would be applied by the society to the music user for the year or years in which the performances occurred. In addition, the arbitrator shall, if requested by the music user, determine a fair and reasonable rate or license fee for the music user's future public performances of the musical works in such society's repertoire.

"(B) As used in this paragraph, the term 'blanket license' means a license provided by a performing rights society that authorizes the unlimited performance of musical works in the society's repertoire, for a fee that does not vary with the quantity or type of performances of musical works in the society's repertoire.

"(3) TERM OF LICENSE FEE DETERMINATION.—In any arbitration proceeding initiated under this subsection, the arbitrator's determination of a fair and reasonable rate or license fee for the performance of the music in the repertoire of the performing rights society concerned shall apply for a period of not less than 3 years nor more than 5

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years after the date of the arbitrator's determination.".

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

"(e) ACTIONS THAT SHALL BE REFERRED TO ARBITRATION.—In any civil action against a general music user for infringement of the right granted in section 106(4) of title 17 involving a musical work that is in the repertoire of a performing rights society, if the general music user admits the public performance of any musical work in the repertoire of the performing rights society but contests the rate or the amount of the license fee demanded by the society for such performance, the district court shall, if requested by the general music user, refer the dispute to arbitration, which shall be conducted in accordance with section 504(d)(2) of title 17. Each district court shall establish procedures by local rule authorizing the use of arbitration under this subsection. The definitions set forth in title 17 apply to the terms used in this subsection.".

SEC. 204. VICARIOUS LIABILITY PROHIBITED.

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

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"(f) A landlord, an organizer or sponsor of a convention, exposition, or meeting, a facility owner, or any other person making space available to another party by contract, shall not be liable under any theory of vicarious or contributory infringement with respect to an infringing public performance of a copyrighted work by a tenant, lessee, subtenant, sublessee, licensee, exhibitor, or other user of such space on the ground that—

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

"(2) the landlord, organizer or sponsor, facility owner, or other person has or had at the time of the infringing performance actual control over some aspects of the use of such space,

if the contract for the use of such space prohibits infringing public performances and the landlord, organizer or sponsor, facility owner, or other person does not exercise control over the selection of works performed.".

SEC. 205. CONFORMING AMENDMENTS.

Section 101 of title 17, United States Code, is amended by inserting after the undesignated paragraph relating to the definition of "perform" the following:

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"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, Broadcast Music, Inc., and SESAC, Inc. The 'repertoire' of a performing rights society consists of those works for which the society provides licenses on behalf of the owners of copyright in the works.".

SEC. 206. CONSTRUCTION OF TITLE.

Except as provided in section 504(d)(1) of title 17, United States Code, as added by section 203(a) of this Act, nothing in this title shall be construed to relieve any performing rights society (as defined in section 101 of title 17, United States Code) of any obligation under any consent decree, State statute, or other court order governing its operation, as such statute, 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 enacted, issued, or agreed to after such date.

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SEC. 207. EFFECTIVE DATE.

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

Passed the House of Representatives March 25, 1998.

Attest: ROBIN H. CARLE,

Clerk.

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