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came together and knew the need for it.

But let us make it very clear how we feel about the Constitution and the Bill of Rights, as the 100 who hold this responsibility, so that the American people know that if we are going to change our Constitution, we will do it with real debate and real consideration, and all 100 of us will be able to stand up on this floor and vote.

Now, the entire Senate has known—in fact, the Nation has known—for weeks that Senator GLENN would be unavailable this week, and certainly that alone would be a reason not to bring this up now. Senator GLENN is one of the most distinguished Americans of all time. He obviously should have a chance to vote on this. So I am glad the Senator from Nebraska has lodged the objection he did. I concur with it. I have voted on this proposed constitutional amendment before. I am not afraid to do so again. But the First Amendment, the Constitution, the Bill of Rights deserve more than cursory attention.

Let us all make it clear to the people of this country that the Constitution stands first and foremost. We serve here only for the time our States allow us to serve. The Constitution predated us and will be here after us.

I see the distinguished majority leader once again in the Chamber, and so I will yield the floor.

UNANIMOUS CONSENT REQUEST—S. 505

The PRESIDING OFFICER (Ms. COLLINS). The majority leader is recognized.

Mr. LOTT. I thank the Chair. I thank Senator LEAHY for completing his remarks so we could proceed with this unanimous consent agreement.

This is with regard to S. 505, the copyright bill. I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 505 and the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection——

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I am told there is one other Senator who still has a question on this, and I would tell my friend from Mississippi that as a result of that, while I have no objection to this unanimous consent agreement, and I will be supporting the bill and have worked hard on the bill, there is an objection over here and I will have to lodge an objection.

Mr. LOTT. I will withhold the unanimous consent request, but I would once again like to urge my colleagues to agree to this. This is a very important bill that work has been done on for a period of months, and it also is connected to the music licensing issue which has been worked out. It has been extremely tedious, working with all the interested parties, but they have been responsible, they have agreed, and I want to commend and thank all of those who worked with us and helped us reach agreement with music licensing, including the Restaurant Association, the National Federation of Independent Businesses, and the writers who have been involved in this music issue, including BMI and ASCAP and others. They have all given more than they wanted to, but I think we have come to a reasonable agreement. And then also, it is connected to the treaty with regard to intellectual property.

So I will withhold at this time, but I hope Senators will not begin putting a hold on this very important legislation because of unrelated issues that we probably are going to get resolved in the next 2 days anyway.

Mr. LEAHY. Madam President, I say to my friend from Mississippi, I have worked on each one of these pieces of legislation so much. There are times when I have attempted to pull out what little bit of hair I have left, and, frankly, I hope we can move this. I will personally go to anybody who is lodging objection to see what I can do to clear it up, because I absolutely concur with the Senator from Mississippi and the Senator from South Dakota, the Democratic leader, that this is something which should be moved forward; we want to move it forward. I hope I can tell the distinguished majority leader within a few minutes we do have it cleared.

Mr. LOTT. I yield the floor, Madam President.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LOTT. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

COPYRIGHT TERM EXTENSION ACT OF 1997

Mr. LOTT. I renew my unanimous consent request that the Judiciary Committee be discharged from further consideration of S. 505, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will report.

The bill clerk read as follows:

A bill (S. 505) to amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3782

Mr. LOTT. Senator HATCH has a substitute amendment at the desk. I ask for its consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Mississippi [Mr. LOTT], for Mr. HATCH, proposes an amendment numbered 3782.

Mr. LOTT. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. LEAHY. Madam President, I am delighted that the Senate is finally considering the Copyright Term Extension Act.

Copyright has been the engine that has traditionally converted the energy of artistic creativity into publicly available art and entertainment. Historically, government's role has been to encourage creativity and innovation by protecting rights that create incentives for such activity through copyright.

On July 1, 1995, the European Union issued a directive to its member countries mandating a copyright term of 20 years longer than the term in the U.S. As a result, the E.U. will not have to guard American works beyond the American term limit, whereas European works will have 20 years more security and revenues in the marketplace.

The songwriter Carlos Santana put it eloquently in his statement submitted to the Senate Judiciary Committee three years ago on this subject, "As an American songwriter whose works are performed throughout the world, I find it unacceptable that I am accorded inferior copyright protection in the world marketplace."

His reasons are as relevant today as the day he made that statement. The 1998 Report on Copyright Industries in the U.S. Economy issued by the International Intellectual Property Alliance indicates just how important the U.S. copyright industries are today to American jobs and the economy and, therefore, how important it is for the U.S. to give its copyright industries at least the level of protection that is enjoyed by European Union industries.

The Report indicates that from the years 1977 through 1996, the U.S. copyright industries' share of the gross national product grew more than twice as fast as the remainder of the economy. During those same 20 years, job growth in core copyright industries was nearly three times the employment growth in the economy as a whole. These statistics underscore why it is so important that we finally pass this legislation today.

I cosponsored the original Senate copyright term legislation, the Copyright Term Extension Act of 1995, S. 483. The Senate Judiciary Committee held a hearing on that bill on September 20, 1995. At that hearing, we heard the testimony of Marybeth Peters, Register of Copyrights, and Bruce Lehman, Assistant Secretary of Commerce and Commissioner of the Patent and

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Trademark Office. We also heard testimony of Jack Valenti, President and CEO of the Motion Picture Association of America, Alan Menken, a composer and lyricist, Patrick Alger, President of the Nashville Songwriters Association International, and Peter Jaszi, Professor at American University, Washington, College of Law. That bill was favorably reported to the Senate, and the Committee filed its report, Senate Report No. 104-315, on May 23, 1996.

Alert to the possibility that copyright term extension could impose unintended costs, I, along with Senators KENNEDY, DODD, Brown and Simpson, asked Marybeth Peters, Register of Copyrights, and Daniel Mulhollan, Director of Congressional Research Service, to conduct a study and issue a report to Congress on the financial implications of copyright term extension. The Congressional Research Service issued its report on February 17, 1998, and the Copyright Office issued its report February 23, 1998.

This Congress, I introduced the Copyright Term Extension Act, S. 505, on March 20, 1997, along with Senators HATCH, D'AMATO, THOMPSON, ABRAHAM and FEINSTEIN. Despite the merits of passing copyright term extension legislation, the bill has been held hostage to other matters far too long. In the global world of the next century, competition in the realm of intellectual property will reach a ferocity even more ruthless than it is today. Congress should equip American creators with a full measure of protection for their copyrighted works, else U.S. intellectual property owners are reduced in their reach and their effectiveness. I am therefore pleased that the Senate is finally considering the Copyright Term Extension Act, and I urge its passage.

Mr. KENNEDY. Madam President, I am pleased that the Senate is enacting this legislation to extend the period of copyright protection for an additional twenty years. This extension is needed to coordinate the term of copyright for our creative authors and artists with their European counterparts.

The principles of copyright are established in the Constitution. They reflect our enduring belief that our nation prospers when it advances knowledge, understanding and the arts. As President Kennedy said, "There is a connection, hard to explain logically but easy to feel, between achievement in public life and progress in the arts. The age of Pericles was also the age of Phidias. The age of Lorenzo de Medici was also the age of Leonardo da Vinci. The age of Elizabeth was also the age of Shakespeare."

Effective copyright protection is an important national priority. If the United States is to continue its leadership in world of ideas and creativity, we must continue to provide a climate that encourages America's authors, artists, inventors and composers and the important work that they do.

The pending legislation also includes an important compromise on the music licensing issue that has prevented adoption of copyright term legislation until now. I am pleased that agreement has been reached between the business and the music licensing communities so that musical authors and composers can enjoy an appropriate return from their creative achievements.

Finally, the bill also includes an important reference to the current negotiations between the film industry and its guilds. It is gratifying that negotiations will be taking place on the appropriate division of residuals from the earliest films, and I hope that the negotiations will be resolved to the satisfaction of both sides on this important issue of fairness.

Overall, I commend the bipartisan cooperation that has produced this worthwhile legislation. Our cultural heritage will be strengthened by this measure, and I urge the Senate to approve it.

Mr. THURMOND. Madam President, I wish to express my support for S. 505, the Copyright Term Extension Act, as amended. I wish to thank the Majority Leader, Senator HATCH, and others in the Senate for their commitment to this important issue. I also wish to thank Speaker GINGRICH, Congressman SENSENBRENNER, and others in the House for their hard work in this regard.

This bill will greatly benefit the American copyright community by making our copyright term protections consistent with Europe. At the same time, it provides meaningful relief to small businesses, including restaurants, hair salons, and many other establishments, regarding licensing fees for broadcast music. It exempts eating and drinking establishments to a certain square footage and other establishments to a certain square footage of a lesser degree. It also creates a fairer venue for rate dispute resolution through the circuit court venue.

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

The agreement is not nearly as extensive as S. 28, the Fairness in Musical Licensing Act, which I introduced at the start of this Congress. However, this legislation represents a fair compromise to this important and complex issue of National significance. I am pleased that we have reached this resolution.

Mr. LOTT. I ask unanimous consent that the amendment be agreed to, the bill be read a third time and passed, as amended, the motion to lay on the table be agreed to, and any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 3782) was agreed to.

The bill (S. 505), as amended, was passed, as follows:

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

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

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

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

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

(A) in subsection (c)—

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

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

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

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

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

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

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

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

"(D) In the event that the author's widow or widower, children, and grandchildren are not living, the author's executor, administrator, personal representative, or trustee shall own the author's entire termination interest.".

SEC. 104. REPRODUCTION BY LIBRARIES AND ARCHIVES.

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

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

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

"(h)(1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.

"(2) No reproduction, distribution, display, or performance is authorized under this subsection if—

"(A) the work is subject to normal commercial exploitation;

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

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

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

SEC. 105. VOLUNTARY NEGOTIATION REGARDING DIVISION OF ROYALTIES.

It is the sense of the Congress that copyright owners of audiovisual works for which the term of copyright protection is extended by the amendments made by this title, and the screenwriters, directors, and performers of those audiovisual works, should negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements with respect to the establishment of a fund or other mechanism for the amount of remuneration to be divided among the parties for the exploitation of those audiovisual works.

SEC. 106. EFFECTIVE DATE.

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

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

SEC. 201. SHORT TITLE.

This title may be cited as the "Fairness In Music Licensing Act of 1998."

SEC. 202. EXEMPTIONS.

(a) EXEMPTIONS FOR CERTAIN ESTABLISHMENTS.—Section 110 of title 17, United States Code is amended—

(1) in paragraph (5)—

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

(B) by adding at the end the following:

"(B) communication by an establishment of a transmission or retransmission embodying a performance or display of a nondramatic musical work intended to be received by the general public, originated by a radio or television broadcast station licensed as such by the Federal Communications Commission, or, if an audiovisual transmission, by a cable system or satellite carrier, if—

"(i) in the case of an establishment other than a food service or drinking establishment, either the establishment in which the communication occurs has less than 2000 gross square feet of space (excluding space used for customer parking and for no other purpose), or the establishment in which the communication occurs has 2000 or more gross square feet of space (excluding space used for customer parking and for no other purpose) and—

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

"(II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than one audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space;

"(ii) in the case of a food service or drinking establishment, either the establishment in which the communication occurs has less than 3750 gross square feet of space (excluding space used for customer parking and for no other purpose), or the establishment in which the communication occurs has 3750 gross square feet of space or more (excluding space used for customer parking and for no other purpose) and—

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

"(II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than one audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space;

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

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

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

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

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

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

SEC. 203. LICENSING BY PERFORMING RIGHTS SOCIETIES.

(a) IN GENERAL.—Chapter 5 of title 17, United States Code, is amended by adding at the end the following:

"**§512. Determination of reasonable license fees for individual proprietors**

"In the case of any performing rights society subject to a consent decree which provides for the determination of reasonable license rates or fees to be charged by the performing rights society, notwithstanding the provisions of that consent decree, an individual proprietor who owns or operates fewer than 7 non-publicly traded establishments in which nondramatic musical works are performed publicly and who claims that any license agreement offered by that performing rights society is unreasonable in its license rate or fee as to that individual proprietor, shall be entitled to determination of a reasonable license rate or fee as follows:

"(1) The individual proprietor may commence such proceeding for determination of a reasonable license rate or fee by filing an application in the applicable district court under paragraph (2) that a rate disagreement exists and by serving a copy of the application on the performing rights society. Such proceeding shall commence in the applicable district court within 90 days after the service of such copy, except that such 90-day requirement shall be subject to the administrative requirements of the court.

"(2) The proceeding under paragraph (1) shall be held, at the individual proprietor's election, in the judicial district of the district court with jurisdiction over the applicable consent decree or in that place of holding court of a district court that is the seat

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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.

Mr. LOTT. Again, Madam President, I thank the Senator from Vermont for his cooperation and his allowing us to go ahead and proceed quickly on this very important matter.

I yield the floor.

Mr. LEAHY. Madam President, I thank the Senator from Mississippi. I think we are clearing a lot of things.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MCCAIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. COLLINS). Without objection, it is so ordered.

INTERNET TAX FREEDOM ACT

The Senate continued with consideration of the bill.

AMENDMENT NO. 3719, AS MODIFIED
AMENDMENT NO. 3779, AS MODIFIED TO AMENDMENT NO. 3719

Mr. MCCAIN. I ask unanimous consent that amendment No. 3719, as modified, be the pending business; that Senator DORGAN be recognized to offer a second-degree amendment, as modified, that will be adopted; and it be in order for me to offer a nonfiled second-degree amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Madam President, let me comment on what is going on here for the benefit of my colleagues. We have agreed on the language concerning the grandfathering of this legislation, which was important.

Now we have resolved all matters with the exception of whether the moratorium should last for 3 or 4 years. My amendment, after we accept the grandfather language from the Senator from North Dakota, will be to have the moratorium expire at the end of 4 years, for which there will probably be a recorded vote, after which it is most likely—although we have to check with both sides about further debate—we will have completed the amending process of the germane amendments that were on the bill and we will be very close to final passage of the legislation.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself and Mr. WYDEN, proposes an amendment numbered 3719, as modified.

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 3779, as modified, to amendment No. 3719.

The amendments (No. 3719, as modified, and No. 3779, as modified) are as follows:

AMENDMENT NO. 3719, AS MODIFIED

(Purpose: To make minor and technical changes in the moratorium provision)

On page 16, beginning with line 23, strike through line 15 on page 17, and insert the following:

(a) MORATORIUM.—No State or political subdivision thereof shall impose any of the following taxes during the period beginning on October 1, 1998, and ending 3 years after the date of the enactment of this Act:

HeinOnline -- 2 William H. Manz, Federal Copyright Law: The Legislative Histories of the Major Enactments of the 105th Congress S11675 1999

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