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Citation: 2 William H. Manz Federal Copyright Law The Histories of the Major Enactments of the 105th S12434 1999

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availability and make recommendations on the adequacy of our existing water supply. The study will form the basis of future water supply programs. The State of Florida is already taking the water supply issue seriously, and in 1998 alone has budgeted $75 million in regional and State funds for development of alternative water supplies. I am looking forward to working with my colleagues on the Environment and Public Works Committee during the next Congress to address the water quality and water supply needs of the State of Florida.

Together, these initiatives will protect the future of the State of Florida by protecting our water resources that are so critical to our environment and our economy.•

COPYRIGHT LEGISLATION

• Mr. THOMPSON. Mr. President, in the closing days of the 105th Congress, the Senate passed two pieces of copyright legislation that will have enormous impact. As Charles Dickens might say, it is the best of times and the worst of times for those who create the property that is protected by copyright.

First, the Senate passed S. 505, which extended the terms of copyrights by 20 years, to life plus 70 years from life plus fifty years. For a number of years, our trading partners and competitors have protected their copyrights for the life of the author plus 70 years. Under the rule of the shorter term, these nations protected American copyrights for only the life of the author plus 50 years. The United States is the world leader in copyright, and should afford the greatest protection for copyrighted works of any nation, both to encourage creativity that benefits all, and for our own national interest with respect to the balance of trade.

The extension of copyright terms will be of enormous benefit to songwriters and others who create copyrighted works. It will benefit the public through enhanced creative activity, and the further public performance of already existing works to be enjoyed by future generations.

But S. 505 contained a bitter pill to swallow, the so-called Fairness in Music Licensing Legislation. These provisions are terribly unfair to those who create music. When a person profits from a public performance of music, he or she should fairly compensate the creator of that music through royalty payments. This is an elemental necessity for the creation of music. To paraphrase Justice Holmes, if music did not pay, no one would write it. The average songwriter receives less than $5,000 per year in royalties, and the average restaurateur pays only a few hundred dollars a year to play music in his establishment, about 1% of revenues. At the same time, the restaurateur uses music to create an ambience that will cause people to come to his establishment, and to spend more time and money there than they would without the music.

But the restaurateurs, retailers, and others wanted something for nothing. The songwriters were even willing to help out the mom and pop restaurants by exempting broadcast performances of their music in about two-thirds of the Nation's restaurants. But that was not good enough for the music users, who had the House pass outrageous legislation that amounted almost to stealing from the songwriters. A House that purports to defend property rights passed the most anti-property rights legislation in many years.

We worked in the Senate to improve that House-passed bill. We preserved vicarious liability, a necessity to ensure that royalties are paid. We prevented retailers and restaurants from challenging their rates in any city they chose, which would have been an unacceptable burden on the ability of songwriters to protect their rights. We eliminated provisions that would have enabled department stores to use music for free. In addition, we increased enforcement of payments because a judge can award double the licensing fees for up to three years instead of current law's limits of statutory damages.

But I still have major concerns about S. 505, even with these changes. Songwriters' property taken from them and used by others without payment. The exemptions are too generous, as they go well beyond the interest of small establishments. In fact, the vast majority of songwriters are smaller business people than many of the establishments that will be exempted from paying royalties by this bill.

At the same time, this bill runs counter to our international treaty obligations under the Berne Convention and the TRIPS Agreement. Those treaties benefit Americans more than any other country. We have the greatest interest in ensuring compliance by all signatory countries with these treaties. Yet we have passed a bill that is inconsistent with these treaty obligations. What will happen when foreign countries do not live up to their promises to protect intellectual property, citing our own example of this legislation back to us? Songwriters may not be the only losers; copyright protects computer software and other non-performing arts creative material. Some of the companies who may be hurt by international retaliation may be member companies of organizations that insisted on the music licensing provisions.

Only time will tell if the World Trade Organization will find that this bill violates international treaties that are binding on this country. But there is a good chance that these unfair music licensing provisions will not be able to stand.

It became clear in the final days of this Congressional session that in order to obtain copyright term extension and the WIPO implementing legislation, unfair music licensing legislation would have to be included. Although the music licensing provisions are considerably better than those contained in the House-passed bill, they are still unfair. However, the 20-year extension in copyright terms is a significant benefit to songwriters, and the WIPO Treaty implementing legislation will assist creative artists in the digital age, as well as enhance worldwide protection of copyrighted materials. In implementing this treaty, it is unfortunate that my colleagues have passed legislation that violates our existing treaty obligations.

Mr. President, there are times when the bad has to be taken with the good. The music licensing provisions are indefensible, but a necessary cost of obtaining very important legislation for the benefit of creative artists. It should not have been this way. I am confident that the music licensing issue is not yet over, and I regret the likely embarrassment that will ultimately fall upon this body when the language it has passed is ruled to violate our treaty obligations.•

ORDER FOR RECESS

Mr. JEFFORDS. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess, under the previous order, following the remarks of the Democratic leader, Senator DASCHLE.

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

Mr. JEFFORDS. I suggest the absence of a quorum.

The assistant legislative clerk proceeded to call the roll.

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

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

FAREWELL TO OUR DEPARTING COLLEAGUES

Mr. DASCHLE. Mr. President, on Saturday, I had a chance to talk about our good friend, DALE BUMPERS. I'd like to take a few minutes to talk about four other friends who will be leaving us at the end of this Congress.

Shortly after he left the White House, Calvin Coolidge was called on to fill out a standard form. After filling in his name and address, he came to a line marked "occupation." He wrote "retired." When he came to the next line, labeled "remarks," he wrote "Glad of it." I suspect that our colleagues who are retiring at the end of this Congress are also "glad of it"—at least in some small measure. But, in addition to relief, I hope they also feel a sense of pride—both for what they have accomplished here, and the dignity with which they have served.

In a short time here, DIRK KEMPTHORNE has made all of our lives a little better. Thanks in large part to him, the Safe Drinking Water Act is now the law. Senator KEMPTHORNE has also reminded us of the importance of state

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