

104TH CONGRESS
2D SESSION

S. 1628

To amend title 17, United States Code, relating to the copyright interests of certain musical performances, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 20, 1996

Mr. BROWN (for himself, Mr. THOMAS, Mr. FAIRCLOTH, Mr. THURMOND, and Mr. HELMS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, relating to the copyright interests of certain musical performances, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. MUSIC LICENSE FEES.**

4 Section 110(5) of title 17, United States Code, is
5 amended to read as follows:

6 “(5) communication within a commercial estab-
7 lishment of a transmission embodying a performance
8 or display of a work by the reception of a broadcast,

1 cable, satellite, or other transmission, if commu-
2 nicated—

3 “(A) in an area within the establishment
4 where a transmission is intended to be received
5 by the general public that is smaller than 5,000
6 square feet;

7 “(B) within an establishment whose gross
8 annual income does not exceed 20 percent of
9 the gross annual income of a small business
10 under the applicable Standard Industrial Code
11 as defined by the Small Business Administra-
12 tion;

13 “(C) by means of 10 or fewer loudspeak-
14 ers, not including speakers in audiovisual de-
15 vices; or

16 “(D) by means of speakers in audiovisual
17 devices only,

18 if no direct charge is made to see or hear the trans-
19 mission, the reception of the transmission is author-
20 ized, and the transmission or retransmission is not
21 further transmitted to the public beyond the prem-
22 ises of the retail establishment;”.

1 **SEC. 2. ARBITRATION BETWEEN GENERAL MUSIC USERS**
2 **AND PERFORMING RIGHTS SOCIETIES;**
3 **AVAILABILITY OF REPERTOIRE.**

4 (a) ARBITRATION.—

5 (1) IN GENERAL.—Chapter 1 of title 17, United
6 States Code, is amended by adding after section 120
7 the following new section:

8 **“§ 121. Arbitration between general music users and**
9 **performing rights societies; availability**
10 **of repertoire**

11 “(a) ARBITRATION.—

12 “(1) IN GENERAL.—Any controversy or dispute
13 arising out of or related to the appropriate fee to be
14 paid for the user’s past or future performance of
15 nondramatic musical works in the repertoire of the
16 performing rights society shall be settled by arbitra-
17 tion administered by the American Arbitration Asso-
18 ciation under its Commercial Arbitration Rules, and
19 judgment on the award may be rendered by the arbi-
20 trators may be entered in any court having jurisdic-
21 tion thereof.

22 “(2) FINDINGS.—The arbitrator’s findings shall
23 be confidential and shall not provide any precedent
24 for the determination of rates, except as to the par-
25 ties involved.

1 “(3) DURATION OF DETERMINATION.—In any
2 arbitration proceeding initiated under this sub-
3 section, the arbitrator’s determination of a fair and
4 reasonable license fee for the performance of
5 nondramatic musical works in the repertoire of the
6 performing rights society shall apply for a period of
7 not less than 3 years nor more than 5 years after
8 the date of the arbitrator’s determination.

9 “(b) ACCESS TO LICENSING INFORMATION AND REP-
10 ERTOIRE.—

11 “(1) IN GENERAL.—Performing rights societies
12 shall make available, free of charge, to all interested
13 persons, online computer access to copyright and li-
14 censing information for each nondramatic musical
15 work in its repertoire which is published or per-
16 formed, without regard to whether the work is iden-
17 tified in the society’s survey of music use. Such in-
18 formation shall, for each such nondramatic musical
19 work, identify the work by the title of the work; the
20 name of the writer; the name, address, and tele-
21 phone number of the publisher; when the work will
22 enter the public domain, if determinable; and the
23 names of any artists known by the society to have
24 recorded the work, to the extent such artist informa-
25 tion is tracked by the society for any purpose other

1 than this section. Such online computer access shall
 2 permit the efficient review of multiple musical works
 3 consistent with reasonably available technology.

4 “(2) DIRECTORY.—Each performing rights so-
 5 ciety shall make available at its reproduction cost,
 6 not including the cost of maintaining the database
 7 or any other overhead, not less frequently than semi-
 8 annually, a printed directory or CD ROM directory
 9 of each title in its repertoire, at the choice of the
 10 music user, as of the date which is not more than
 11 30 days before the date on which the directory is
 12 published, containing the information under para-
 13 graph (1).”.

14 (2) TECHNICAL AND CONFORMING AMEND-
 15 MENT.—The table of sections for chapter 1 of title
 16 17, United States Code, is amended by adding after
 17 the item relating to section 120 the following:

“121. Arbitration between general music users and performing rights societies;
 availability of repertoire.”.

18 (b) RESTRICTIONS ON INFRINGEMENT ACTIONS.—
 19 Section 504 of title 17, United States Code, is amended
 20 by adding at the end thereof the following new subsection:

21 “(d) RESTRICTIONS.—No fee for a license may be
 22 charged and no action may be instituted, maintained, or
 23 supported by the society for the public performance of a
 24 nondramatic musical work in a society’s repertoire, that

1 is not identified and documented as required under section
 2 121, without regard to whether the nondramatic musical
 3 work has been published or performed, if a good faith ef-
 4 fort to search the repertoire of the performing rights soci-
 5 ety as provided under section 121 has been made.”.

6 **SEC. 3. RADIO PER PROGRAMMING PERIOD LICENSE.**

7 Section 504 of title 17, United States Code, as
 8 amended by section 2 of this Act, is further amended by
 9 adding at the end thereof the following new subsection:

10 “(f) RADIO PER PROGRAMMING PERIOD LICENSE.—

11 “(1) IN GENERAL.—Each performing rights so-
 12 ciety shall offer, to any radio broadcaster that so re-
 13 quests, a per programming period license to perform
 14 nondramatic musical works in the repertoire of the
 15 performing rights society. Such license shall be of-
 16 fered on reasonable terms and conditions that pro-
 17 vide an economically and administratively viable al-
 18 ternative to the blanket license offered by the society
 19 to radio broadcasters for all such broadcasters.

20 “(2) PRICE OF PER PROGRAMMING PERIOD LI-
 21 CENSE.—

22 “(A) The total price of a per programming
 23 period license described under paragraph (1)—

24 “(i) shall include separate components
 25 for incidental and feature performances,

1 with the incidental performance component
2 to be independent of the quantity of such
3 performances by the broadcaster and not
4 to exceed the relative value the performing
5 rights society assigns to such performances
6 in its distribution of royalties; and

7 “(ii) shall vary between the incidental
8 performance component, for a broadcaster
9 that makes only incidental performances of
10 music in the society’s repertoire, and the
11 fee that would be payable under the blan-
12 ket license offered to radio broadcasters, in
13 direct proportion to the percentage of the
14 broadcaster’s revenue attributable to pro-
15 gramming periods containing feature per-
16 formances of nondramatic musical works
17 in the society’s repertoire compared to the
18 industry average percentage of revenue at-
19 tributable to programming periods contain-
20 ing feature performances of such musical
21 works.

22 “(B) A nondramatic musical work shall
23 not be considered in calculating any per pro-
24 gramming period license fee under this sub-
25 section, if the performance of such work—

1 “(i) has been licensed directly, at the
2 source, or other than by the society; or

3 “(ii) constitutes fair use or is other-
4 wise exempt from liability under this title.

5 “(3) ADMINISTRATION OF LICENSE.—Com-
6 mencing on January 1, 1998, the performance of
7 nondramatic musical works by a broadcaster under
8 any per programming period license shall be deter-
9 mined on the basis of statistically reliable sampling
10 or monitoring by the performing rights society, and
11 the society may not require the broadcaster to report
12 such performances to the society. The society shall
13 provide the broadcaster with a report detailing the
14 results of such sampling or monitoring, identifying
15 each programming period containing the perform-
16 ance of nondramatic musical works in the society’s
17 repertoire and the nondramatic musical works in the
18 society’s repertoire performed during each such pe-
19 riod.

20 “(4) IMPLEMENTATION.—Any radio broad-
21 caster entitled to a per programming period license
22 under this subsection may bring an action to require
23 compliance with this subsection in an appropriate
24 United States district court, including any district
25 court established by court order or statute as a

1 court that resolves disputes, with respect to license
2 rates, that may arise between performing rights soci-
3 eties and persons who perform musical works in the
4 society's repertoire.

5 “(5) DEFINITIONS.—As used in this sub-
6 section—

7 “(A) the term ‘blanket license’ means a li-
8 cense provided by a performing rights society
9 that authorizes the unlimited performance of
10 musical works in the society's repertoire, for a
11 fee that does not vary with the quantity of per-
12 formances of musical works in the society's rep-
13 ertoire, or any other license with comparable
14 economic effect;

15 “(B) the term ‘incidental’ as applied to
16 performances shall include commercial jingles
17 not exceeding 60 seconds in duration, bridges,
18 themes or signatures, arrangements of works in
19 the public domain, and background music, in-
20 cluding music used in conjunction with sporting
21 events; and

22 “(C) the term ‘programming period’ means
23 any 15 minute period of radio broadcasting
24 commencing on the hour, or at 15, 30, or 45
25 minutes past the hour.”.

1 **SEC. 4. RELIGIOUS SERVICE EXEMPTION.**

2 Section 110(3) of title 17, United States Code, is
 3 amended by inserting after “religious assembly” the fol-
 4 lowing: “the transmission of such services, whether live or
 5 recorded, or the recording of copies or phonorecords of a
 6 transmission program embodying such services in their en-
 7 tirety, if there is no commercial advertisement or commer-
 8 cial sponsor within the program.”.

9 **SEC. 5. CONFORMING AMENDMENTS RELATING TO DEFINI-**
 10 **TIONS.**

11 (a) **PERFORMING RIGHTS SOCIETY.**—Section 101 of
 12 title 17, United States Code, is amended by inserting after
 13 the undesignated paragraph relating to the definition of
 14 “perform” the following:

15 “A ‘performing rights society’ is an association,
 16 corporation, or other entity that licenses the public
 17 performance of nondramatic musical works on behalf
 18 of copyright owners of such works, such as the
 19 American Society of Composers, Authors, and Pub-
 20 lishers, Broadcast Music, Inc., and SESAC, Inc. The
 21 repertoire of a performing rights society consists of
 22 those works for which the society provides licenses
 23 on behalf of the owners of copyright in the works.”.

24 (b) **GENERAL MUSIC USER.**—Section 101 of title 17,
 25 United States Code, is amended by inserting after the un-

1 designated paragraph relating to the definition of “fixed”
2 the following:

3 “A ‘general music user’ is any person who per-
4 forms musical works publicly but is not engaged in
5 the transmission of musical works to the general
6 public or to subscribers through broadcast, cable,
7 satellite, or other transmission. For purposes of this
8 paragraph, transmissions within a single commercial
9 establishment or within establishments under com-
10 mon ownership or control are not transmissions to
11 the general public.”.

12 (c) LOUDSPEAKER.—Section 101 of title 17, United
13 States Code, is amended by inserting after the undesig-
14 nated paragraph relating to the definition of “Literary
15 works” the following:

16 “A ‘loudspeaker’ is any device or self contained
17 collection of devices that converts electronic signals
18 to audible sound.”.

○