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Citation: 2 William H. Manz Federal Copyright Law The Histories of the Major Enactments of the 105th H1447 1999

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(i) the total number of nationals of the Republic of the Philippines who were admitted for entry into Guam pursuant to a waiver under this section during the most recent month for which data are available, and who violated the terms of such admission; bears to

(ii) the total number of nationals of such country who were admitted for entry into Guam pursuant to a waiver under this section during such month.

(e) ENFORCEMENT AND REPORTING.—

(1) MEMORANDUM OF UNDERSTANDING.—Prior to the implementation of the pilot program, the Attorney General and the Government of Guam shall enter into a memorandum of understanding setting forth their respective obligations with respect to the program's operation. The memorandum shall contain provisions sufficient to ensure that the requirements of this section are enforced effectively, including provisions ensuring that the arrival and departure control system on Guam—

(A) will collect a record of departure for every alien who was admitted pursuant to a waiver under this section, and match the record of departure with the record of the alien's arrival in Guam; and

(B) will enable the Attorney General to identify aliens who remain on Guam beyond the period authorized by the Attorney General under this section.

(2) REPORTING ON ALIENS OVERSTAYING PERIOD OF LAWFUL ADMISSION.—The memorandum under paragraph (1) shall require the Government of Guam to report to the Attorney General in a timely manner (but not less than monthly) any information, in addition to the information described in paragraph (1), that the Government of Guam may acquire with respect to aliens admitted pursuant to a waiver under this section who remain on Guam beyond the period authorized by the Attorney General under this section.

(f) INCLUSION OF PHILIPPINES IN GUAM-ONLY VISA WAIVER PROGRAM.—

(1) PROGRAM REVIEW.—Upon the termination of the pilot program under subsection (d)(1), the Attorney General shall conduct a review of the success of the program and shall determine whether the overstay rates (as defined in subsection (d)(2)(B)) for the months comprising the pilot program period were excessive. The Attorney General shall complete the review, and shall issue the determination, not later than 6 months after the termination of the pilot program under subsection (d)(1).

(2) DETERMINATION OF SUCCESS.—Upon the issuance of a determination by the Attorney General under paragraph (1) that the overstay rates, when considered together, were not excessive, the Republic of the Philippines shall be deemed to be a geographic area that meets the eligibility criteria for inclusion in the visa waiver program under section 212(l) of the Immigration and Nationality Act (8 U.S.C. 1182(l)).

(g) DEFINITIONS.—Except as otherwise provided in this section, the terms used in this section shall have the meaning given such terms in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

H.R. 2589

OFFERED BY: MR. SENSENBRENNER

AMENDMENT NO. 1: Page 1, insert before section 1 the following:

TITLE I—COPYRIGHT TERM EXTENSION

Strike section 1 and insert the following:

SEC. 101. SHORT TITLE.

This title may be referred to as the "Copyright Term Extension Act".

Redesignate sections 2 through 5 as sections 102 through 105, respectively.

In section 105, as so redesignated, strike "this Act" and insert "this title".

Strike section 6 and insert the following:

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.

Add at the end the following:

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—

"(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 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".

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 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.

"(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.

"(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 society 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

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concerned shall apply for a period of not less than 3 years nor more than 5 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:

"(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:

"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.

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.

H.R. 2589

OFFERED BY: MR. COBLE

AMENDMENT NO. 2: Page 4, line 9, strike "of 1997".

Page 4, line 24, strike "of 1997".

Page 5, line 12, strike "of 1997".

Page 6, line 4, strike "of 1997".

Page 6, strike line 17 and all that follows through page 7, line 4 and insert 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.".

Insert the following after section 5 and redesignate the succeeding section accordingly:

SEC. 6. 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) 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 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) 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".

H.R. 2589

OFFERED BY: MR. MCCOLLUM

(To the Amendment Offered by: Mr. Sensenbrenner)

AMENDMENT NO. 3: In lieu of the matter proposed to be inserted as title II, insert the following:

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. EXEMPTION.

Section 110(5) of title 17, United States Code is amended—

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

(2) by adding at the end the following:

"(B) communication by a food service or drinking 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 by the Federal Communications Commission, or, if an audiovisual transmission, by a cable system or satellite carrier, if—

"(i) either the establishment in which the communication occurs has less than 3500 gross square feet of space (excluding space used for customer parking), or the establishment in which the communication occurs has 3500 gross square feet of space or more (excluding space used for customer parking) 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) no direct charge is made to see or hear the transmission or retransmission;

"(iii) the transmission or retransmission is not further transmitted beyond the food service or drinking establishment where it is received; and

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

(3) 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

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