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ACTION: Introduced by Mr. McClellan

S. 4592—INTRODUCTION OF A BILL TO PROVIDE FOR THE CREATION OF A LIMITED COPYRIGHT IN SOUND RECORDINGS

Mr. McCLELLAN. Mr. President, as chairman of the Senate Subcommittee on Patents, Trademarks, and Copyrights, I introduce, for appropriate reference, a bill to amend title 17 of the United States Code to provide for the creation of a limited copyright in sound recordings for the purpose of protecting against unauthorized duplication and piracy of sound recordings, and for other purposes.

Information supplied to the Copyrights Subcommittee indicates a rapid increase in the unauthorized duplication and piracy of sound recordings. It has been estimated that as many as 18,000 illegal tapes are being produced each day depriving the record industry, its distributors, and performing artists of an estimated $100 million annually in tape sales. Recording artists and members of the musicians union are major victims of the record piracy racket because artists under contract loose royalties from the legitimate sale of albums and tapes, and the percentage of the sales price of each record that would normally go to the music performance trust funds and the musicians themselves is not conveyed by the pirates to the fund. Furthermore, Federal, State, and local governments are deprived of tax revenues they would otherwise receive from record manufacturers. The consumer is harmed by the frequently inferior quality of the pirated records and tapes.

Because the illegal duplication of recordings is rather simple, it affords a lucrative activity for organized crime. The pirates purchase for a few dollars a tape or record which represents to the record company substantial recording and manufacturing costs, transfer mechanically the music from the legitimate record or tape to the pirated tape and sell it at reduced cost in competition with the legitimate tape. Thus, the pirates, with virtually no financial investment, sell under their own labels, or with no label identification at all, the recordings of others. On the other hand, the costs to the record manufacturer of producing and promoting a modern album or tape can well be over $100,000.

Not surprisingly the pirates produce those albums that are proven money makers. It is well known that a substantial percentage of the recordings of classical music, such as operas and symphonies, do not make a profit. The sales of classical records have been further reduced by off-the-air taping. If the income of record manufacturers from the sale of popular records is significantly harmed by the activities of the pirates, this will further reduce the ability of such manufacturers to produce new recordings of classical music.

The existing U.S. copyright law, enacted in 1909, does not grant copyright protection to the owner of a sound recording. The remedies available to record manufacturers under State law are inadequate. Consequently, the Copyrights Subcommittee, in reporting the pending legislation for a general revision of the copyright law, included provisions establishing a limited copyright in sound recordings. The bill which I am introducing today is based on the provisions contained in S. 543, the copyright revision bill.

The earliest feasible effective date for the implementation of the general copyright revision bill is January 1, 1973. While the revision bill has been making its slow and tortuous progress through the legislative process, the Congress has endeavored by the passage of several joint resolutions and by various informal understandings to preserve the rights and equities of all parties. The widespread unauthorized duplication of recordings is causing irreparable injury to the record industry, performers, and the public. It may therefore be desirable for the Congress to act on this issue independently of the general revision bill.

The bill which I am introducing today seeks to combat record piracy by establishing a limited copyright in sound recordings. Alternative remedies, such as a criminal statute, may also have merit. The subcommittee can review this matter further in the 92d Congress. In the meantime any individuals having views on this subject should address their comments to the subcommittee.

I ask unanimous consent that there be printed at this point in the RECORD an article on piracy and counterfeiting of records and tapes which appeared in the Wall Street Journal on November 30.

The PRESIDING OFFICER (Mr. STEVENSON). The bill will be received and appropriately referred; and, without objection, the article will be printed in the RECORD.

The bill (S. 4592) to amend title 17 of the United States Code to provide for the creation of a limited copyright in sound recordings for the purpose of protecting against unauthorized duplication and piracy of sound recordings, and for other purposes, introduced by Mr. McCLELLAN, was received, read twice by its title and referred to the Committee on the Judiciary.

The article presented by Mr. McCLELLAN is as follows:

HOT NUMBERS: PIRATES AND COUNTERFEITERS OF STEREO TAPES STEAL HUGE SALES AND GIVE THE INDUSTRY FITS

(By Stephen Grover)

NEW YORK.—Heard about those hot new recording groups that are cutting new stereo tapes almost daily? One's called The Pirates, and the other is The Counterfeiters. They've got the whole industry talking.

Actually, muttering is a better word.

The pirates and the counterfeiters are real pirates and real counterfeiters. The pirates make illegal copies of tapes and peddle them cheaply to record shops, unabashedly admitting that they are pirated copies. The counterfeiters make illegal copies but then go a step further and copy the packaging that the originnal comes in, too; the counterfeiters then palm off their work as the original.

Last year the two groups sold about $100 million in copied tapes, accounting for about a fourth of all tapes sold, according to Jules Yarnell, counsel for the Recording Industry Association of America. This year the figure is believed to be sharply higher.

Pirating and counterfeiting musical works is nothing new; records have been copied illegally for years. But tape piracy is far easier than record piracy, and thus is far more of a problem for the industry. Record piracy has never accounted for more than 5% of total record sales, industry officials say. Last year the figure was 5%, equal to sales of about $60 million, the officials estimate.

WILL PRICES GO DOWN?

This big threat to the blossoming tape industry could have either of two major repercussions: The legitimate tape makers might cut the prices of their stereo tapes to try to make the copies less of a bargain and therefore less attractive to retailers. Or "it could mean the destruction of the business," one executive says.

No one really expects the industry to be killed by the pirates, but neither does anyone expect the pirates to be knocked off by the industry. Alarmed record companies have filed more than 100 lawsuits against pirates and counterfeiters in recent weeks, but "no sooner do we win one suit than another three counterfeit operations spring up," says a lawyer for one recording company.

The problem is simply that counterfeiting tapes is one of the easiest ways to make an illegal bundle. "You don't need metal presses or any of the other expensive equipment it takes to make records," says Henry Brief, executive secretary of the Recording Industry Association. All a person needs is a tape recorder, a tape playback deck and some machines that will produce many copied tapes at a time. "The cost of going into business as a tape pirate or counterfeiter is less than $10,000," says one person in the industry.

THE GRAND FUNK RAILROAD

There are other advantages. The pirate doesn't have to bother with the expenses of developing talent, promoting it, paying royalties when a recording is a hit or swallowing huge losses if a recording is a flop. Thus, the pirates and counterfeiters often get a high return on their investment. They often get $20 or more for a tape that cost them only 95 cents to produce—and that legitimate record companies sell for $6.95.

Pirates and counterfeiters often make as many as 5,000 copies of a hit tape, and they seem to have little difficulty selling them. Many record retailers regularly sell pirated tapes under the counter, and a few sell them openly. Capitol Records, for example, alleges that a Minnesota chain was recently advertising "a fresh shipment of regular $6.95 stereo tapes for only $2.99 each" and that the tapes included two pirated tapes by the Grand Funk Railroad, which is a rock group under contract to Capitol.

Capitol has sued the stores, which say they are blameless. Indeed, it's unclear what laws are broken by sellers of pirated records outside New York and California. There is a Federal law that prohibits the sale of counterfeited tapes, but only New York and California have statutes that specifically forbid the sale of pirated tapes. Some companies win actions that are based on the ground of "unfair competition," but these actions are long and costly.

The companies are pressing for more state laws against pirating and for changes in the U.S. copyright law to bar counterfeiting and piracy. At the moment, the copyright law applies only to the work performed, not to the performance; that is, if a pirate tapes a number rendered by the Grand Funk Railroad and written by the Beatles, the Beatles but not the Grand Funk Railroad would have an action for copyright infringement. The Beatle's action could be brought against both the pirate and the seller.

TAKING THE OFFENSIVE

"We know that tougher laws aren't the commplete answer," says an industry executive, "but it would be a start. They have laws against piracy in Canada, and the problem there isn't a serious one anymore." The industry also complains that the New York and California laws are too lenient; they make the offense a misdemeanor and provide for a maximum sentence of a year in jail.

Record companies find it especially galling that some pirates have taken the legal offensive. In the past, two groups, Tape-a-Tape of Chicago and Tape Industries Association of America in Los Angeles, have made pirated tapes and made no bones about it. Each of their copied tapes carries this message: "No relationship of any kind exists between Tape-a-Tape (or Tape Industries Association of America) and the original recording company, nor between this recording and the original recording artist. . . . Permission to produce this tape has not been sought or obtained from any party whatsoever."

Both groups were sued by record companies on the ground of unfair competition, and both groups lost. The California company, however, is appealing to the Supreme Court. It says clothing makers are allowed to copy famous designs, and it argues that "the Supreme Court held an Illinois law on unfair competition could not Constitutionally be applied to prevent a competitor from copying the designs and selling identical products simply because consumers might be confused about the source of the product."

The judge in the lower court refused to accept that argument. He ruled that pirated tapes "actually take and appropriate the product itself—the sounds recorded on the albums—and commercially exploit the product."

A DIFFERENT ARENA?

Some people maintain that instead of fighting in court the tape companies should fight the pirates in the marketplace. "They could solve their problem if the record companies cut their listed prices," asserts one buyer of pirated tapes. "It still costs about a dollar more to buy a stereo cartridge than it does to buy a record containing the same music. That's just too much money."

Tape companies argue that their heavy overhead costs—royalties, promotion and the like—prevent them from reducing prices significantly. And they say that even if they cut expenses to a minimum they could never possibly approach the low prices offered by pirates and counterfeiters.

But industry officials do admit that if the pirates keep increasing their share of the market the industry will have to take a long, hard look at its pricing practices.