

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2515

To amend title 17, United States Code, to exempt business establishments from copyright fees for the public performance of nondramatic musical works, to provide for binding arbitration in royalty disputes involving performing rights societies, to ensure computer access to music repertoire, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 6 (legislative day, SEPTEMBER 12), 1994

Mr. BROWN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 17, United States Code, to exempt business establishments from copyright fees for the public performance of nondramatic musical works, to provide for binding arbitration in royalty disputes involving performing rights societies, to ensure computer access to music repertoire, 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. SHORT TITLE.**

4 This Act may be cited as the “Fairness in Musical  
5 Licensing Act of 1994”.

1 **SEC. 2. BUSINESS EXEMPTION.**

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

4 “(5) communication of a transmission embody-  
5 ing a performance or display of a work by electronic  
6 players, or by the public reception of a broadcast,  
7 cable or satellite transmission on a receiving appara-  
8 tus, in any commercial establishment, the perform-  
9 ance of which is incidental to the main purpose of  
10 the commercial establishment, unless—

11 “(A) an admission charge is made to see  
12 or hear the transmission; or

13 “(B) any other public performance or dis-  
14 play of the works implicated in such trans-  
15 mission are not properly licensed.”.

16 **SEC. 3. BINDING ARBITRATION OF RATE DISPUTES INVOLV-**  
17 **ING PERFORMING RIGHTS SOCIETIES; AC-**  
18 **CESS TO REPERTOIRE.**

19 (a) IN GENERAL.—Section 504 of title 17, United  
20 States Code, is amended by adding at the end thereof the  
21 following new subsection:

22 “(d) PERFORMING RIGHTS SOCIETIES; BINDING AR-  
23 BITRATION AND REPERTOIRE.—(1)(A) If a user of music  
24 and a performing rights society are unable to agree on  
25 the appropriate fee to be paid for the user’s past or future  
26 performance of music in the performing rights society’s

1 repertory, either party shall be entitled to binding arbitra-  
2 tion of such disagreement pursuant to the rules of the  
3 American Arbitration Association. The arbitrator in such  
4 binding arbitration shall determine a fair and reasonable  
5 fee for the user's past or future performance of the music  
6 in such society's repertory.

7       “(B) In any civil action for infringement of the right  
8 granted in section 106(4) involving a nondramatic musical  
9 work that is licensed by a performing rights society, where  
10 the defendant admits prior use of music licensed by the  
11 performing rights society but contests the amount of the  
12 license fee demanded for such use by such society, the dis-  
13 pute may, if requested by either party, be submitted to  
14 court annexed arbitration under section 652(e) of title 28.  
15 In such arbitration proceeding, the arbitrator shall deter-  
16 mine the full and entire amount owed by the defendant  
17 to the performing rights society for all past use of music  
18 licensed by such society. Such amount shall not exceed  
19 what the arbitrator determines would have been a fair and  
20 reasonable license fee for performance of the music at  
21 issue, at the time such performance was made.

22       “(C) In any arbitration proceeding initiated under  
23 this section, the arbitrator may also determine a fair and  
24 reasonable license fee for performance by the music using  
25 part of the music licensed by the performing rights society

1 for a period not to exceed 5 years after the date of the  
2 arbitrator's determination.

3       “(2) Performing rights societies and other organiza-  
4 tions authorized to license nondramatic musical works for  
5 public performances shall make available, free of charge,  
6 online computer access to their respective repertoires.  
7 Such access shall include information regarding—

8           “(A) the title of the work;

9           “(B) the name, address, and telephone number  
10 of the author and the copyright owner (if different);

11           “(C) the date the copyrighted work will enter  
12 the public domain; and

13           “(D) the names of any artists known to have  
14 performed the work.”.

15       (b) ACTIONS THAT SHALL BE REFERRED TO ARBI-  
16 TRATION.—Section 652 of title 28, United States Code,  
17 is amended by adding the following:

18       “(e) ACTIONS THAT SHALL BE REFERRED TO ARBI-  
19 TRATION.—In any civil action for infringement of the  
20 right granted in section 106(4) of title 17 involving a  
21 nondramatic musical work that is licensed by a performing  
22 rights society, where the defendant admits prior use of  
23 music licensed by the performing rights society but con-  
24 tests the amount of the license fee demanded for such use  
25 by such society, the district court may, if requested by ei-

1 ther party, refer the dispute to arbitration. Each district  
2 court shall establish procedures by local rule authorizing  
3 the use of arbitration under this subsection.”.

4 **SEC. 4. PER PROGRAMMING PERIOD LICENSE.**

5 Section 504 of title 17, United States Code, as  
6 amended by section 3 of this Act, is further amended by  
7 adding at the end thereof the following new subsection:

8 “(e) PERIOD LICENSES.—

9 “(1) IN GENERAL.—In any case in which a  
10 nondramatic musical work is licensed by a perform-  
11 ing rights society, the performing rights society shall  
12 offer a per programming period license to any radio  
13 or television broadcaster that requests such a li-  
14 cense. Such license shall be offered on terms and  
15 conditions that provide an economically and adminis-  
16 tratively viable alternative to blanket licenses.

17 “(2) PRICE OF PERIOD LICENSE.—(A) The  
18 total price of a per programming period license de-  
19 scribed in paragraph (1) shall—

20 “(i) include separate components for inci-  
21 dental and feature performances;

22 “(ii) be no higher than the fee that would  
23 be payable under a blanket license offered to  
24 broadcasters in the same industry; and

1           “(iii) be directly proportional to the broad-  
2           caster’s actual use of the society’s repertoire.

3           “(B) The fee for incidental public performances  
4           shall reflect the value of such uses to the broad-  
5           caster and the relative value which the performing  
6           rights society assigns in its distribution of royalties  
7           for such incidental public performances.

8           “(C) Nondramatic musical compositions that  
9           have been licensed directly or at the source, or whose  
10          performance constitutes fair use, shall not be consid-  
11          ered in calculating any per programming period li-  
12          cense fee under this subsection.”.

13 **SEC. 5. ACCESS TO REPERTOIRE.**

14          Section 504 of title 17, United States Code, is  
15          amended by adding at the end the following:

16          “(e) COMPUTER ACCESS TO MUSICAL REP-  
17          ERTOIRE.—Performing rights societies and other organi-  
18          zations authorized to license nondramatic musical works  
19          for public performances shall make available, free of  
20          charge, to licenses or those negotiating licenses, online  
21          computer access to its entire repertoire. Such access shall  
22          include information regarding the title of the work, the  
23          name, address, and telephone number of the author and  
24          the copyright owner (if different), and the names of any  
25          artists known to have performed the work.”.

1 **SEC. 6. ANNUAL REPORT.**

2 No later than March 1 of each year the Antitrust  
3 Division of the Department of Justice shall submit a writ-  
4 ten report to the Congress on the activities of the Depart-  
5 ment during the preceding calendar year relating to the  
6 Department's continuing supervision and enforcement of  
7 the American Society of Composers, Authors, and Publish-  
8 ers and the Broadcast Music, Inc. consent decrees. Such  
9 report shall include a description of all issues raised or  
10 complaints filed with the Department relating to the oper-  
11 ations of performing rights societies, and a summary of  
12 the Department's actions or investigations undertaken by  
13 the Department in response.

14 **SEC. 7. CONFORMING AMENDMENT.**

15 Section 101 of title 17, United States Code, is  
16 amended by inserting after the undesignated paragraph  
17 relating to the definition of "perform" the following new  
18 paragraph:

19 "A 'performing rights society' is an association,  
20 corporation or other entity that licenses the public  
21 performance of nondramatic musical works on behalf  
22 of copyright owners of such works, such as the  
23 American Society of Composers, Authors, and Pub-  
24 lishers; Broadcast Music, Inc.; and SESAC, Inc."