Here is what the Republican bill will do, among other things. It would increase the amount of money rich individuals could contribute to a candidate from $1,000 to $2,000. It would increase the amount of money a rich individual could contribute to a political party from $20,000 to $60,000, and it would increase the total amount a rich individual could contribute to candidates and parties from $25,000 to $75,000; $1,000 to $2,000, $20,000 to $60,000, $25,000 to $75,000.

That is the Republican campaign finance reform. If you think there is not enough money in politics, this is the campaign finance reform bill for you.

This bill is a scam, it is a sham, it is a shame and a disgrace. The Republican majority ought to be embarrassed to bring this bill to the floor.

## CAMPAIGN FINANCE REFORM

(Mr. TIERNEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TIERNEY. Mr. Speaker, the moment of truth is upon us. It is showdown time today in the Rules Committee on campaign finance reform.

Last November, the Speaker of this House promised the House a very fair bipartisan vote on campaign finance reform. The question is, will the Committee on Rules live up to that promise when it meets today?

Certainly, Mr. Speaker, the deck against passing reform is stacked. The bill that the Republicans are putting forth today is in no way reform. It is in fact deform. We will not have a chance to vote on real reform nor will we have a chance to vote on anything but a half-baked concoction of campaign finance deforms that are going to be offered to us in a so-called Thomas bill.

Just this week the chairman of the Rules Committee indicated that he wants to allow a vote on a substantive campaign finance bill in addition to the Thomas bill. I urge the Speaker, I urge the Rules Committee, to fulfill the promises that have been made last fall. Give us a fair bipartisan vote on campaign finance reform.

## COPYRIGHT TERM EXTENSION ACT

Mr. DIAZ-BALART. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 390 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 390

*Resolved,* That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 2589) to amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read. No amendment to the committee amendment in the nature of a substitute shall be in order unless printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Points of order against the amendment printed in the Congressional Record and numbered 1 pursuant to clause 6 of rule XXIII for failure to comply with clause 7 of rule XVI are waived. The chairman of the Committee of the Whole may: (1) postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment; and (2) reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first of any series of questions shall be 15 minutes. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. SHIMKUS). The gentleman from Florida (Mr. DIAZ-BALART) is recognized for 1 hour.

Mr. DIAZ-BALART. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. Frost), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 390 is a modified open rule providing for the consideration of H.R. 2589, the Copyright Term Extension Act. The purpose of this legislation is to extend the term of copyright protection in all copyrighted works, that have not fallen into the public domain, by 20 years.

House Resolution 390 provides for 1 hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

The rule makes in order the amendment in the nature of a substitute recommended by the Committee on the Judiciary as an original bill for the purpose of amendment and provides that it will be considered as read.

The rule further provides that first-degree amendments must be preprinted in the CONGRESSIONAL RECORD. This will facilitate their prompt consideration. Last Wednesday, March 18, the chairman of the Committee on Rules announced on the House floor that the rule for the copyright extension bill may require the preprinting of amendments. I believe that this was ample notice to Members who are interested in offering amendments on this measure.

In 1995, the European Union extended the copyright term for all of its member states by 20 years, from life of the author plus 50 years to life of the author plus 70 years. Therefore, this is not a new issue. As the leader in the export of intellectual property, I think it is important that the United States extend the copyright term as well.

The rule waives points of order against the amendment by the gentleman from Wisconsin (Mr. SENSENBRENNER) printed in the CONGRESSIONAL RECORD and numbered 1 for failure to comply with clause 7 of rule XVI which prohibits nongermane amendments. The Sensenbrenner amendment involves an issue that has some degree of controversy, dealing with songwriters, restaurants and small businesses. However, to be fair to those with other viewpoints on the issue, it will be possible for Members who wish to amend the Sensenbrenner amendment to be able to do so without any special protections.

In addition, the rule provides for the Chairman of the Committee of the Whole to postpone votes during the consideration of the bill and to reduce votes to 5 minutes on a postponed question if the vote follows a 15-minute vote.

Finally, Mr. Speaker, the rule provides for one motion to recommit, with or without instructions.

Mr. Speaker, I believe House Resolution 390 is fair rule. It is a modified open rule for the consideration of H.R. 2589, the Copyright Term Extension Act. I believe the underlying bill is very important. As for the music issue, I think Members will have the opportunity to vote for the amendment by the gentleman from Wisconsin or alternatives proposed by other Members. I think this is a judicious way to handle the issue. I urge my colleagues to support this rule.

I commend the gentleman from Illinois (Mr. HYDE) and the gentleman from North Carolina (Mr. COBLE) for their hard work on H.R. 2589 and would urge my colleagues to support both this open rule and the underlying bill.

In conclusion, Mr. Speaker, House Resolution 390 is a fair rule. I urge its adoption.

Mr. Speaker, I reserve the balance of my time.

□ 1045

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in reluctant support of this rule, but I do support H.R. 2589, the Copyright Term Extension Act. H.R. 2589 seeks to provide important protections for American copyright holders in the world marketplace. This legislation will extend the term of

copyright protection for works created after January 1, 1978, for life of the author plus 70 years after death, bringing this protection into line with the standard in the European Union. This is an especially important protection for U.S. intellectual property since this parity will ensure that American works will receive copyright protection equal to that received in European countries for European-produced intellectual property. Because European countries are huge markets for U.S. intellectual property, this protection is worth hundreds of millions of dollars for works produced by Americans.

Mr. Speaker, this rule allows only for the consideration of any germane amendments to the committee substitute which has been printed in the CONGRESSIONAL RECORD. There is no reason for the preprinting requirement since the underlying bill is relatively free of controversy, and it is for that reason that I only reluctantly support this rule. However, the rule also provides for consideration of a nongermane amendment by the gentleman from Wisconsin (Mr. SENSENBRENNER) by waiving the provisions of clause 5, rule XVI against it. Further, the rule does allow for the consideration of germane amendments to the Sensenbrenner amendment, and it is anticipated that the gentleman from Florida (Mr. MCCOLLUM) and the gentleman from Michigan (Mr. CONYERS) will offer a substitute to the Sensenbrenner amendment. Because these amendments relate to music licensing and not directly to the issue of copyright protection extension, the germaneness waiver is necessary.

In order that the House may proceed to consider this important legislation, Members should support this rule. In the future, however, I would hope that open rules might be truly open and not bound by unnecessary preprinting requirements.

Mr. Speaker, I reserve the balance of my time.

Mr. DIAZ-BALART. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Speaker, I thank the gentleman from Florida for giving me this 2 minutes, and also thank the chairman of the Committee on Rules, the gentleman from New York (Mr. SOLOMON) for providing this open rule containing a waiver which may be necessary to protect a process supported by the chairman, the gentleman from Illinois (Mr. HYDE), and subcommittee chairman, the gentleman from North Carolina (Mr. COBLE), and the leadership of the House. The rule guarantees this body the opportunity to provide balance to the underlying bill, the Copyright Term Extension Act, with a modest package of relief for America's small business.

The supporters of fairness in music licensing, which is the subject of my amendment, believe it complements the Copyright Term Extension Act quite fittingly. The underlying bill extends the term of copyright for an additional 20 years, thereby permitting copyright owners to continue to commercially exploit works that are beginning to fall into the public domain.

My amendment suggests the need to balance this generous expansion of rights, which the gentleman from Texas (Mr. FROST) estimates to be worth hundreds of millions of dollars for copyright owners, with a set of reforms designed to level the playing field for the users of intellectual property.

Again, I thank the Committee on Rules for offering this open rule enabling a fair debate and an up-or-down vote on my amendment.

Mr. FROST. Mr. Speaker, I yield 4 minutes to the gentleman from Texas (Mr. DOGGETT).

Mr. DOGGETT. Mr. Speaker, the Copyright Term Extension Act makes an important correction in our existing law to ensure that the intellectual property of artists across this land is protected, that it is not raided and misappropriated by people around the world to their benefit, without compensation to the original owner.

It is therefore particularly contradictory and ironic that this rule will attach and permit attachment to this protection of intellectual property, what many people have come to call the Music Theft Act, a measure that is a separate freestanding piece of legislation that has nothing to do with copyright extension, but is being attached to the most convenient vehicle to steal the intellectual property of thousands of small businesspeople who are song writers in this land.

This Music Theft Act is based on a very simple premise: If one cannot get someone else's property for free, then pass a law to allow them to steal it from them. It is particularly ironic that this Music Theft Act is being considered here on the floor of Congress at a time when we have just completed the great South By Southwest Music Festival that pulled together hundreds, indeed thousands of people interested in the music industry and what it contributes to the enjoyment of life here in America and how it spreads our American culture literally around the globe.

In my home city, the city of Austin, Texas, where that South By Southwest Music Festival pulled people from around the world to enjoy and build on the success of our music capital, our claim to be the ''loud music capital of the world,'' we have hundreds of songwriters who are small businesspeople who rely on the income that they earn from their songwriting to support themselves. They work hard creating a product that all of us enjoy, and when someone else uses or enjoys their product, they expect to make a profit just like any other business. When Joe Ely or Shaun Colvin or Tish Hinojosa go downtown to play at a club, they do not do it for free. That is how they earn their living. And the same thing ought to apply when music is being broadcast by one of those artists in a restaurant. If a business owner is using a song writer's property to help that business, then it ought to compensate the person that provides, that provided the benefit to them, the songwriter who is responsible for creating the work.

Let us be real clear about what we are discussing. The songwriter's property is just that; it is property every bit as real as a trade name, every bit as real as the script for a movie or for a new book, every bit as real as a new phone system or a copying machine. Music is the property of the songwriter who created it. And when music helps attract people to a restaurant, and that is what this is all about is the desire of the National Restaurant Association to take someone else's property for free, they may not offer any free lunch around America but they are willing to take for free the property of someone else to help them promote their profits in the restaurants.

Supreme Court Justice Oliver Wendell Holmes had it right when he wrote many years ago ''It is true that music is not the sole object, but neither is the food. . . . The object is a repast in surroundings that give a luxurious pleasure not to be had from eating a silent meal. If music did not pay, it would be given up . . . Whether it pays or not, the purpose of employing it,'' the music, ''is profit, and that is enough. ''

And that is what is at stake here today, the right of thousands of small businesspeople who are creative, who write music, to earn an income from doing so.

Mr. DIAZ-BALART. Mr. Speaker, I yield 2 minutes to a distinguished gentleman from Florida (Mr. SCARBOROUGH).

Mr. SCARBOROUGH. Mr. Speaker, I thank the gentleman for yielding me the time, and it may surprise and scare the gentleman from Texas (Mr. DOGGETT) but I actually agree with him on this issue and he is shocked. I agree with him on several issues: on South By Southwest; it is an incredible festival. But more importantly, I agree about what he is talking about are property rights, and I think it is very interesting. It is usually us Republicans hurling charges at Democrats, saying that they do not respect property rights enough and that they are Socialists because they believe the government and others can intervene in their own property rights. And yet I find it to be very, very ironic today, as we come to the floor and debate a bill that is going to gut the property rights of artists, that apparently the belief on the amendment actually is the belief that property rights are only important if there are supporters' property rights.

I think the gentleman talked about Shaun Colvin, a young songwriter. Last night she performed in Washington, D.C. She is 5 months pregnant, she

won a Grammy; she is still struggling. She is not rich, she is not wealthy; and there is going to be an attempt to make these musicians out to be rich and famous rock star types. They are not.

There are a lot of struggling people who have been working 15, 20, 30 years, working their entire life to build property, intellectual property that is every bit as dear to them as real property in our districts. And so for us to just gut their ability to earn a living because of problems they have done is absolutely ridiculous.

So I thank the gentleman for his statements, and I am greatly distressed that apparently some people in this Chamber only respect the property rights of nonsupporters.

Mr. DOGGETT. Mr. Speaker, will the gentleman yield?

Mr. SCARBOROUGH. I yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Speaker, I am so pleased to see that not all of the concern for music on the Republican side is expressed by the singing Senators and that there are other musicians and lovers of music on the Republican side that recognize this is basically a property rights issue.

Mr. SCARBOROUGH. This is an issue that was very important to Sonny Bono, and in fact is one of the issues that he talked about the most when he was here on Capitol Hill, because Sonny understood, he had been struggling his whole life to create songs, to create something that mattered, that would have a lasting impact, that is going to last long after Sonny has been gone. And so it is not just myself, Sonny recognized it, there are other people who recognize that if we are for property rights, real property rights, we should be for intellectual property rights too.

Mr. FROST. Mr. Speaker, I urge adoption of the rule, and I yield back the balance of my time.

Mr. DIAZ-BALART. Mr. Speaker, I yield back the balance of our time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. SHIMKUS). Pursuant to House Resolution 390 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2589.

The Chair designates the gentleman from Alabama (Mr. EVERETT) as Chairman of the Committee of the Whole, and requests the gentleman from Florida (Mr. DIAZ-BALART) to assume the Chair temporarily.

□ 1058

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 2589 to amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes, with Mr. DIAZ-BALART (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from North Carolina (Mr. COBLE) and the gentleman from Massachusetts (Mr. FRANK) each will control 30 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. COBLE).

Mr. COBLE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of the bill, H.R. 2589, the Copyright Term Extension Act, reported by the Committee on the Judiciary by voice vote, without objection. This important and significant bill will give to the United States economy 20 more years of foreign sales, revenues from books, movies, records, and software products sold abroad.

We are, Mr. Chairman, by far the world's largest producers of copyrighted works, and the copyright industries give us one of our most significant trade surpluses.

□ 1100

Our most valuable economic resource is no longer our industrial power and natural resources, but the creative potential of the minds of our citizens.

While our creativity holds America's greatest promise for the future, it is also our most fragile commodity, fragile because while difficult and expensive to produce and market, it is relatively easy and inexpensive to copy and to use for free.

We must ensure that foreign markets are open to our intellectual property exports, and just as importantly, that our copyright industries be given reciprocity and the opportunity to compete. That is what this bill is all about, Mr. Chairman.

The European Union countries, pursuant to a directive, have adopted domestic laws which would protect their own works for 20 years more than they protect American works. This bill would correct that by granting to United States works the same amount of protection which, under international agreements, requires reciprocity.

Under the current law, most works receive copyright protection for the life of the author plus 50 years. In the case of works made for hire, such as a movie, the copyright term typically endures for a period of 75 years from the year of its publication.

H.R. 2589 would bring the term of copyright protection from the life of the author plus 50 years to the life of the author plus 70 years and of works made for hire from 75 to 95 years from the date of publication.

Trade surpluses are not the only benefit of term extension. It is also good for consumers. When works are protected by copyright, they attract investors who can exploit the work for profit. That, in turn, brings the work to the consumer who may enjoy it at a movie theater, at a home, in a car, or in a retail establishment. Without that exploitation, a work may lie dormant, never to be discovered or enjoyed.

Now, of course, copyright protection should be for a limited time only. Perpetual protection does not benefit society. But extending the term to allow a property owner to hand that property down to his or her children or grandchildren is certainly appropriate, it seems to me, and grants the benefits of exploitation for that limited time.

I urge all my colleagues, Mr. Chairman, to vote yes on this bipartisan, noncontroversial legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself as much time as I may consume.

Mr. Chairman, I am delighted to appear, along with the gentleman from North Carolina, chairman of the Subcommittee on Courts and Intellectual Property. I should note that this bill is also strongly supported by the chairman and ranking member of the Committee on the Judiciary.

The responsibility to protect intellectual property is a very important one. As the gentleman from North Carolina has indicated, there are both cultural and economic reasons for doing so. The cultural reasons are probably more familiar to people, so we stress sometimes in this debate the economic reasons, not because we think the cultural reasons are less important, but the economic reasons are not always fully understood.

In an evolving world economy, there are areas where Americans will do less than they have in the past. We will make unsophisticated products in far less amounts than we used to in an internationally competitive world. We all know that. People can lament it, people can support it, but it is an unchangeable fact. There is simply not going to be in the future, as there already has been, a diminution in American products of a relatively simple and uncomplicated era.

On the other hand, America's comparative advantage in the world has been growing in the intellectual property area. We not only enrich much of the rest of the world culturally, but we enrich ourselves economically by the production of songs and movies and a whole range of other things.

Much of our effort is, in fact, to protect our intellectual property against theft overseas. Members are familiar with this in the cases of piracy and counterfeiting. What we do here is to try to make sure, in part, that the people who do the actual creation share in these riches. And they are not people who are in the multibillion dollar category exclusively and, in fact, not even primarily.

Frankly, for the wealthiest of the creators and performers, the additional copyright term is relatively unimportant. This becomes important precisely for those who make a living as a song writer, but do not get rich at it, who make a living in these areas. What we do here is to enhance the stream of income that goes to support their creative efforts.

One part of this bill that is particularly important, that was worked out in a bipartisan way, in fact, says, in cases where the creative person, the song writer, the artist, the writer of the book, where for a variety of reasons that person may have signed away some of his or her rights, to the extent that we are creating a new set of values here in this 20-year extension, we have urged that this be renegotiated and that the creators be given a share of the additional 20 years. We will be monitoring that carefully. I am confident that we will see the creator is better treated.

Yes, many people write songs and write books because of their love of the creative process. Love of the creative process is a great thing. But great as it is, it is kind of hard to support a family on it. It is kind of hard to sustain that.

What we are saying is, we want to encourage creativity, not simply as a hobby, not simply as something that people who are independently wealthy can do on their own time, but as a way for people to earn a living to support themselves and their families.

This bill is an important step precisely for those who are not in the wealthy category, precisely for those who are trying to earn a living day-today by writing songs, by writing books. This enhances their ability, and it particularly is relevant when we talk about the 20-year extension, about their obligation that they feel to deal with their families.

We are talking here about people earning and then being able to transfer to their families, to later generations, this kind of writing. It is a very important piece of legislation.

There is an overwhelming consensus on the part of the Committee on the Judiciary, which as some of you might have noticed is not always united. The Committee on the Judiciary has, indeed, recently been overdescribed as a source of contention and as a place for fighting.

I must say that, having served on the Committee on the Judiciary for 18 years, I have yet to see the first pie thrown. I keep reading with some disappointment that it is a locus for food fights. They seem to have them when I am absent. I am going to insist that I be invited to the next one; I have got my own seltzer bottle, and I am ready to come.

But precisely because the Committee on the Judiciary is composed of people who are prepared to engage in the most vigorous democratic debate when issues divide us, I think it is noteworthy that here there is an overwhelming consensus that for cultural reasons, for economic reasons, as a matter of fairness, as the gentleman from Florida was saying as I came in, we have come forward with a bill that protects the right of the creative people in our society, who so enrich the rest of us, to benefit some from that creativity.

Mr. Chairman, I reserve the balance of my time.

Mr. COBLE. Mr. Chairman, I thank the gentleman from Massachusetts for his opening statement.

Mr. Chairman, I yield 5 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER), a member of the Committee on the Judiciary.

Mr. SENSENBRENNER. Mr. Chairman, today I rise in support of H.R. 2589, the Copyright Term Extension Act, if, and only if, my amendment to ensure fairness in music licensing passes.

H.R. 2589 provides a very generous windfall to the entertainment industry by extending the term of copyright for an additional 20 years. That is 20 years more that they can commercially exploit works that would otherwise fall into the public domain.

Mr. Chairman, the Constitution I read suggests the need for balanced intellectual property rights between its creators and users. When the mechanisms designed to ensure that balance are broken, it is the duty of Congress to act.

Passage of the amendment which I will offer later on today will provide that balance. It sends the message that the voice of the tavern keeper in Boston, Massachusetts, Greensboro, North Carolina, or Milwaukee, Wisconsin is just as important as the parade of celebrities that Hollywood has trotted out to support expanding its rights by passing term extension and oppose my efforts to enact the modest reforms I seek for small business.

The amendment which I will offer is a compromise version of my legislation, H.R. 789, the Fairness in Music Licensing Act and is a key vote for the NFIB, the National Restaurant Association, the National Association of Beverage Retailers, and the many other small business associations.

They support my amendment because it ensures fairness by providing for local arbitration of rate disputes, so small businesses do not have to go to New York City and hire an expensive attorney to contest a rate that may involve several hundred dollars.

They support my amendment because it prevents small businesses from being forced to pay every music licensing society a fee for music already paid for several times over.

Let me make this point: Under my amendment, nobody gets a free ride. The creators of intellectual property are paid. My amendment only provides for the exemption for a retailer who has a TV set on or a radio set on where the creators of the intellectual property have already been paid a licensing fee by the TV or radio station or the other broadcast media.

We should stop the double-dipping, and we should stop the harassment of small business operators over the type of programming that they have no control over. It does not provide an exemption for tapes or CDs or live music performances such as has been described earlier.

The same groups oppose a window-dressing amendment to be offered later on today by the gentleman from Florida (Mr. MCCOLLUM). That amendment is unanimously opposed by America's small businesses because it reflects a rejected proposal from failed negotiations. It contains no local arbitration, and it excludes the vast majority of America's small businesses from any relief from the music-licensing monopolies.

Make no mistake, the McCollum substitute to my amendment is the music monopolies' amendment. The McCollum-ASCAP-BMI substitute is a key vote, no, by the same groups I just identified in support of my amendment.

Next time, Mr. Chairman, you walk down Main Street in a town in your district, walk with your head held high knowing that you did the right thing for small business. Do not cozy up to the same folks who have been abusing small businesses in your district and mine for years by supporting the McCollum amendment, because it substitutes the interest of Main Street for the interest of the music monopolies.

In the name of balance and support for Main Street U.S.A., vote no on McCollum and yes on Sensenbrenner.

The CHAIRMAN. The Chair now recognizes the gentleman from Massachusetts (Mr. DELAHUNT) as the new controller of time for the minority.

Mr. DELAHUNT. Mr. Chairman, I yield as much time as he may consume to the gentleman from California (Mr. BERMAN).

Mr. BERMAN. Mr. Chairman, I thank the gentleman from Massachusetts for yielding me this time.

Mr. Chairman, I rise in strong support of the bill H.R. 2589, Copyright Term Extension. As I believe my colleagues know, Congress is obliged under the Constitution to protect intellectual property or, to be precise, to secure for limited times to authors the exclusive right to their respective writings.

My colleagues may be less familiar, however, with the fact that the U.S. also has international obligations to protect copyright. In 1989, the United States, in a long-overdue move, became a member of the Berne Convention, the century-old international treaty mandating copyright rules for member countries. Under the ''rule of the shorter term,'' member countries are only obliged to protect the work of foreign authors to the same extent that they would be protected in their country of origin.

Herein lies the problem. Under current U.S. law, copyright term for most works is life of the author plus 50 years. For works made for hire, such as motion pictures, the term is 75 years. However, in 1995, the European Union extended copyright term by 20 years. If we fail to extend our copyright term as well, our intellectual property industry would lose millions of dollars in export revenues, and the U.S. balance of trade would suffer commensurately.

European Union countries would not have to extend to American works the additional 20-year protection that they have already extended to European works. This is an outcome we can and must prevent by passing H.R. 2589.

Later in the debate we will be addressing an amendment that I strenuously oppose, to be offered by the gentleman from Wisconsin (Mr. SENSENBRENNER). That amendment would do great harm to the integrity of copyright law, and I will speak to it at the appropriate time.

□ 1115

But I do not want us to lose sight of the significance of H.R. 2589 to America's intellectual property interests, both at home and abroad.

Mr. COBLE. Mr. Chairman, how much time does each side have remaining?

The CHAIRMAN (Mr. EVERETT). The gentleman from North Carolina has 21½ minutes, and the gentleman from Massachusetts has 22½ minutes.

Mr. COBLE. I thank the Chairman.

Mr. Chairman, I yield 10 minutes to the gentleman from Florida (Mr. SCARBOROUGH).

Mr. SCARBOROUGH. Mr. Chairman, I thank the gentleman for yielding me this time. I certainly agree with the gentleman that H.R. 2589 is very important for the copyright protection of this country. However, and I will speak to this issue a little bit later on during the debate of the Sensenbrenner amendment, but a few things were said that need to be addressed.

The gentleman from Wisconsin (Mr. SENSENBRENNER) talked about how the McCollum music machine amendment would abuse small businesses. He talked about fairness in music licensing. He talked about ''a windfall.'' He talked about ''commercial exploitation.''

Now, we talk about double-speak; who is using the property rights of whom to sell beer, to sell food, to sell products in the taverns that he spoke about in Anytown, USA? My restaurant owners in northwest Florida certainly understand the importance of music in setting a mood in a tavern, in setting a mood in a restaurant. They also understand what would happen if they turned the music off. Mr. Chairman, that is the choice they all have if they do not want to use a product.

And I hear this talk that somehow supporting property rights now is anti-small business. I was elected by small business. Some of my biggest supporters throughout northwest Florida own small restaurants and own nightclubs, and own other things that come under this bill, and they all understand that what sells their product is the mood that they set.

The gentleman from Texas was talking about how music was a backdrop. It is. It is a backdrop for these small businesses. Not only is it the sound track of our lives and of the movies that we watch, but it is also the restaurants that we go into. It sets the mood. And yet, we have an amendment to this very, very important bill that would absolutely gut the right of those people that are making the property that helps people set the moods to sell the products in these small businesses that are extraordinarily important to me.

Let me state again the backbone of my political support comes from small businesses, not from PACs, certainly not from unions, not from people who want more regulation, and not from people who want this Congress to interfere in goodwill negotiations. My people, my supporters, are small business people that talk about property rights, and they do not talk about property rights only when it suits them politically. They talk about property rights for everybody.

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. SCARBOROUGH. I yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, if I understand what the gentleman is saying, then if someone develops a very successful restaurant and they think it contributes to have some music playing there, they do not expect to get the electricity for free, they do not expect to get the recording device for free, but some of them apparently think that they can take the property of the song writer and get that for free.

Mr. SCARBOROUGH. Mr. Chairman, reclaiming my time, I do not think it is they. I think it is a very small number of people in Washington, D.C. Because again, people that own the restaurants in my district understand. I have talked to them about this. I would not come on the floor without talking to people that support me.

They understand, if one pays for the carpet to set a mood and one pays for the wallpaper to set a mood and one pays for the lighting to set a mood, they also understand the most important thing, again, in music is the property rights.

Mr. DOGGETT. Mr. Chairman, if the gentleman will continue to yield, if one of those successful restaurants in the gentleman's district has a famous name, I could not take that name and open up right next door without stealing their property, could I?

Mr. SCARBOROUGH. Mr. Chairman, the gentleman is exactly right.

Mr. DOGGETT. Mr. Chairman, is that not the same thing as stealing the works of people that have devoted significant time to creating something we all enjoy?

Mr. SCARBOROUGH. Again, reclaiming my time, it certainly does, and I remember hearing Sonny Bono talk about this, hearing him over and over again. He wrote us Dear Colleague letters, he talked about it nonstop.

Everybody has this image of Sonny Bono as some guy that just sort of stumbled into 7 or 8 gold records, that he just somehow, in the late 1960s stumbled into 7 gold records and a number 1 and number 2 TV show that he produced. That is not the case.

Sonny told me his story, because we were on the Committee on National Security together. He told me his basically hard-luck story about going out to Los Angeles in the late 1950s, about working hard around the clock. I do not know how many people here know who Phil Spector is, but he ran around doing errands for Phil Spector, getting coffee, emptying his garbage can, do everything he could do, writing songs, to get an opportunity to make a little bit of money.

What Sonny told me then was, he said, the great thing is now, it is something that is going to help my kids. Sonny did not realize just how pathetic his words were going to be, to help his kids a lot sooner unfortunately than any of Sonny's friends would have liked it to be.

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. SCARBOROUGH. I yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, so what the gentleman is saying is, most of the song writers in America, they do not begin their careers at the Grammy's or in the movies or on television. It is hard work, and for every Sonny Bono, there are thousands of other song writers out there that are song-writing on the side, and they are out maybe working for one of the small businesses whose misguided association has promoted this bill.

Mr. SCARBOROUGH. Mr. Chairman, reclaiming my time, the gentleman is exactly right.

Last night, again I met one of the gentleman's constituents, Shawn Colvin. Now, Shawn Colvin just won a Grammy, and everybody thinks she is at the top of the world because she won the Grammy. I saw her last night, she was in a dressing room.

Mr. DOGGETT. Mr. Chairman, if the gentleman would continue to yield, the gentleman has good taste, better than I realized.

Mr. SCARBOROUGH. Mr. Chairman, again reclaiming my time, she was in a dressing room smaller than the bathroom of many Members in the Rayburn Building, and I will guarantee, she will not make as much money as a song writer as any Member in this Chamber today.

I wrote down the words, when we are hearing about music machine and Hollywood stars and blah, blah, blah, I mean this sort of rhetoric to make this thing seem, gee, this is going to really help the wealthy people. It is not going

to help the wealthy people. They are going to be making the majority of their money on other things, on videos, selling the CDs.

This helps the people like Ms. Colvin who is 5 months pregnant, who certainly, if she was wealthy, would be sitting at home watching TV instead of running around trying to make a little bit of money. This helps Ms. Colvin, and this helps other people that are struggling to get by so that they can work, so that they can devote their life to creating artistic works that enhance the quality of life for all of us.

Mr. DOGGETT. Mr. Chairman, will the gentleman yield further?

Mr. SCARBOROUGH. I yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, I want to extend an invitation to the gentleman to come down to Austin, Texas, at some time other than the campaign season, of course, and enjoy her where she sounds the best. But whether we have Shawn Colvin on the radio or Jerry Jeff Walker or any other fine artist from down there in central Texas, the average cost of using that kind of music. To the small business, when they talk about balance, it is only about a buck and a half a day; is it not?

Mr. SCARBOROUGH. Mr. Chairman, reclaiming my time, it is very minimal. I have to say again, I want to finish how I began because people seeing the gentleman from Texas and I go back and forth talking, it might scare some of my natural constituents.

I am a friend of small restaurant owners, I am a friend of small businesses. My voting record over 3 or 4 years has shown that. In fact, I think the gentleman has called me a right-wing extremist because of a lot of my votes on less taxes and less regulation, less Federal spending. But I also recognize that small business people are people that are song writers, they are people that are doing things that may not fit our national constituency, and they deserve protection as much as landowners deserve protection.

If we want to talk about something that really hits home with me in my district, because I am always fighting for property rights, stopping extremists from coming in and having improper takings, I think we can apply that to this situation where we have an amendment in the Sensenbrenner amendment that constitutes nothing less than an improper taking; and where there is a taking, there needs to be just and full compensation, and our Constitution says that. That is why I think this does violence to the Constitution's provision and the Fifth Amendment. It talks about eminent domain, it talks about just taking, it talks about property rights.

That is why I think the far more sensible approach is the approach taken by the distinguished gentleman from Florida (Mr. MCCOLLUM). I will be supporting his amendment. I ask every single Republican and Democrat that cares about property rights, that cares about small business owners, that cares about the things that we have been talking about we care about for the past 4 years to support Chairman MCCOLLUM on his amendment when it comes up later on, because it is the wise, the fair alternative.

Mr. DELAHUNT. Mr. Chairman, I yield myself such time as I may consume to say that listening to the colloquy between the gentleman from Florida and the gentleman from Texas, I do not know how, but it might be appropriate to redesignate the bill before us as the Sonny Bono Act.

Mr. Chairman, I yield as much time as he may consume to the gentleman from Texas (Mr. DOGGETT).

Mr. DOGGETT. Mr. Chairman, I thank the gentleman for yielding to me.

Last week at the Austin Music Awards down at the South by Southwest Music Gathering, we had people from all over the world, and of course we had to spotlight a little local talent, so the band that was playing is Ray Benson's Asleep At the Wheel, and I think what the gentleman from Florida and I are trying to do, from very different, perhaps, political perspectives on some other issues, is to be sure that this Congress is not asleep at the wheel today.

Mr. Chairman, the basic thrust of the legislation that we are debating today is very positive. We are saying that whether one is an author or one is a music artist, that one's property ought not to be stolen in China or in Europe or someplace else where people take advantage and pirate American works. It is a major problem. This Copyright Extension Act is basically sound legislation that tries to protect the creative work of the American people wherever it might be used around the globe.

But as we reach out to protect our citizens around the globe, we have a group, a special interest group that has come in here to the Congress and said, well, we want to hang on a little amendment to this, and our little amendment is something called the Musical Fairness Act. We cannot get it passed on its own, but we want to stick it on this good bill and kind of put it in there.

It reminds me of another one of our Austin song writers, the late Stevie Ray Vaughn. To call this the Fairness in Musical Licensing Act is to remind me of that line from his song called the Garden of White Lies, ''They are pulling wool over our eyes,'' because that is what this is all about.

It is about pulling wool over our eyes, as we consider a good bill, to tack on a very bad bill that could not pass on its own because it basically is contrary to a long series of American court decisions and American recognition that just because one cannot touch property, a trade name, a musical work does not mean it is not very real property that deserves to be protected by our Congress. And those who would steal this property know that they cannot get away with it under our existing law, so they want it legalized in the amendment that is being offered today.

□ 1130

Most of the people that are going to be hurt by this musical theft amendment are not even full-time songwriters. They work for small businesses and large businesses across this country, and on the side they apply their creativity talent. Less than 10 percent of the American Society of Composers, Authors, and Publishers earn their living full-time from the music that we all enjoy. They are only getting a little supplemental income and hoping that one day they can become a Sonny Bono, or they can become a Willie Nelson.

The small compensation that current law requires of those that use that music to pay is modest, indeed, compared to the benefit they derive. It has been estimated that it costs about $1.58 a day to get the benefits of all of those members of the American Society of Composers.

Goodness, do you know in Austin, Texas, you cannot even get a bowl of tostados and a little guacamole on the side while you are enjoying this music for $1.58. It is not unreasonable to ask that there be some compensation to encourage the kinds of musical genius that we have, not only in Austin but across this land.

I have heard from literally hundreds of musicians in this country, many of them, of course, from Texas, who have urged the defeat of this Musical Theft Act, and who recognized that it represents a deprivation of private property rights.

It is so ironic that some of the people who have spoken out in favor of private property rights on this floor would now authorize the taking of private rights from the musicians that create so much of what adds to the quality of our life, and obviously, flows to the benefit of people, regardless of the party label that they wear when they come on this floor.

As with any debate, there is room for some middle ground. Indeed, there have been extensive negotiations over this issue, trying to reach a reasonable balance. A reasonable balance is not to give the authority to steal the property rights of our musicians. But, for example, there is a discussion that has gone on that exempts over 65 percent of all the drinking establishments in the United States and creates 12 regional sites for arbitration of disputes.

On this proposal, actually there was agreement reached with the National Licensed Beverage Association, but the National Restaurant Association will not have any of it. Why pay something when you can change the law and get it for nothing, seems to be their approach. So they have been unwilling to join those reasonable organizations that would respect private property rights and recognize they ought to

have to pay something for them, because they want it all their way.

What we are asking today is that we approve the base legislation, the very positive, bipartisan legislation that is being presented here today, but not attach to it something that has nothing to do with it, that is completely contrary to the purposes of this legislation, and will only serve to take away the rights, the creativity, of artists across this land.

I would urge the rejection of that amendment, and the whole concept of trying to reach some balance is not achieved by this Musical Theft Act, but by the very reasonable approach that follows the agreement with the National Licensed Beverage Association that our Republican colleague, the gentleman from Florida (Mr. MCCOLLUM) is going to offer, an approach that provides a change in the law for small businesses, but recognizes that there are many other small businesses out there involved in the music industry that need protection, too, and will draw a reasonable balance and not permit the theft of music creativity.

Mr. COBLE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, let me put another oar in the water. I was not even going to get into this, but the die has been cast. The gentleman from Florida (Mr. SCARBOROUGH) addressed it very adeptly.

I resent the fact that this is being portrayed as big business versus little business. It is not true. I will compare my voting record supporting small business men and small business women with anybody on this floor. As far as being a friend to the restaurateurs and the restaurants across my district, ask any of them down there. I can assure the Members that they will say that I have spoken favorably for them.

They do a good job. Songwriters do a good job. Must we, in this era of conflict, have to be opposed to one? Can you not be for the songwriter and the restaurateur? It seems to me that you can be. Some people, I think, are incapable of that in this current climate and in this era. They must be opposed to one. They cannot embrace both, they have to reject one. I think that is poppycock. I think the gentleman who will come on next is going to have an amendment that will exemplify that spirit of compromise, and that spirit of embracing both parties to this affray.

Mr. Chairman, I yield 5 minutes to the gentleman from Florida (Mr. MCCOLLUM), a member of the full committee, who will have a subsequent amendment on this matter.

(Mr. MCCOLLUM asked and was given permission to revise and extend his remarks.)

Mr. MCCOLLUM. Mr. Chairman, I thank the chairman for yielding time to me.

First of all, I would like to point out that we are here today primarily to pass copyright extension. While we are going to be having this huge debate over the songwriters' music licensing fees, and I am going to offer a substitute amendment that has been already widely discussed out here, we do not want to miss the point that hundreds and thousands, and more than that, hundreds of thousands, really, of various parties in this country, individuals, businesses, and so forth, who have copyright interests in books, in music, in TV videos, in movies, and all kinds of various productions that are copyrighting, whatever you can have a copyright for, anything that you write that you copyright on, are in great need of a copyright extension that is the underlying part of this bill; that is, to lengthen the life of how long your property right is protected, how long can you get royalties or money for the reproduction, the publishing of the book, if you will, if you want to put it back in the old-fashioned term of art; how long will you and your family be able to get royalties for that, and when will it become public property to which you have lost your personal property right.

We have been waiting around for quite a long time, 5 or 6 years, to get this bill to the floor of the House, simply because there has been this big dispute between the restaurants of this country and their primary association and the songwriters and their primary association over the so-called music licensing issue. We need to resolve that.

When I come out here in a little while, after the gentleman from Wisconsin (Mr. SENSENBRENNER) has offered his amendment, that is going to basically exempt all restaurants and businesses from having to pay a fee that has been paid for years and years to the associations for the songwriters' benefit, for every playing of a radio or TV rebroadcast of their music, when I come out here in a few minutes to offer my substitute, the debate is going to be about certain ways you go about giving some relief to some restaurants or some businesses further than they already have today.

There is already an exemption in the law, it has been there a long time, for any business of under 1,055 square feet. So if you have a really tiny business, you want to play the radio or have your television and music on, you do not have to pay a licensing fee.

The average fee out there on music licensing for restaurants they have to pay now is about $30 a month, which for the larger restaurants is not a very big deal. For some small restaurants it is a big deal. What we have worked out that the gentleman from North Carolina (Chairman COBLE) I believe is going to support and the gentleman from Illinois (Chairman HYDE) of the full Committee on the Judiciary, and the gentleman from Michigan (Mr. CONYERS), is an amendment to the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER).

That is basically the compromise. That we think is where we have gotten the product after 5 years of discussion, as close as we can get it when the two parties would not come to an agreement, to a technical agreement.

So it is truly a compromise amendment that I am offering. It would exempt 65 to 70 percent of all restaurants who are currently paying music licensing fees from ever having to pay it, my substitute would. That is a pretty big hunk of it. That is certainly all the smaller restaurants and quite a number of restaurants of much larger size.

It would exempt all restaurants, regardless of size, from having to pay these fees they have always paid to songwriters if they have as many as six speakers to broadcast the radio around in their shop, or fewer, or if they have four televisions or fewer. So a lot more are going to be picked up. It is hard to measure how many have that. You can limit the number of speakers you have in your restaurant and get exempted altogether from paying fees that you have currently been paying.

But more importantly, perhaps, than what it does in that regard, it provides some balance, because as the gentleman from Florida (Mr. SCARBOROUGH) has pointed out, songwriters are small business men, too. We are out here trying to protect small business men and give exemptions to the truly small restaurateurs of this country, but also protect the songwriters so they continue to be able to get their livelihood.

There are thousands of songwriters, most all of whom get their entire income and livelihood from the royalty fees they get from the copyrighted songs that they write, yet their average income is somewhere under $10,000 a year for a songwriter. That is pretty darned small. They are not the wealthy people of this Nation. The fees they get from the use of their songs in these restaurants, especially in the larger chains that are out there, is very important to them.

As I said, it is about $30 a month that the restaurants pay. It goes into a pool of money these associations have, and then those associations of songwriters spread the money around and pay a proportionate share to all the songwriters who are members. I think that is really important to protect. That is what my amendment would do, to allow them to continue to have some money from this source from the larger restaurants in this country. That is, again, the compromise, the balance, in here that is involved.

I also would like to point out that most songwriters never get a big hit. If they get a big hit, a few of them do make some money. I am sure there will be somebody out here sometime today pointing out some of those people who do. But for every songwriter that gets a big hit and makes a lot of money, there are literally a thousand others for every one of those who do not. That is what this legislation protects are those thousand others, thousands of others, who do not ever get the big hit.

Last but not least, there is a compromise in what I am going to offer out here in a little while dealing with the question of complaints we have had for some time about the fact that restaurants in particular, small businesses, have had to go a long way, to New York, to go appeal a fee dispute with these associations collecting the music licensing fees, because there is a rate commission set up to do it.

What the gentleman from Wisconsin (Mr. SENSENBRENNER) would provide would be that there would be arbitration in every locality around the country. That would provide uniformity. That would be expensive the other way around.

What we have tried to do in a compromise is say we will set up a provision for circuit riders from this rate commission to go around to the sitting seats of all 12 Federal judicial circuits to sit regularly to settle these disputes, so people do not have to travel as far.

I think what I am offering in a little while out here truly is the compromise substitute. Let us do it now so we can get on with the main, underlying thrust of this bill, and that is copyright extension. That is what we are here about today. It is long overdue. We cannot afford to have this dispute between the restaurants and the songwriters tie up this legislation any longer. The bill, underlying bill, is too important. I urge my colleagues to both vote for my substitute when the time comes and vote for the underlying bill.

Mr. DELAHUNT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong support of the underlying bill. I think it is important to understand that this bill is not simply a means to encourage American creativity and to protect the products of that creativity. Just as importantly, it is about the future of our national economy. I suggest that is not an exaggeration.

Most importantly, it is about our balance of trade, a balance of trade that for some time has registered a substantial deficit, a deficit that exploded last month as a result of the financial crisis in Asia, and according to most economists, a deficit that will continue to escalate because of that crisis.

Mr. Chairman, we cannot afford to not pass this bill if we hope to control this burgeoning trade deficit and protect our national economic well-being. Furthermore, it is essential that the Sensenbrenner amendment that we will be considering shortly be defeated and the McCollum-Conyers substitute pass. Otherwise our trading partners will claim that Congress has enacted an overly broad exemption to our copyright laws that violates our international treaty obligations. If we do not defeat the Sensenbrenner amendment, not only will this be unfair to songwriters, but it will further exacerbate our trade deficit.

America is the world's leading producer and exporter of copyrighted products. The entire world clamors for American software, American movies, American television programs, American videos, American literature, and American music. Just these core copyrighted industries produce a surplus of $50 billion annually in our trade with the rest of the world.

Just imagine what our trade deficit would be if that $50 billion annual surplus were at risk or declining. Imagine how many well-paying American jobs would be jeopardized in just these industries, which create new jobs for American workers at nearly three times the rate of the rest of the economy.

□ 1145

Well, if we want to avoid that disastrous scenario, we must pass this bill; because if we are to maintain American leadership and retain our comparative advantage in this aspect of international commerce, we must adapt to changing international standards of copyright protection, and this bill does just that.

The emerging world standard for the term of copyright protection in Europe and throughout most of the developed world is the life of the author plus 70 years. In 1995, the European Union adopted this standard, but only with respect to works that enjoy comparable protection in the country of origin. This means that until the United States extends its copyright term to 70 years from its current term of 50 years, U.S. works will not be entitled to protection for the full term accorded to works in the European markets. If this situation persists, it will put our creative industries at a serious competitive disadvantage and will substantially and adversely affect our overall trade posture. Rather, we should foster and nurture our creative industries for the sake of our economic future.

So, Mr. Chairman, I urge my colleagues to vote for American prosperity. Support the bill as amended by the McCollum-Conyers substitute.

Mr. Chairman, I yield back the balance of my time.

Mr. COBLE. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. GALLEGLY), a member of the Committee on the Judiciary.

Mr. GALLEGLY. Mr. Chairman, I thank the gentleman from North Carolina (Mr. COBLE) for giving me the opportunity to speak today in support of this important piece of legislation.

In February of last year, I introduced a copyright term extension bill which is almost identical to the legislation we are considering here today. This legislation extends the term for copyrighted products by 20 years. This will allow the U.S. copyright term to keep pace with the term of European countries that are now our main competitors for copyrighted products such as motion pictures and music.

In 1995, the European Union required member Nations to extend the copyright term to life of the author plus 70 years. This is 20 years more than is currently granted to the U.S.-based copyrighted works. Moreover, under the rules of an international treaty, most of our economic competitors are not required to give U.S. works the same term of protection as they give their domestic works if the U.S. has a shorter copyright term.

The European Union has exercised this rule and now requires EU member States to limit protection of U.S. works to the shorter term granted in the United States. Let me emphasize this point: Under a current European Union directive, member nations are actually required to discriminate against American copyrighted works. The result, unless this bill becomes law, is to place our copyright industries at a competitive disadvantage with other nations, threatening the incomes of U.S. authors, artists, songwriters, and other copyright holders.

As many of my colleagues know, our copyright industry employs over 6 million Americans and is one of the fastest growing segments of our economy. Moreover, with estimated foreign sales of over $53 billion last year, the copyright industry is one of the few areas in the U.S. actually enjoying a healthy trade surplus.

Copyright term extension has enjoyed strong bipartisan backing and is supported by a wide-ranging coalition in the current Congress. Among many of the groups that support term extension legislation are the Songwriters Guild of America, National Academy of Songwriters, the Motion Picture Association of America, the Intellectual Property Law Section of the American Bar Association, the Recorded Industry Association of America, National Music Publishers Association, the Information Technology Association of America, and many, many others.

Mr. Chairman, I would like to congratulate the gentleman from North Carolina (Mr. COBLE), my friend and colleague, the chairman of the Subcommittee on Courts and Intellectual Property of the Committee on the Judiciary, for recognizing the importance of the copyright industry to the U.S. economy and the need to update our copyright law to the current legal and competitive climate faced by the U.S. from countries throughout the world.

Mr. Chairman, I urge my colleagues to support this commonsense yet very critical piece of legislation.

Mr. CONYERS. Mr. Chairman, I urge my colleagues to support this amendment which is a fair and balanced compromise to the current dispute surrounding music licensing. This dispute really revolves around big business seeking an exemption to paying public performance royalties for radio, television and other broadcast in their restaurants. Copyright owners have the exclusive right to authorize others to publicly perform their works. When a commercial establishment turns on the radio or television, that is a public performance of another's intellectual property.

Why should all commercial establishments be exempted from licensing fees? Representative SENSENBRENNER's amendment is far from a fair approach to music licensing. His amendment would create a carve out for all commercial establishment using music via any transmission, not just standard radio and TV broadcast. Adopting this provision would mean an outrageous give away of music by allowing big restaurants to stop paying a mere $1.58 a day! Meanwhile ninety percent of music writers make less than $10,000 a year! Most songwriters don't perform, so licensing fees are critical to their incomes. This amendment is a direct big business attack on the livelihood of songwriters.

My amendment, offered with Representative MCCOLLUM, represents provisions of an agreement which the parties came close to at the end of recent negotiations. The McCollum-Conyers substitute expands the current exemption from music licensing to cover all restaurants of less than 3,500 square feet, excluding parking lots, no matter what kind of radio or television devices are being used. It also exempts restaurants of 3,500 square feet or larger if they use only four television sets and six speakers, with no more than four speakers in one room and reasonable television screen sizes. This compromise offers a fair approach by providing a broad exemption to small businesses and protecting royalties of songwriters.

Many of you have heard the song, ''I Heard It Through the Grapevine'' which has been recorded by the Temptations, Gladys Knight and the Pips, Marvin Gaye and many others. But I bet you have never heard of Barrett Strong, the songwriter. Music licensing fees collected by performing rights organization (e.g. BMI, ASCAP and SESAC) is the only income Mr. Strong receives from his creative work. Don't let big businesses ''rip off' artists!

It is time to end this long dispute—but not by giving away artists' rights to just compensation for their creative works. I urge my colleagues to vote for the McCollum-Conyers substitute.

Mr. HOYER. Mr. Chairman, I rise in strong support of the legislation, in strong support of the McCollum amendment, and in opposition to the Sensenbrenner amendment.

The Sensenbrenner amendment is nothing short for a ''takings'' provision. I have heard a lot about taking. This is about taking, whether to or not to. It would force songwriters to provide their music for free to restaurants and others. These restaurants then, in turn, use this music to enhance their business.

How is this fair? For the thousands of songwriters, composers and music publishers, this amendment is a two-fold insult. First, it says to them, ''Your hard work and creative talent aren't worth protecting.'' Then it says, ''And by the way, it's not worth a dime either.''

My colleague, Stephen Foster died a pauper. Why did Stephen Foster die a pauper? Because the product he created was not popular, was not wanted, was not used? No. Because Stephen Foster put his product on the table, it was eaten—if you will—listened to, more appropriately, but not paid for. And so Stephen Foster, one of the great songwriters of America, and indeed the world, died a pauper because the world enjoyed his music but did not compensate him for his music.

The McCollum amendment tries in a reasonable way to get at what is a problem that is by some perceived as cataclysmic and by others perceived as procedural. It is a reasonable alternative. It is one that I will support. But if it does not pass, I will as strongly as I know how oppose this legislation, even though I believe its underlying 20-year extension of the copyright protecting one's property is appropriate.

Mr. Speaker, I have been and always will be opposed to any legislation that infringes upon the property rights of anyone. I cannot digest ''taking'' someone else's hard work from them for free. This amendment is an affront to the tens of thousands of individuals who spend a lifetime trying to sell their work in a competitive and sparsely rewarded field—especially after considering the cost benefit analysis.

It is estimated that the restaurant business is a $289.7 billion industry, while thousands of songwriters draw an income that is minuscule in comparison and subsist largely off of royalties. Music licensing fees account for less than one percent of expenses for a full service restaurant, and the average cost for a restaurant business that uses music is $1.58 a day—equivalent to one draft beer.

Mr. Chairman, let me make it plain: we are considering stripping individuals of their intellectual property rights over what boils down to a mug of beer.

Mr. Chairman, I would hope that my colleagues who in fact have some property that we put in the public sphere, not expecting remuneration, at least not in money, the remuneration we expect is votes when we put our property, our ideas, our thoughts, our opinions in the public wheel. But when a songwriter sits down to create art, that songwriter does so for their own personal enjoyment, but they also do so with the expectation that if someone wants to use their product, they will do in a capitalistic society what we expect, and that is to compensate them fairly for that.

The previous speaker spoke about the problem with small business. Government does not require a small business in America to turn on the radio in their place of business or to turn on the television in their place of business, not one. They do so because they think to some degree it enhances the ambiance of their establishment, and I agree with them. And if they thought curtains did or tablecloths did or pretty windows did, they would have to pay for all of those increases to the ambiance of their establishment. If the restaurant pays for the hamburger, it should also face the music and pay for the licensing.

I have a lot of restaurants in my district and in my State. I understand some of them are concerned, and I believe that the McCollum amendment tries to reach out to them and say yes, we understand there is a problem, let us try to solve it and let us try to solve it where there is a meeting of the minds. And in fact, I understand there was a meeting of the minds until one party thought perhaps they could win without agreement. I do not know that; I have heard that.

But let us, as we vote on the Sensenbrenner amendment, remember Stephen Foster, remember that Stephen Foster gave us so much, this Nation and this world, enriched our lives, enriched our culture, enriched our enjoyment, and let us not say to the Stephen Fosters of the world what they do is not worth us compensating them for it.

Let me share with you part of a concise perspective offered by former Chief Justice Oliver Wendell Holmes: ''If music did not pay, it would be given up. If it pays, it pays out of the public's pocket. Whether it pays or not, the purpose of employing it is profit, and that is enough.''

I would hope that we would defeat the Sensenbrenner amendment, pass the McCollum amendment and pass the bill.

Mr. HYDE. Mr. Chairman, I rise in support of the bill H.R. 2589, the ''Copyright Term Extension Act,'' reported by the Committee on the Judiciary by voice vote, without objection.

This is an important bill for our economy. It will mean 20 more years of foreign sales revenue coming back into the United States for our intellectual property products sold abroad. We are by far the world's largest producers of intellectual property and it is one of our most significant trade surpluses.

Copyright is a property right. It is meant to be handed down by its creator to his or her children and grandchildren. This amendment provides for a small extension in the term of copyright which will allow the heirs of our nation's creators to benefit from the work of their family members. Writing a song or a novel is no less significant than contributing to a family business to be passed on to those we choose.

The Berne Convention for Literary and Artistic Works, of which we are a Member, has a provision called the ''Rule of the Shorter Term.'' It states that a country need not give a foreign work any more protection than that work is given in its country of origin. The European Union countries recently adopted the term for copyright that we propose in this bill, life of the author plus 70 years. Under the Berne Convention, they need not give American copyrighted works the benefit of that term, but may limit protection in their countries of our works to our current term of life of the author plus 50 years. That, of course, means that their works are protected in their countries for 20 years longer than our works are protected in their countries. While that may be good for their products, it is not good for ours.

I am proud of the fact that American creators and owners of creations have made the U.S. the dominant producer in the world of copyrighted material. It reflects the ingenuity of our people and indicates that through freedom and democracy, people will use their powers of creativity for their own benefit and, consequently, for society's benefit. This bill will maintain our dominance and continue to allow for the exploitation of that creativity which brings it to consumers for their enjoyment.

I want to say a special word about the creative community that is the bedrock of our great film and television business. I refer to the screenwriters, the directors and the performers. Through their respective guilds, they have consistently supported the extension of the copyright term, and have asked that they be specifically made beneficiaries of the extension. In particular, they requested remuneration during the new term for those who currently receive no residuals and no royalties for films made before 1960. These films include such masterpieces as Casablanca, The Best Years of Our Lives, and Sunset Boulevard.

This bill does not give them that because the Committee believes that private negotiation between private parties is always the best place to start when determining remuneration. I am certainly a believer in the marketplace. But this bill does contain a very strong and

very serious admonition, a ''Sense of the Congress,'' that urges film studios and the guilds to voluntarily negotiate what remuneration screenwriters, directors and performers of pre-1960 films shall receive for the new term. Congress will be watching the negotiations. I expect that both sides in good faith will negotiate a fair outcome, and it will certainly not be taken lightly if the ''Sense of the Congress'' is not turned into a contractual reality.

Mr. Speaker, this is a good and balanced bill which will ensure our global competitiveness while urging fair compensation for the creators who, with the investors and owners, make great copyrighted works our national treasures.

I urge my colleagues to support this fine legislation.

Mr. CONYERS. Mr. Chairman, I rise in strong support of H.R. 2589, the ''Copyright Term Extension Act''. This bill will allow the United States to keep pace with the copyright terms of European countries that are our main competitors for copyright products such as motion pictures and music.

In 1995, the European Union harmonized the copyright term in its member countries at a minimum of life plus 70 years—20 years longer than the term in the United States. By directive, EU countries will not provide copyright protection for U.S. intellectual property in Europe beyond what our own law provides. This approach is known as the ''rule of the shorter term.'' As a result, absent congressional action, U.S. copyright owners will not receive income from uses of their works during the 20 additional years of protection available in European countries and will therefore be at a relative disadvantage to their European competitors.

Changes in technology that have increased the commercial value of works created many years ago. In music, for instance, copyright owners are now digitizing musical works and reissuing them to a receptive market. A short copyright term is harmful to works of art and music whose value may not be recognized until many years since they were initially created.

The world loves American-made music, movies, computer software and books. Creators of these works should not be placed at a competitive disadvantage in overseas markets. American intellectual property is the most sought after abroad and is one of the few bright spots in our balance of trade. By acting on copyright extension, Congress will be furthering American innovation and protecting American jobs.

H.R. 2589 also includes a carefully crafted, balanced library exemption that ensures that the legitimate needs of the libraries are met. In addition the ''fair use doctrine'' is unaffected by the bill. Therefore, users continue to enjoy the full benefits of ''fair use'' under Section 107 of the Copyright Act.

I urge all Members to support extending the copyright term which will protect American creators and keep U.S. copyright laws in proper balance domestically and abroad.

Mr. COBLE. Mr. Chairman, I have no further speakers, and I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill is considered as an original bill for the purpose of amendment and is considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 2589

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the ''Copyright Term Extension Act''.*

***SEC. 2. DURATION OF COPYRIGHT PROVISIONS.***

*(a) PREEMPTION WITH RESPECT TO OTHER LAWS.—Section 301(c) of title 17, United States Code, is amended by striking ''February 15, 2047'' each place it appears and inserting ''February 15, 2067''.*

*(b) DURATION OF COPYRIGHT: WORKS CREATED ON OR AFTER JANUARY 1, 1978.—Section 302 of title 17, United States Code, is amended—*

*(1) in subsection (a) by striking ''fifty'' and inserting ''70'';*

*(2) in subsection (b) by striking ''fifty'' and inserting ''70'';*

*(3) in subsection (c) in the first sentence—*

*(A) by striking ''seventy-five'' and inserting ''95''; and*

*(B) by striking ''one hundred'' and inserting ''120''; and*

*(4) in subsection (e) in the first sentence—*

*(A) by striking ''seventy-five'' and inserting ''95'';*

*(B) by striking ''one hundred'' and inserting ''120''; and*

*(C) by striking ''fifty'' each place it appears and inserting ''70''.*

*(c) DURATION OF COPYRIGHT: WORKS CREATED BUT NOT PUBLISHED OR COPYRIGHTED BEFORE JANUARY 1, 1978.—Section 303 of title 17, United States Code, is amended in the second sentence by striking ''December 31, 2027'' and inserting ''December 31, 2047''.*

*(d) DURATION OF COPYRIGHT: SUBSISTING COPYRIGHTS.—*

*(1) IN GENERAL.—Section 304 of title 17, United States Code, is amended—*

*(A) in subsection (a)—*

*(i) in paragraph (1)—*

*(I) in subparagraph (B) by striking ''47'' and inserting ''67''; and*

*(II) in subparagraph (C) by striking ''47'' and inserting ''67'';*

*(ii) in paragraph (2)—*

*(I) in subparagraph (A) by striking ''47'' and inserting ''67''; and*

*(II) in subparagraph (B) by striking ''47'' and inserting ''67''; and*

*(iii) in paragraph (3)—*

*(I) in subparagraph (A)(i) by striking ''47'' and inserting ''67''; and*

*(II) in subparagraph (B) by striking ''47'' and inserting ''67'';*

*(B) by amending subsection (b) to read as follows:*

*''(b) COPYRIGHTS IN THEIR RENEWAL TERM AT THE TIME OF THE EFFECTIVE DATE OF THE COPYRIGHT TERM EXTENSION ACT OF 1997.—Any copyright still in its renewal term at the time that the Copyright Term Extension Act of 1997 becomes effective shall have a copyright term of 95 years from the date copyright was originally secured.'';*

*(C) in subsection (c)(4)(A) in the first sentence by inserting ''or, in the case of a termination under subsection (d), within the five-year period specified by subsection (d)(2),'' after ''specified by clause (3) of this subsection,''; and*

*(D) by adding at the end the following new subsection:*

*''(d) TERMINATION RIGHTS PROVIDED IN SUBSECTION (c) WHICH HAVE EXPIRED ON OR BEFORE THE EFFECTIVE DATE OF THE COPYRIGHT TERM EXTENSION ACT OF 1997.—In the case of any copyright other than a work made for hire, subsisting in its renewal term on the effective date of the Copyright Term Extension Act of 1997 for which the termination right provided in subsection (c) has expired by such date, where the author or owner of the termination right has not previously exercised such termination right, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated in subsection (a)(1)(C) of this section, other than by will, is subject to termination under the following conditions:*

*''(1) The conditions specified in subsection (c)(1), (2), (4), (5), and (6) of this section apply to terminations of the last 20 years of copyright term as provided by the amendments made by the Copyright Term Extension Act of 1997.*

*''(2) Termination of the grant may be effected at any time during a period of 5 years beginning at the end of 75 years from the date copyright was originally secured.''.*

*(2) COPYRIGHT RENEWAL ACT OF 1992.—Section 102 of the Copyright Renewal Act of 1992 (Public Law 102–307; 106 Stat. 266; 17 U.S.C. 304 note) is amended—*

*(A) in subsection (c)—*

*(i) by striking ''47'' and inserting ''67'';*

*(ii) by striking ''(as amended by subsection (a) of this section)''; and*

*(iii) by striking ''effective date of this section'' each place it appears and inserting ''effective date of the Copyright Term Extension Act of 1997''; and*

*(B) in subsection (g)(2) in the second sentence by inserting before the period the following: '', except each reference to forty-seven years in such provisions shall be deemed to be 67 years''.*

***SEC. 3. TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM.***

*Sections 203(a)(2) and 304(c)(2) of title 17, United States Code, are each amended—*

*(1) by striking ''by his widow or her widower and his or her children or grandchildren''; and*

*(2) by inserting after subparagraph (C) the following:*

*''(D) In the event that the author's widow, widower, children, and grandchildren are not living, the author's executors shall own the author's entire termination interest, or, in the absence of a will of the author, the author's next of kin shall own the author's entire termination interest, on a per stirpes basis according to the number of such author's next of kin represented. The share of the children of a dead next of kin at the same level of relationship to the author eligible to take a share of a termination interest can be exercised only by the action of a majority of them.''.*

***SEC. 4. REPRODUCTION BY LIBRARIES AND ARCHIVES.***

*Section 108 of title 17, United States Code, is amended—*

*(1) by redesignating subsection (h) as subsection (i); and*

*(2) by inserting after subsection (g) the following:*

*''(h)(1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.*

*''(2) No reproduction, distribution, display, or performance is authorized under this subsection if—*

*''(A) the work is subject to normal commercial exploitation;*

*''(B) a copy or phonorecord of the work can be obtained at a reasonable price; or*

*''(C) the copyright owner or its agent provides notice pursuant to regulations promulgated by*

*the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.*

*''(3) The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.''.*

***SEC. 5. VOLUNTARY NEGOTIATION REGARDING DIVISION OF ROYALTIES.***

*It is the sense of the Congress that copyright owners of audiovisual works for which the term of copyright protection is extended by the amendments made by this Act, and the screenwriters, directors, and performers of those audiovisual works, should negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements with respect to the establishment of a fund or other mechanism for the amount of remuneration to be divided among the parties for the exploitation of those audiovisual works.*

***SEC. 6. EFFECTIVE DATE.***

*This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.*

The CHAIRMAN. No amendment to the bill is in order unless printed in the portion of the CONGRESSIONAL RECORD designated for that purpose.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

Are there any amendments?

AMENDMENT NO. 2 OFFERED BY MR. COBLE

Mr. COBLE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment No. 2 offered by Mr. COBLE:

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''.**

Mr. COBLE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. COBLE. Mr. Chairman, this amendment will make technical changes to further clarify who owns the termination interest in a copyrighted work when an author passes away, and provide for the proper transfer of contractual obligations when a copyright is transferred.

Regarding the transfer of contractual obligations provision, I would like to clarify the meaning of a certain term. The ''reason to know'' language is intended to be interpreted in light of common sense and industry practice. Because many motion pictures made in the United States are produced subject to one or more collective bargaining agreements, the distributor would ordinarily perform some check on whether the motion picture is subject to such an agreement. The provision would not, however, require a burdensome or exhaustive examination. Publicly available information that indicates a work's status, such as records of a guild's security interest in the motion picture filed with the copyright office, would ordinarily provide ''reason to know'' within the meaning of the act.

Mr. Chairman, this amendment is noncontroversial and as best I can determine is not opposed, and I urge my colleagues to support it.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the last word.

Mr. Chairman, the gentleman from North Carolina (Mr. COBLE) is right. It is not controversial and there is no opposition.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina (Mr. COBLE).

The amendment was agreed to.

AMENDMENT NO. 1 OFFERED BY MR. SENSENBRENNER

Mr. SENSENBRENNER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment No. 1 offered by Mr. SENSENBRENNER:

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 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.

Mr. SENSENBRENNER (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Chairman, the amendment that I offer today is the culmination of nearly 4 years of effort to provide relief for the small business community from the unfair music licensing system administered by the performance rights monopolies.

My involvement in this issue stems from the tactics of an ASCAP operative who circumnavigated a lake in my district, hitting up every bar or restaurant with the standard take-or-leave-it proposition. Needless to say, I received a number of calls from perplexed and outraged owners. The tactics of ASCAP's representative prompted me to make a more thorough investigation of how these performance rights organizations function and who, if anybody, controls their behavior.

What I learned was an eye opener. ASCAP and BMI, the two largest music licensing societies, are virtual monopolies operating under consent decrees administered by the Justice Department. Unfortunately, the Justice Department's priorities have been elsewhere, allowing the two monopolies to

operate with impunity. The conduct of these monopolies has prompted 22 States to adopt code of conduct laws. Given the licensing society's' record of heavy-handed action, a Justice Department that has looked the other way, and a Federal law that is either ambiguous or clearly skewed, now is the time for Congress to act.

My amendment incorporates three of the core principles embodied in my original bill, H.R. 789, the Fairness in Music Licensing Act. First it eliminates the most unfair aspect of the current system. Under the consent decrees, any business in the United States that wishes to dispute a licensing fee with ASCAP or BMI is forced to travel to New York City, hire a New York attorney, and fight it out in the Federal District Court for the Southern District of New York, the so-called rate court.

My amendment establishes local arbitration of these rate disputes so no one is coerced into accepting a license rate simply because it would be foolish to spend thousands of dollars to travel to New York to challenge the licensing monopolies and their litigation war chest.

Let me point out that the current law requires that these disputes be resolved in court. My amendment takes it out of court, eliminates the necessity of hiring an attorney, and has local arbitration decide the issue.

Second, the amendment updates the existing home-style exemption. Under the amendment, businesses whose public space is 3,500 square feet or less would be exempt from paying royalties for playing the radio or TV unless they charge admission. Those over 3,500 square feet would be exempt if they had two TVs or less and no more than six speakers.

It is important to note that the exemption provided in my amendment does not, and I repeat, does not apply to live or recorded music where the proprietor controls the content. Only TV and radio broadcasts for which the broadcaster has already paid the royalty are exempt.

Let me give an example of how far down the food chain the licensing societies go in pursuit of royalties. A marching band plays a song during the half time of a football game. First the stadium pays the licensing society to use the song played by the band. Then the national TV network pays to broadcast the song. Next the local TV station pays to broadcast the song. Then the local cable system pays for the song again. And finally, the bar in Pewaukee Lake, Wisconsin pays for airing the song on TV. That is right. The music licensing societies are paid five times, five times for the right, the one playing of one song. That is a scam and that is what my amendment reforms.

The provision also exempts retailers of stereos and television sets who under existing laws must pay licensing fees simply to demonstrate that their product works so that a customer may buy it. You go into your local appliance store to buy a TV. The proprietor turns the TV on so that you can see the quality of the picture. And because the proprietor did that to sell the TV, they have to pay ASCAP under this current law. My amendment eliminates that.

And finally, the amendment protects landlords and convention owners from vicarious liability for music licensing fees for music played by a tenant or an exhibitor.

The CHAIRMAN. The time of the gentleman from Wisconsin (Mr. SENSENBRENNER) has expired.

(By unanimous consent, Mr. SENSENBRENNER was allowed to proceed for 2 additional minutes.)

Mr. SENSENBRENNER. Mr. Chairman, many of our communities do operate convention centers and they lease out space. If somebody turns on a TV set because they are selling a product or asking to go on vacation someplace, then the city or the owner of the convention center gets hit up for a licensing fee because they could not turn the hand of the tenant on the dial to turn the TV set off.

Mr. Chairman, while considering the underlying bill, we have suggested that Congress is the appropriate place for the expansion of the scope of copyright expansion of business' obligations to pay additional fees. Meanwhile, the licensing societies and their defenders in the Congress claim that this body has no role in the music licensing debate where the central issue is a proposal to perhaps modestly diminish their ability to extract fees. But the Constitution itself suggests the need for balanced intellectual property rights. That is precisely what my amendment accomplishes.

Mr. Chairman, I urge my colleagues not to stand aside and permit this Congress to do the bidding of the copyright holders who seek a one-way street to expand their rights while denying balance and fairness to the small business users of intellectual property. My amendment is supported by virtually every small business organization in the country, including the NFIB, the National Restaurant Association, the National Retail Federation, home builders, florists, and the list goes on.

In the name of balance and in the name of America's small business, I ask my colleagues for an ''aye'' vote on the Sensenbrenner amendment.

□ 1200

AMENDMENT NO. 3 OFFERED BY MR. MCCOLLUM TO AMENDMENT NO. 1 OFFERED BY MR. SENSENBRENNER

Mr. MCCOLLUM. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment No. 3 offered by Mr. MCCOLLUM to Amendment No. 1 offered by Mr. SENSENBRENNER:

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 proceeding to set or adjust the royalties payable to copyright owners for the public performance or display of their works. Royalties payable to copyright owners for any public performance or display of their works other than such performances or displays as are exempted under paragraph (5) shall not be diminished in any respect as a result of such exemption''.

**SEC. 203. LICENSING BY PERFORMING RIGHTS SOCIETIES.**

(a) IN GENERAL.—Chapter 5 of title 17, United States Code, is amended by adding at the end the following:

**''§ 512. determinations of reasonable license fee for individual proprietors**

''In the case of any performing rights society subject to a consent decree which provides for the determination of reasonable license fees to be charged by the performing rights society, notwithstanding the provisions of that consent decree, an individual proprietor who owns or operates fewer than 3

food service or drinking establishments in which nondramatic musical works are performed publicly and who claims that any license agreement offered by that performing rights society to the industry of which the individual proprietor is a member is unreasonable in its license fee as to that individual proprietor, shall be entitled to determination of a reasonable license fee as follows:

''(1) The individual proprietor may commence such proceeding for determination of a reasonable license fee by filing an application in the applicable district court under paragraph (2) that a rate disagreement exists and by serving a copy of the application on the performing rights society Such proceeding shall commence in the applicable district court within 90 days after the service of such copy, except that such 90-day requirement shall be subject to the administrative requirements of the court.

''(2) The proceeding under paragraph (1) shall be held, at the individual proprietor's election, in the judicial district of the district court with jurisdiction over the applicable consent decree or in that place of holding court of a district court that is the seat of the Federal circuit (other than the Court of Appeals for the Federal Circuit) in which the proprietor's establishment is located.

''(3) Such proceeding shall be held before the judge of the court with jurisdiction over the consent decree governing the performing rights society. At the discretion of the court, the proceeding shall be held before a special master or magistrate judge appointed by such judge. Should that consent decree provide for the appointment of an advisor or advisors to the court for any purpose, any such advisor shall be the special master so named by the court.

''(4) In any such proceeding, the industry rate, or, in the absence of an industry rate, the most recent license fee agreed to by the parties or determined by the court, shall be presumed to have been reasonable at the time it was agreed to or determined by the court. The burden of proof shall be on the individual proprietor to establish the reasonableness of any other fee it requests.

''(5) Pending the completion of such proceeding, the individual proprietor shall have the right to perform publicly the copyrighted musical compositions in the repertoire of the performing rights society, and shall pay an interim license fee, subject to retroactive adjustment when a final fee has been determined, in an amount equal to the industry rate, or, in the absence of an industry rate, the amount of the most recent license fee agreed to by the parties. Failure to pay such interim license fee shall result in immediate dismissal of the proceeding, and the individual proprietor shall then be deemed to have had no right to perform the copyrighted musical compositions in the repertoire of the performing rights society under this section from the date it submitted its notice commencing the proceeding.

''(6) Any decision rendered in such proceeding by a special master or magistrate judge named under paragraph (3) shall be reviewed by the presiding judge. Such proceeding, including such review, shall be concluded within 6 months after its commencement.

''(7) Any such final determination shall be binding only as to the individual proprietor commencing the proceeding, and shall not be applicable to any other proprietor or any other performing rights society, and the performing rights society shall be relieved of any obligation of nondiscrimination among similarly situated music users that may be imposed by the consent decree governing its operations.

''(8) For purposes of this section, the term 'industry rate' means the license fee a performing rights society has agreed to with, or which has been determined by the court for, a significant segment of the music user industry to which the individual proprietor belongs.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 17, United States Code, is amended by adding after the item relating to section 511 the following:

''512. Determinations of reasonable license fee for individual proprietors.''.

**SEC. 204. DEFINITIONS.**

Section 101 of title 17, United States Code, is amended—

(1) by inserting after the definition of ''display'' the following:

''A 'food service or drinking establishment' is a restaurant, inn, bar, tavern, or any other similar place of business in which the public or patrons assemble for the primary purpose of being served food or drink, in which the majority of the gross square feet of space is used for that purpose, and in which nondramatic musical works are performed publicly.'';

(2) by inserting after the definition of ''fixed'' the following:

''The 'gross square feet of space' of a food service or drinking establishment means the entire interior space of that establishment and any adjoining outdoor space used to serve patrons, whether on a seasonal basis or otherwise.'';

(3) by inserting after 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 (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.''; and

(4) by inserting after the definition of ''pictorial, graphic and sculptural works'' the following:

''A 'proprietor' is an individual, corporation, partnership, or other entity, as the case may be, that owns a food service or drinking establishment. No owner or operator of a radio or television station licensed by the Federal Communications Commission, cable system or satellite carrier, cable or satellite carrier service or programmer, Internet service provider, online service provider, telecommunications company, or any other such audio-visual service or programmer now known or as may be developed in the future, commercial subscription music service, or owner or operator of any other transmission service, or owner of any other establishment in which the service to the public of food or drink is not the primary purpose, shall under any circumstances be deemed to be a proprietor.''

**SEC. 205. CONSTRUCTION OF TITLE.**

Except as otherwise provided in this title, nothing in this title shall be construed to relieve any performing rights society of any obligation under any State or local statute, ordinance, or law, or consent decree or other court order governing its operation, as such statute, ordinance, law, decree, or order is in effect on the date of the enactment of this title, as it may be amended after such date, or as it may be issued or agreed to after such date.

**SEC. 206. EFFECTIVE DATE.**

This title and the amendments made by this title shall take effect 90 days after the date of the enactment of this title.

Mr. MCCOLLUM (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida.

There was no objection.

Mr. MCCOLLUM. Mr. Speaker, we are going to have a serious dispute today in some detail about how we deal with music licensing, but let me tell my colleagues what my amendment is all about. It is all about what is called compromise. It is all about the fact that for about 5 years now we have been debating, maybe a little longer than that, how to get a copyright extension bill out which affects thousands of people and all kinds of businesses totally unrelated to what the Sensenbrenner amendment is about.

The reason we have had that debate is because the restaurant owners of America have wanted to be exempted from some long-term fees that they have had to pay song writers for playing their music in their restaurants, and the song writers and their associations that collect the fees have been resisting that. And we have arbitrated and tried to get dispute settlements and all kinds of things.

The gentleman from North Carolina (Mr. COBLE), who is my subcommittee chairman, and the gentleman from Illinois (Mr. HYDE), who is my full committee chairman, and the gentleman from Michigan (Mr. CONYERS), who is our ranking member, and the gentleman from Massachusetts (Mr. FRANK) have all worked hours and hours trying to get agreement between these parties on something so we could move this bill ahead.

Well, we never got there. But this amendment I am offering is essentially where those gentlemen think the compromise ought to be. It is true compromise.

What it does is this: It provides that most of the restaurants of this country, the vast majority, will be exempted from paying this fee, so the small businessman will not have to pay it anymore. It is about $30 a month, they tell me, for each restaurant, and the big restaurants are still going to have to pay it. I think that is fair because that is the property right of the song writer that he or she has invested their entire livelihood in.

In fact, what it boils down to, if we talk about song writers, is that, and there are thousands of them out there, very few of them ever have a big hit. The few that do are not terribly worried about it, but the thousands that do not average under $10,000 a year in income, average under that. So they are really very small business people, and their primary livelihood, their only livelihood, frankly, comes from the royalties on their songs. And royalties pay gradually.

Many, many different times, as the gentleman from Wisconsin (Mr. SENSENBRENNER) correctly pointed out, these songs are played, reproduced at different levels, and a little bit here or a little bit there, penny here or penny there, is paid into a royalty house that

distributes money to these folks that only nets them out, after all is said and done, for everything they write in a given year about $10,000 overall in the whole Nation.

And the restaurants are a big part of that. And if we take away, as the Sensenbrenner amendment does, virtually all restaurants in the United States paying these fees and lots of other businesses too, we have taken away a big hunk of that $10,000 that the average song writer gets in the United States from his or her work product each year.

But my amendment is going to go to exempting small businesses. It is the compromise to do that. It does it by using the same 3,500 square feet number that the Sensenbrenner amendment does to exempt, but it does it on a gross square footage level, which is a lot more reasonable to do, where we talk about the entire restaurant, whether it is made up with kitchens or bathrooms or whatever, not trying to get in there and be more obtrusive, that I do not think most restaurants would want, and trying to measure out every restaurant to figure out just exactly how much this or that or the other restaurant has in the way of square footage for the actual eating space.

It takes what will probably be on the books in the local community with the ordinances that they have and the zoning requirements and all, so we can clearly see, without having to go in there and take a tape measure, how much are you going to base the fee upon?

Anyway, the net result of this dispute is that we exempt, as I say, 65 or 75 percent in my amendment, whereas his does virtually all the restaurants in the United States.

If a restaurant has 6 or fewer speakers for broadcasting on radio or television or 4 or fewer televisions, my substitute amendment will exempt that restaurant no matter what size it is, no matter what size it is. That seems very reasonable.

But at the same time we provide balance. Besides making these changes that exempt a lot of restaurants, we provide balance in the compromise amendment to the song writers because we protect their property rights so they get something back from the larger restaurants. And we recognize they do not always have the big hit by giving them this protection.

By the way, my amendment would increase the exemptions by about 406 percent over what they are now. I think now there are very few that are exempted. But we also provide some balance in terms of the access to the courts and to the rate dispute settlement process that has been discussed. Right now there are problems in the fact that the rate commission that decides various disputes over whether this fee or that fee should be paid when a restaurant owes is set up in New York and everybody has to go to New York. That is expensive.

Granted, almost all the small restaurants are being exempted, but even the larger ones, we do not want them to have to go to New York. We do not want any other business to have to travel that far from home. So we set up a provision in the substitute amendment that the circuit seat of every one of the Federal judicial circuits, that is, 12 of them, where the Federal circuit courts sit, there will be a circuit rider from that rate commission travel out there periodically so rate disputes can be heard.

But we will have uniformity. We will not go to the arbitration in every local hometown that the Sensenbrenner amendment proposal would do.

The CHAIRMAN. The time of the gentleman from Florida (Mr. MCCOLLUM) has expired.

(By unanimous consent, Mr. MCCOLLUM was allowed to proceed for 1 additional minute.)

Mr. McCOLLUM. Mr. Chairman, so what I am trying to do in this substitute is fairly straightforward; it is to provide an opportunity for the Members to vote on as close as we can get it to where the dispute has been put in terms of compromised negotiations over all of these 5 years.

When it became ripe here in the last couple of weeks, we did not get this to closure. Frankly, the restaurants want more. Frankly, the song writers would like to have it more their way. But the reality is, this is truly a compromise that will provide my amendment, my substitute, provide relief for the truly smaller restaurants, 65, 70 percent of all restaurants in the United States never have to pay these licenses fees again; provide easy access to courts, to settling these disputes closely in the geographical area, and protect the property rights of the song writers so the song writers can still get some money, some income, since most of them do not have a whole lot, from the larger restaurants and the larger establishments. That is what it is all about.

I urge a vote for my substitute as the reasonable alternative and compromise.

Mr. SENSENBRENNER. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, first of all, this McCollum amendment is no compromise. It was the last offer of the music-licensing monopolies, ASCAP and BMI, in the negotiations which broke off and has been rejected unanimously by all the organizations that support my amendment. The adoption of the McCollum amendment will not fix the problem with music licensing.

I would like to give a little comparison between the two. First, the McCollum amendment does not provide for local arbitration. Any business owner or proprietor that wishes to contest a rate demand by ASCAP and BMI still has to go to court and hire a lawyer.

Now, instead of having to go to New York, the McCollum amendment has the cases heard by a Special Master in each of the 12 circuits. That does not reduce the cost to a proprietor who wishes to contest something that he feels unreasonable. Going to San Francisco from Pocatello, Idaho, or to Atlanta from Kissimmee, Florida, or to Chicago from Superior, Wisconsin, is going to cost a lot of money and the meter ticks; and local arbitrations in the Sensenbrenner amendment will solve that.

Secondly, the McCollum amendment only covers certain restaurants and not other music users, whereas, my amendment is universal. Only bars and restaurants are covered by the McCollum amendment, not funeral homes, the dentist's office, florists, the Main Street appliance store. They still are subject to the same type of harassment by ASCAP and BMI that my amendment seeks to eliminate. So unless our funeral home or our dentist's office has got a restaurant or a bar license, then we do not get the exemption. So it is very narrowly targeted.

Third, the McCollum amendment is poorly targeted and would include parts of a restaurant where music is not played. For example, the 3,500 square feet contained in the McCollum amendment includes the bathroom, the broom closet, the refrigeration area, the storage area and the like, instead of the 3,500 square feet in my amendment, which is just where the music is played. If we want to pay a royalty fee or have to pay a royalty fee, we ought to pay a royalty fee where people can listen to the music rather than where there is no music.

The McCollum amendment also does not apply to all music licensing societies in its circuit rider provision. It only provides to ASCAP and BMI, which are the subject of the consent decrees that were entered many years ago. Bob Dylan is not a member of ASCAP and BMI, and if one of his tunes comes up on the radio or the TV, the McCollum amendment does not apply, and the restaurateur or the bar owner or the other retail proprietor is subject to the existing law. The Sensenbrenner amendment does not have that defect.

There is no freedom from vicarious liability in the McCollum amendment. So our city's convention center or a big hotel which is open for various types of exhibitions is on the hook because one of their tenants that they have leased space out to happens to turn on the TV when licensed music is played. The Sensenbrenner amendment gets rid of the vicarious liability, and that is a protection for hotels as well as for the municipalities that operate convention centers and the like.

The McCollum amendment circuit rider adjudication provision is only as good as the Department of Justice consent decrees. If the DOJ gets rid of the consent decrees, then everything goes back to New York City. And DOJ has done that on many complicated areas, the most prominent of which is the AT&T litigation consent decree.

The McCollum amendment only applies to a restaurant owner who does not own any other business besides his restaurant. So if the restaurant owner is into something else, the McCollum amendment does not apply. It would go back to the existing law which is so strongly objected to.

And finally, under the McCollum amendment, an appliance store dealer who sells radios and TVs would still have to pay royalties for music that comes across the TV when he turns them on to sell them. The Sensenbrenner amendment does not do that.

I think that the McCollum amendment is a sham. It is a fig leaf that really does not solve the problems that have caused this issue to come to the Congress. And finally, I would like to point out that there are those who say that passing the Sensenbrenner amendment is going to take away the income of poor, starving artists. If they believe ASCAP's figures, only 14 cents of their revenue on the dollar comes from fees from bars and restaurants. My amendment does not exempt live performances, big nightclubs——

The CHAIRMAN. The time of the gentleman from Wisconsin (Mr. SENSENBRENNER) has expired.

(By unanimous consent, Mr. SENSENBRENNER was allowed to proceed for 1 additional minute.)

Mr. SENSENBRENNER. And establishments that play their own recorded music, their own CDs and tapes.

My guess is that the exemption that my amendment proposes might reduce ASCAP's and BMI's fees by as much as 5 cents on the dollar, but they will be able to pick that up with the 20-year term extension that is contained in the underlying bill.

Vote for balance, vote against McCollum and vote for Sensenbrenner.

Mr. DOGGETT. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I have done everything I could to stop the Sensenbrenner amendment except threaten to sing myself; and I would ask my colleagues to spare the House that kind of circumstance by supporting the amendment the genuine compromise and moderate approach that the gentleman from Florida (Mr. MCCOLLUM) has offered as a substitute to the Sensenbrenner amendment.

A lot was just said about it. But I think that the bottom line that most people in this House and across the country would want to know about is that if it is approved, if this McCollum music licensing amendment substitute is approved, 65 percent of all the eating and drinking establishments in this country will be exempt, their problems will be taken care of.

Already the national licensed beverage folks have agreed to something very, very similar, if not exact, to the amendment that the gentleman from Florida (Mr. MCCOLLUM) is offering. The same amendment would exempt audio sound systems with fewer than 6 speakers and would exempt video systems with 2 television sets. So there is ample room for agreement.

I am troubled frankly by some of the provisions in this amendment. I would like to leave the system largely as it is at present. But I think that trying to achieve some balance is a realistic compromise, my colleague has come forward with a reasonable amendment.

We do need to focus, though, on what a failure to adopt his amendment is really all about. You see, there really is not any free lunch, we have all heard that, and if the restaurants across this country were to offer one free lunch after another, we know full well that they would go out of business because they have to earn a profit on their labor and on their services.

□ 1215

The same thing is true with reference to those who offer something to our community through song writing and through their creative spirit. I believe that those same folks deserve to have their property protected just as much as the restaurant owner or any small business in this country.

I think one of the reasons we see some of our colleagues tending to put our songwriters in a different category is that we often think of them as the rich and famous. We think of famous artists like Willie Nelson and Jimmy Dale Gilmore, we think of people coming star-studded in the limousines and the designer clothes to the Grammys and the other celebrations of music like our South by Southwest Music Festival down in Austin. But the truth of the matter is that most of our artists are out there working somewhere else and doing a little creative work on the side and these revenues which are only costing the restaurant or the small business that uses this work product about $1.58 a day, those revenues are vital to that creative spirit.

I think not only of the famous groups there in Austin, but one that is becoming a little more famous, the Austin Lounge Lizards. They have a hit called ''Newt the Gingrich.'' If they want to play that over in the Republican Conference to add a little bit more tranquility and a little ambience, they would be permitted under the McCollum amendment to do that without having to pay any licensing fee. I think it would be worth $1.58 a day to them to do that. But in the spirit of compromise, they would be exempted from this. And struggling groups like that and the members of that band who will be up here I think later in the spring to play in Washington, they work full-time at other jobs.

We ought to recognize the creative genius that they bring, that they are not driving the limousines, they are in the cowboy boots and they are driving the pickup trucks down in our area, and that they have property rights that deserve to be protected, not stolen as would be accomplished by the Sensenbrenner amendment if it were adopted in full.

I quoted from this earlier, but I think it is important to note that even going right up to the Supreme Court of the United States, the importance of music and music rights has been recognized. It was Supreme Court Justice Oliver Wendell Holmes who said it is true that music is not the sole object but neither is the food. The object is a repast in surroundings that give a luxurious pleasure, not to be had from eating a silent meal.

If music did not pay, it would be given up. Whether it pays or not, the purpose of employing it is profit and that is enough. Indeed it is. It is a very real quantity. As Justice Holmes wrote in the language of an earlier era when this right was recognized, the songwriter contributes something to the restaurant or the small business or the convention that uses that songwriter's product, that is very real. It would not be used at all if the person using it did not think that it would bring more profit.

The CHAIRMAN pro tempore (Mr. GUTKNECHT) The time of the gentleman from Texas (Mr. DOGGETT) has expired.

(By unanimous consent, Mr. DOGGETT was allowed to proceed for 1 additional minute.)

Mr. DOGGETT. Mr. Chairman, I want to be wholly bipartisan, as the gentleman from Florida (Mr. SCARBOROUGH) and I have been on the party line, but I would just close in being truly bipartisan on the issue of music by making reference to a songwriter from outside of Austin, a fellow named Don McLean, who wrote ''American Pie.'' The first verse goes like this:

A long, long, time ago
I can still remember how that music used to make me smile
And I knew if I'd had my chance
That I could make those people dance
And maybe they'd be happy for a while
But February made me shiver
With every paper I'd deliver
Bad news on the doorstep
I couldn't take one more step
I can't remember if I cried
When I read about his widowed bride
But something touched me deep inside
The day the music died.

What this amendment is all about is to ensure that the creative genius of our songwriters does not die, at least protected in part with the moderate, reasonable approach that the gentleman from Florida (Mr. MCCOLLUM) has advanced here today.

Mr. DREIER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the McCollum amendment. I would like to bring up the name of our very dear, departed colleague Sonny Bono. Sonny Bono was someone who got very involved in this issue. He felt very strongly about it. Sonny Bono had a very unique perspective on this issue. He was a restaurateur, and he was also a songwriter.

I believe that as we look at this issue, that Sonny would have supported what I do believe is a compromise. The gentleman from Wisconsin (Mr. SENSENBRENNER) indicated this

is not a compromise, but as I have talked to lots of people on this issue, it seems to me that this is in fact a compromise. Obviously not everyone agrees to it, but it is a compromise.

What does it do? It actually increases, as the gentleman from Texas said, the number of exemptions by 400 percent, to 65 percent of those restaurants that actually will be exempt. That is information that was provided to us by the Congressional Research Service.

There is another issue here that is rather troubling to me, and that is as we deal in this global economy today, which obviously is getting smaller and smaller and smaller as we have found from the trip of the President to Africa who was there touting the agreement which we just passed in this House last week on expanding new trade opportunities with sub-Saharan Africa, it seems to me that as we look at that very important issue which we as Americans continue to argue in behalf of, that being intellectual property, the fact that when an individual has an idea, a concept, that person should be remunerated for that. If we were to pass the Sensenbrenner amendment, it would send, I believe, a terrible signal to our global trading partners that we as a nation are not going to be there on the front line arguing in behalf of intellectual property.

Mr. Chairman, I am strongly supporting the McCollum amendment. Frankly, I do not think it is the very best measure but I am in support of it as a compromise. It is a compromise that many of our friends in the entertainment industry seem to be accepting.

Mr. MCCOLLUM. Mr. Chairman, will the gentleman yield?

Mr. DREIER. I yield to the gentleman from Florida.

Mr. MCCOLLUM. Mr. Chairman, as the gentleman knows, as part of that compromise, we have actually increased from what the gentleman from Wisconsin (Mr. SENSENBRENNER) is offering the exemption for up to four TV sets instead of two in a restaurant which actually is very sizable. We have doubled the number. That was something that, quite frankly, the music industry really did not want us to do. We have tried to go out. That is beyond the discussion point where this was a couple of weeks ago. There has been a big effort at that.

Also, the gentleman from Wisconsin has taken away some liability that the owner of a space that might be renting it has whenever they might be improperly showing, say, Titanic or something, so you do not any longer get a fee. It is kind of clever, the owner who might know about this.

Last but not least, he has come along also and done some other things that are kind of in the grass back there. He has managed to come to the position of saying even the music channel like Muzak, even if you play that, and that is what you are playing from a transmission other than radio and TV, which is all that we were discussing before we got to today in these debates between restaurants and music writers.

Mr. DREIER. If I could reclaim my time, I would say maybe the gentleman went even further than I might have in this negotiating process. I will nevertheless continue to support the amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. DREIER. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, on this question about whether or not this is a compromise, and the gentleman has mentioned our late colleague Sonny Bono who worked so hard for this, he frankly thought this went much too far. He wrote a letter to the Registrar of Copyrights expressing his opposition to the notion of giving away on the square footage that he felt it might undermine our international negotiating process.

I say that simply for those who would deny that this is a genuine compromise. There were people who were strong supporters of the original bill who thought it went too far.

Mr. Chairman, I am supportive of it because I think it is a reasonable approach, but I do want to validate the point he made. This is a genuine compromise. Mr. Bono in fact thought it had gone too far.

Mr. DREIER. Mr. Chairman, I thank the gentleman for his contribution on that. I would simply say that the only argument that we will be able to use with our international trading partners is the fact that we have been able to come to a compromise with those who do in fact hold that intellectual property here.

I urge strong support of the McCollum amendment as a compromise. I hope very much that we will finally be able to put to rest this battle which has been going on for literally years and recognize the very important rights of talent that exists in this country.

Also in closing, I see our former colleague Carlos Moorhead has just come into the Chamber. He deserves a great deal of respect for his work on this copyright legislation, which he has pursued for a long period of time. Resolving this whole overall bill, it will be a great day for this institution.

Mr. DELAHUNT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, much has been made about the ability of the performing rights societies, principally ASCAP and BMI, to drive a hard bargain. They have been described as monopolies. I would just simply quote a great South Boston philosopher, Paddy McPhagan, who clearly would say in these circumstances, ''Give me a break.'' These organizations are not monopolies. They are trade associations, collective bargaining units, if you will, which enable authors and composers to negotiate contractual terms that are fair and are equitable. It is absurd to suggest that the thousands of songwriters who belong to these trade associations could ever negotiate a contract on their own.

I understand why the restaurant association would want to focus on the market power of ASCAP and BMI, but I think it is important to remember what this issue is really about. It is about the people that are part of these trade associations, the songwriters who create American music. They are mostly people whose songs we all know by heart but whose names none of us, or most of us, would not even recognize. As Mac Davis testified at our hearing, the people who write the songs are the low men on the totem pole, the tiny names in fine print and parentheses under that star's name on the label, the last guys to get credit and the last guys to get paid. They are the ones who create the music that fuels an industry that pours millions of dollars into our economy and generates millions upon millions of dollars in taxes. Yet the songwriters get the smallest piece of the pie, pennies, if you will.

Mac Davis is one of the lucky ones. He is a renowned songwriter. His musical gifts have been recognized and he has done extremely well. But most songwriters write hundreds of songs over the course of a long career before they achieve financial success, if they ever do. George David Weiss, who is the current President of the Songwriters Guild and one of America's truly great songwriters, commissioned a study that established that 10 percent of his colleagues are able to earn a living writing songs. He quoted a study that was done in 1980 and I am quoting now.

> Song writing is an occupation which has a high degree of risk, a high degree of failure, a low chance of success and in general miserly rewards.

Like all true artists, they do what they do because they love it. When it comes to being compensated for their labors, they are willing to accept the verdict of the marketplace. But what they cannot accept is having their work stolen from them, and that is what the Sensenbrenner amendment would do. I urge my colleagues to vote for the McCollum amendment.

Mr. TALENT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, we have heard a number of different artistic products quoted this afternoon. I think that is probably appropriate in this context. I remember when I was growing up I was a big fan of the show All In The Family. I remember one time somebody said to Archie Bunker, who was of course the lead character in that show, to those old enough to remember, they said, ''The times they are a-changing, Arch,'' quoting a Bob Dylan song. He said, ''Yeah, and every time they do they turn around and kick me in the rear end.''

That is how I think the small businesses of this country continually feel. They are ganged up on by big government, by big business, by monopolies,

whether you call them trade societies or artistic units or whatever, by the big people who come in and nick them for a little money here and there and under circumstances where even if they tentatively or theoretically have some rights under the law, they cannot do anything about it.

The politicians always say, ''Yeah, small businesspeople, we love you. You're the backbone of our economy, the backbone of our communities.'' Now we get a chance to do something to help these people, to vindicate their efforts, to vindicate their efforts to achieve the American dream, and we have difficulty doing it.

Let us talk about what the real-world situation is here. It is a dentist or somebody who runs a funeral home or somebody who runs a small restaurant. They have some speakers in the background and they carry a local radio broadcast. Somebody comes in from BMI or ASCAP and has a beer or sits there in the waiting room and listens for a little while and writes down some songs and then asks to see the manager and says, ''You're playing music that we've licensed. You owe us a hundred dollars a month. Here's the contract. Sign it. If you don't think you owe us or if you don't think you owe us that much, you can do something about it. You can go to the Southern District of New York and file suit in Federal court and try and vindicate your rights under the law.''

□ 1230

And they know and we know and everybody knows that is not going to happen. That is what the Sensenbrenner amendment is designed to fix. We have been trying to fix it for years. Even the supporters of the McCollum amendment admit we need to fix something here, we need to do something about the situation.

Now the reason I support SENSENBRENNER and not MCCOLLUM comes down to a couple of things, a couple of the biggest things. First is, the McCollum amendment does not cover everybody who is in the situation, only covers some restaurants. How many? Sixty-five, 70, 55; I do not know if it does not cover all of them, and it does not cover the funeral homes or the florists or the dentists' shops, so this will not be the end of it if we pass Sensenbrenner. They will be coming back because they are manifestly being treated in an unjust fashion where they cannot vindicate their rights under the law.

And the other problem with the McCollum substitute is that it requires these small businesspeople to go to circuit court in the seat of where? In the city where the circuit court is headquartered. Might as well be the Southern District of New York or Honolulu or Russia or the Moon. If one lives in North Dakota or South Dakota they cannot go to St. Louis, where the Eighth Circuit Court of Appeals is located, and try and vindicate their rights to be only charged $80 a month like the guy next door instead of $100 a month. And again, we all know that. It will not make any difference. We will be right back where we started from if we pass McCollum instead of the Sensenbrenner amendment.

Mr. Chairman, there is a lot of interest at stake here. That is why these things are hard, and that is why Members honestly feel differently about these kinds of issues, because we have a conflict of interest. It is important to protect the intellectual property rights, as my friend from California talked about, people who write songs, and protect them not just here but all over the world. We need to protect them in sub-Saharan Africa as well. But there is another interest, the interests of these small businesspeople who stake everything on their investments in their small business, for whom that is their life. They are interested in being treated fairly. That is important too, and we ought to recognize that.

I agree there is no such thing as a free lunch, and we have all learned that in a lot of different endeavors and a lot of different circumstances. But how many times does one have to pay for lunch? Go to a restaurant, pay for it once. Every situation where a small business owner is playing radio music, that license has been paid for at least once by the radio operator, sometimes twice, three or four times if it is a TV broadcast.

Let us deal with this issue. Let us admit what we all know. Incidental use of this music by people who are not charging admission, who do not have a jukebox, who do not have a CD player, they are too small on the chain for us to go out and get them in a way that is fair and a way that is appropriate and a way that allows them to vindicate their rights when they feel they have been treated unfairly.

We can solve this issue and solve it now. Let us pass the Sensenbrenner amendment. Let us be fair to the small businesspeople.

Mr. SCARBOROUGH. Mr. Chairman, will the gentleman yield for a moment?

Mr. TALENT. I yield to the gentleman from Florida.

Mr. SCARBOROUGH. Mr. Chairman, I have great respect for the gentleman, and I have followed him on a lot of issues in our committee and on the floor.

Mr. TALENT. Reclaiming my time, so far the gentleman is fine.

Mr. SCARBOROUGH. But I am going to ask a question or two that the gentleman may not be fine with.

Mr. Chairman, the gentleman has said that we need to do something, we need to protect the property rights of these people.

The CHAIRMAN pro tempore (Mr. GUTKNECHT). The time of the gentleman from Missouri (Mr. TALENT) has expired.

(By unanimous consent, Mr. TALENT was allowed to proceed for 1 additional minute.)

Mr. SCARBOROUGH. Mr. Chairman, will the gentleman yield?

Mr. TALENT. I yield to the gentleman from Florida.

Mr. SCARBOROUGH. Mr. Chairman, the gentleman from Missouri said something needs to be done, he said that the property rights need to be protected, he said that they need to do something, and yet he was talking about endorsing an amendment that is a black-and-white, an all-or-nothing approach where absolutely nothing is done. Their property rights will be absolutely eviscerated.

So my question to the gentleman is, as somebody who I have seen for 3 or 4 years respect property rights, where do we go from here? If my colleague supports an amendment that will destroy all property rights then what does the gentleman propose we do next?

Mr. TALENT. Mr. Chairman, reclaiming my time, of course the gentleman knows I am not supporting an amendment that destroys all property rights, and the gentleman is setting up a premise that is a false premise.

The copyright is vindicated in every case because it is paid for at least once, sometimes it is paid for twice, sometimes it is paid for three times. And now if the gentleman will indulge me, let me ask him a question: Does he expect a tavern owner or a dentist who lives in Fargo or who lives in Nebraska to be able to come to St. Louis to vindicate his right maybe to pay 20 or 30 or $40 less? Why is the gentleman afraid of an arbitration procedure, which is what we have in the Sensenbrenner amendment?

The CHAIRMAN pro tempore. The time of the gentleman from Missouri (Mr. TALENT) has expired.

(By unanimous consent, Mr. TALENT was allowed to proceed for 30 additional seconds.)

Mr. SCARBOROUGH. Mr. Chairman, will the gentleman yield?

Mr. TALENT. I yield to the gentleman from Florida.

Mr. SCARBOROUGH. Mr. Chairman, I am not afraid of an arbitration process, and I like the McCollum idea that we are actually taking it out of New York and moving it across the country. What I fear is that the gentleman is setting up an arbitration system that has absolutely no supervision from any court above it. The gentleman is going to be talking about the wild, wild West where somebody in Fargo could make a decision that has absolutely nothing to do with the rate system that happens in Atlanta, Georgia or California. We would not do that with our Federal court system; why would we do it with this?

Mr. TALENT. Reclaiming my time, Mr. Chairman, a local arbitration procedure with a neutral expert master at arbitration is the only way to permit these issues to be heard and give everybody a chance to have their rights vindicated.

Mr. HOYER. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, I rise in strong support of the legislation, in strong support of the McCollum amendment, and in opposition to the Sensenbrenner amendment.

This amendment is nothing short, referring to the Sensenbrenner amendment, of a taking. I have heard a lot about taking. This is about taking, whether to or not to. It would force songwriters to provide their music for free to restaurants and others.

My colleagues, Stephen Foster died a pauper. Why did Stephen Foster die a pauper? Because the product he created was not popular, was not wanted, was not used? No. Because Stephen Foster put his product on the table, it was eaten, if my colleagues will, listened to, more appropriately, but not paid for. And so Stephen Foster, one of the great songwriters of America, and indeed the world, died a pauper because the world enjoyed his music but did not compensate him for his music.

The McCollum amendment tries in a reasonable way to get at what is a problem that is by some perceived as cataclysmic and by others perceived as procedural. It is a reasonable alternative. It is one that I will support. But if it does not pass, I will as strongly as I know how oppose this legislation, even though I believe its underlying 20-year extension of the copyright protecting one's property is appropriate.

Mr. Chairman, I would hope that my colleagues who in fact have some property that we put in the public sphere, not expecting remuneration, at least not in money, the remuneration we expect is votes when we put our property, our ideas, our thoughts, our opinions in the public wheel. But when a songwriter sits down to create art, that songwriter does so for their own personal enjoyment, but they also do so with the expectation that if someone wants to use their product, they will do in a capitalistic society what we expect, and that is to compensate them fairly for that.

The previous speaker spoke about the problem with small business. Government does not require a small business in America to turn on the radio in their place of business or to turn on the television in their place of business, not one. They do so because they think to some degree it enhances the ambiance of their establishment, and I agree with them. And if they thought curtains did or tablecloths did or pretty windows did, they would have to pay for all of those increases to the ambiance of their establishment.

I have a lot of restaurants in my district and in my State. I understand some of them are concerned, and I believe that the McCollum amendment tries to reach out to them and say yes, we understand there is a problem, let us try to solve it and let us try to solve it where there is a meeting of the minds. And in fact, I understand there was a meeting of the minds until one party thought perhaps they could win without agreement. I do not know that; I have heard that.

But let us, as we vote on the Sensenbrenner amendment, remember Stephen Foster, remember that Stephen Foster gave us so much, this Nation and this world, enriched our lives, enriched our culture, enriched our enjoyment, and let us not say to the Stephen Fosters of the world what they do is not worth us compensating them for it.

I would hope that we would defeat the Sensenbrenner amendment, pass the McCollum amendment, and pass the bill.

Mr. HYDE. Mr. Chairman, I move to strike the requisite number of words.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, I do not intend to take the full 5 minutes, but I do want to say that I support the McCollum amendment. I have great respect and admiration for Mr. SENSENBRENNER who has worked long and hard on this issue, and admirably so. It is regrettable that over 3 years of discussions have not resulted in a negotiated settlement. This is something that should have been agreed to and negotiated, but I guess it was not meant to be. But the McCollum-Conyers substitute, it seems to me, is a reasonable and balanced alternative to the issue of music licensing, and of some importance is the Congressional Research Service finding that the McCollum substitute will exempt over 60 percent of all restaurants in the United States from paying music licensing fees to songwriters for music played over radio and television to their customers.

This is small business week on the floor of the House. We are considering important legislation to help preserve the strength of the most important sector of our economy which employs more Americans than any other, and the amendment of the gentleman from Wisconsin includes an exemption for large chains and corporations who are able to pay their fair share of licensing fees to songwriters, many of whom I might also mention, are small businesses themselves; I am speaking of the song writers.

The McCollum substitute concentrates on true small businesses, those restaurants and bars under 3,500 gross square feet. That constitutes over 60 percent of the restaurants in America. The substitute also exempts restaurants larger than 3,500 gross square feet as long as radio and television music is not played over too many speakers. This will protect larger restaurants that only play radio and television music in bar areas.

There is much more to be said, and I will put that in the statement that will appear in the RECORD, but if this could not be resolved, could not be negotiated, then I prefer the solution proposed by the gentleman from Florida (Mr. MCCOLLUM).

Mr. Chairman, I rise in support of the McCollum/Conyers substitute to the Sensenbrenner amendment to H.R. 2589, the ''Copyright Term Extension Act,'' and urge the House to support the substitute.

I believe the McCollum/Conyers substitute presents Members with a reasonable and balanced alternative on the issue of music licensing. According to the Congressional Research Service, the McCollum/Conyers substitute will exempt over 60% of all restaurants in the United States from paying music licensing fees to songwriters for music played over radio and television to their customers in order to enhance their businesses.

This is ''Small Business Week'' on the floor of the House. We are considering important legislation that will help to preserve the strength of a sector of our economy which employs more Americans than any other. The Sensenbrenner Amendment includes an exemption for large chains and corporations who are able to pay their fair share of licensing fees to songwriters, many of whom, I might also mention, are small businesses themselves. The McCollum/Conyers substitute concentrates on true small businesses—those restaurants under 3,500 gross square feet. That constitutes over 60% of the restaurants in America. The substitute also exempts restaurants larger than 3500 gross square feet as long as radio and television music is not played over too many speakers. This will protect larger restaurants that only play radio and television music in bar areas.

In addition to including large chains and corporations, the Sensenbrenner exemption also includes within its scope music that comes from sources other than radio and television. Surely, we do not want to prevent songwriters from getting just compensation for property that has not already been broadcast publicly for private enjoyment.

As you know, negotiations on this issue have been ongoing in the Judiciary Committees of both the House and the Senate for almost 3 years now. One of the problems that Mr. SENSENBRENNER rightly attempts to correct is the fact that small business owners have to travel to New York City if they have a dispute about the rate they are being charged to play music in their establishment. This is unfair and needs to be rectified. The Sensenbrenner Amendment goes too far the other way, however, by being just as unfair to the three performing rights organizations by forcing them to arbitrate in any town in America. The McCollum/Conyers substitute is a compromise that will allow litigants to dispute rates in 12 places around the country where the seats of our U.S. Courts of Appeals are located.

I also want to mention the relevance of our international obligations. Under the Trade-Related Aspects of Intellectual Property Agreement, and the Berne Convention, the United States may also restrict copyright to a point where it does not affect an author's ability to own his or her work. I believe, along with the United States Trade representative and the Secretary of Commerce, that the Sensenbrenner Amendment may violate these treaties which are the law of our land. We cannot allow ourselves to be unsuccessful defendants under the dispute mechanism of the World Trade organization on this issue which may lead to retaliation in areas other than intellectual property such as agriculture or resources.

The United States makes more money internationally from intellectual property than from almost any other sector of our economy. It is

one of our most prized trade surpluses. We must be cautious and balanced in affecting our ability to persuade other nations to protect U.S. intellectual property. It is difficult to force others to live up to intellectual property agreements if we do not live up to them ourselves.

Let us not forget that this is about taking someone's property. The Constitution makes it clear that Congress has a duty to encourage creativity by allowing for just compensation. I believe that the McCollum/Conyers Amendment carries out that purpose while meeting our international obligations and protecting small businesses who cannot afford licensing fees or travel to New York to dispute an unfair rate. The Sensenbrenner Amendment violates that incentive, our international obligations, and reaches beyond the constituency it purports to protect.

I urge my colleagues to vote for the McCollum/Conyers substitute to the Sensenbrenner Amendment.

Mr. BERMAN. Mr. Chairman, I move to strike the requisite number of words.

(Mr. BERMAN asked and was given permission to revise and extend his remarks.)

Mr. BERMAN. Mr. Chairman, this is an issue raised by the gentleman from Wisconsin (Mr. SENSENBRENNER)—let me indicate initially that I rise in strong support of the McCollum substitute and very strong opposition to the Sensenbrenner amendment—and it has been an issue that has been around the Committee on the Judiciary for a very, very long time. And it came to us initially as stories of a series of abuses, real or perceived, reported by owners particularly of restaurants and bars about things they were required to do. One, they could not get access to repertoire. The McCollum amendment provides that, which I think in practice is now already being provided. It makes it very clear in its provisions that every performing rights organization will have to list every piece of music with every writer on the Internet, with access to the general public, to the owners and proprietors of the store.

Mr. MCCOLLUM. Mr. Chairman, will the gentleman yield on that point?

Mr. BERMAN. Yes, I yield to the gentleman from Florida.

□ 1245

Mr. MCCOLLUM. Mr. Chairman, I think that is really important because you have two different organizations. Sometimes smaller restaurants do not want to have to pay a fee to two different outfits. So they have the list. They do not have to pay the fee to two different outfits. They can just play the music of the group that that organization publishes. The gentleman from California's point is really well made.

Mr. BERMAN. But this was central to the complaints that has initiated the whole fight that has been going on for, I think, 8, 10 years in the Committee on the Judiciary.

Secondly, it was always put in the context of the small restaurant or the small bar. I never thought that I would see the day when I would be coming forward to support an amendment that would exempt establishments of 3,500 square feet or under from paying any single fee to a performing rights organization for the use of their music.

The gentleman from Missouri (Mr. TALENT) made an eloquent statement. But when you examine some of his points, he said I do not want a free lunch for anyone. But this is a free lunch. He said the music has already been paid for, not by the people who are using it, by the stations that have decided to broadcast it. He is now creating a new public performance of that music.

If it is just incidental, which is the way the gentleman from Missouri put it, if it is just incidental to the main purpose of their business, then if they do not want to pay the small amount annually they paid in order to use that music, they turn the radio off. It is very, very simple. It is incidental by its own terms. If it is incidental, it is essential.

I would suggest the music is used as part of creating an atmosphere which encourages customers to come and patronize that restaurant, and I would suggest it is appropriate to ask them to pay for that just as much as they would pay for any other aspect of it.

Mr. SENSENBRENNER. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I am happy to yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, I have a copy of the McCollum amendment that appears at page H–1448 of yesterday's RECORD, and I do not see any provision guaranteeing consumers access to repertoire anywhere in the McCollum amendment. Perhaps I am in error, and the gentleman from California can enlighten me.

Mr. BERMAN. Does the gentleman want to take this one at a time?

Mr. SENSENBRENNER. The second thing is, what we are talking about here is TV and the radio. And how is the proprietor of the retail establishment to know what song is going to go on next so he can look up whether this is licensed by ASCAP or BMI? There is no way he can do it.

Mr. BERMAN. Mr. Chairman, I was not saying the gentleman is simply an agent of the restaurant and bars. He used to catalog a series of things he felt were wrong with the way music was paid for, and that it was very difficult for people who had to pay for music to find out just which of the performing rights organizations had the music, and that was part of his whole series of criticisms.

Mr. Chairman, I yield to the gentleman from Florida (Mr. MCCOLLUM) to answer the gentleman from Wisconsin's initial question.

Mr. MCCOLLUM. Mr. Chairman, the fact is that, technically, the gentleman from Wisconsin is right. There is nothing in my bill about the repertoire because it is already on-line. The point I think the gentleman from California (Mr. BERMAN) is making, which I was trying to amplify, is the fact that that was the reason why the people came from the restaurants to originally complain that started the whole history of this, is they could not get and figure this out. Now they can.

The BMI, ASCAP, those associations of songwriters have gone and put it on-line so people do not have that complaint anymore. That is the basic reason. It does not need to be in the bill.

Mr. BERMAN. Mr. Chairman, I think I should then also correct myself. The version of the amendment that I read yesterday on the airplane had some very specific provisions. Apparently they are not in here now.

Mr. SCARBOROUGH. Mr. Chairman, will the gentleman yield for one second?

Mr. BERMAN. I yield to the gentleman from Florida.

Mr. SCARBOROUGH. Mr. Chairman, just to address the second point, you do not have to call the radio stations now, and he knows that. You do not have to call the radio stations now anymore. There is now digital servers.

The CHAIRMAN pro tempore (Mr. GUTKNECHT). The time of the gentleman from California (Mr. BERMAN) has expired.

(By unanimous consent, Mr. BERMAN was allowed to proceed for 3 additional minutes.)

Mr. SCARBOROUGH. If the gentleman will continue to yield, if you want to hear the Beatles 24 hours a day, if you want to hear jazz all day, you can hear jazz all day through these digital servers. That is one of the really dangerous things about this bill is it expands beyond radio and TV and goes into this vast new universe that they know is coming down the road.

Mr. BERMAN. Mr. Chairman, does the gentleman from Florida mean the bill or the Sensenbrenner amendment?

Mr. SCARBOROUGH. I am sorry, the Sensenbrenner amendment. But these servers will also be able to provide the restaurant owners in the future services that will allow them just to pipe in music by BMI or just to pipe in music by ASCAP. And that technology is available today and certainly will be used, I predict, in the next few years to make it easy for restaurant owners to do that.

So it is a very easy thing to do. It is very doable. You do not have to call your local radio station to see what the play list is. And I suspect that most of the people that were behind this amendment know that already.

Mr. BERMAN. Mr. Chairman, continuing, there was one point, though, that I have not heard discussed so far. The Sensenbrenner amendment simply is not an amendment that exempts some restaurants and bars. It exempts all retail establishments.

But it does a number of other things. It fundamentally changes the whole concept of vicarious and contributory

infringement of copyright. It contains a provision which, if applied, would affect the situation like this. I own a number of theaters. I lease those theaters to people who are showing unauthorized pirated works. And I am exempt from any liability and charging money for patronizing those particular works.

They exempt from any liability the owner of the property that is leased, thereby eliminating any incentive that that landlord has when he leases his studios or facilities to put in provisions to ensure that the lessee does not engage in infringing conduct, does not go out and do public performances without paying the people who wrote the music.

That is a huge and gaping loophole which will lead to a great deal of improper activity that could easily be deterred if you just simply retain existing concepts of contributory and vicarious liability.

I think that is another huge weakness in the amendment of the gentleman from Wisconsin. The McCollum amendment undoes the effect of that amendment, and, therefore, it should be supported.

Mr. SOUDER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am a cosponsor of H.R. 789, the Fairness in Music Licensing Act, which has bipartisan support of over 157 Members of Congress. While I wish that it were what he was offering today on the floor, I believe this compromised amendment by Mr. SENSENBRENNER is fair and balanced.

The Sensenbrenner amendment is balanced because it does several key things. One, it levels the playing field for businesses that use music. These business owners will now have a way to settle their disputes with music licensing societies without having to go to rate court in New York City. We have heard about different options under this but that is an important change.

Two, it will allow businesses of a certain size, 3,500 square feet or less where the speakers are located, and that is important, because it isn't just a question of where the diners are sitting, it is a question of your storage, your kitchens, and receiving areas as well are located to be exempt from copyright royalties when they play TVs and radios, which is important to remember it is TV and radio music. If a business is over 3,500 square feet, it may be exempt if it plays only two TVs and has no more than six speakers.

The Sensenbrenner amendment is fair because it does not change the law with respect to other kinds of music that a business may use. For example, a restaurant that has live music or plays CDs will not be covered by this Sensenbrenner exemption. These restaurants will still have to pay copyright royalties.

Two, it does not change the law with respect to penalties. If a business is found to be violating copyright law, the penalty is a severe $20,000 per violation. That is, a business caught stealing copyrighted music is still liable under the Sensenbrenner amendment.

I wanted to add a couple of comments based on some of the debate here. We are kind of getting lost here, whether Stephen Foster would have died a pauper, which I find quite a stretch into this debate. This is really about individuals who go to eat at restaurants.

There is a mythology that businesses pay taxes. Businesses are pass-through agents. What we are really talking about is whether we are going to increase the cost of eating out for diners, or whether diners are going to have less ambience, so to speak, or any music in the background at all.

What we are forgetting here in a debate between different financial interests are the actual consumers of America. Are we in Congress going to, in effect, pass a food and beverage tax increase in this Congress? Are we going to have little music police going around to try to see how restaurants are enforcing that? Because that is the net that will happen.

Either we will have the sounds of silence, perhaps some restaurants will broadcast sounds of silence brought to you by your local congressmen, if this passes. Are we going to have the sounds of silence here in the restaurants, or are we going to have higher food prices?

That is really what we are debating here today. We are not debating starving artists versus starving restaurant owners. We are debating what is going to happen to consumers in the restaurant business.

It kind of frustrates me in this debate. It is not a matter of just the rich and famous as we hear these things are put together, but, rather, rich and famous on other sides who are trying to, in effect, hit the consumers at restaurants.

We have also heard that, in fact, restaurant owners could try to figure out which licensing company is doing this by going to digital. My friend, the gentleman from Florida (Mr. SCARBOROUGH) made that point.

I am sitting here as a small business owner myself thinking this is not possible. I mean, in effect, businesses will decide probably not to offer the music or, in fact, they have not only the licensing fee cost, but the cost of the people that try to track that licensing fee.

So we really are talking a significant potential increase, not just a marginal increase in the cost of doing business. Restaurant owners are already hammered by our Congress in minimum wage increases, in marginal inspection type increases.

As we have more and more two-parent working families, more and more people are eating out. This is really a question of the financial pressures we are going to put on families just because of radio and TV broadcast, which, in fact, already are going through a process of paying for these fees. And it is a secondary market.

One other comment I wanted to make as far as Congress itself. We constantly have this cuteness. I think it would be very interesting for somebody in the media to go through Members of Congress' records. When constituents call in, many Senators and House Members put them on hold, and there is music there.

I would be very interested to see whether, in fact, the copyright laws are being violated by the Members who have stood up here and said the restaurant owners should pay. Are they paying the starving artists in their offices because they are part of a branch of an institution that has 535 offices in it? Are they paying the fees to the starving artists if they have music going over their system from a radio station? I really question whether that is being done in many cases.

Mr. CALVERT. Mr. Chairman, will the gentleman yield?

Mr. SOUDER. I yield to the gentleman from California.

Mr. CALVERT. Mr. Chairman, I am glad the gentleman from Indiana brought up these points. I thought I would come on down as a person who was in the restaurant business or used to be in the restaurant business before I came to this body.

The CHAIRMAN pro tempore. The time of the gentleman from Indiana (Mr. SOUDER) has expired.

(By unanimous consent, Mr. SOUDER was allowed to proceed for 3 additional minutes.)

Mr. CALVERT. If the gentleman will continue to yield, I have heard some discussion about 60 percent of the restaurants would be exempt on the 3,500 square foot gross. Now, I know from my experience in the restaurant industry, many restaurants today are fast food establishments, and if you are adding that restaurant to the component, which I believe it is, I suspect that the number of dining restaurants, sit-down establishments is much lower than the number that is being thrown out here today.

I point out another subject. When I was in the restaurant business, I paid ASCAP and BMI fees because I had live entertainment, and I used to tape music. So if I used FM radio on the interim, it would not have raised my BMI or ASCAP fees at all.

But those restaurants that just have FM radio, public access, and television, which are very few, by the way, it seems to me the only reason that we pursue the Sensenbrenner amendment and not the McCollum amendment.

From my perspective, real estate companies who have background music, or you mentioned dentists' offices, moving around to pursue collecting fees from these businesses is, I think, poor business on their part, but certainly intrusive to all small business.

I would encourage everyone here to vote against the McCollum amendment and vote for Sensenbrenner.

Mr. SOUDER. Mr. Chairman, reclaiming my time, I would hope that there is an understanding in general when it is background music and not primarily, something that is the primary business of the company that is playing the music.

But there is an understanding that this helps promote, to some degree, the music involved with the individuals, and they are not going to be helped by restaurants going silent. They are not going to be helped by higher prices in restaurants either. That is really what I have a question about in this Republican controlled Congress. Are we, in effect, going to pass another backdoor tax increase?

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, to begin, I want to answer the question posed by the gentleman from Indiana about whether Members of Congress who play music when people are on hold are paying ASCAP.

My understanding of this bill is that you incur that obligation if you are charging people, that is, if you are selling them a meal. So I assume those Members who have charged people to call them would owe ASCAP money. So if you have a separate line for contributors, then you better talk to ASCAP.

For those of us who do not charge our constituents to call us, I think we are probably not in this situation. Although I do not play music on my phone, I do not sing or dance for my constituents, I have more mundane services I try to perform for them.

But I would say to the gentleman, if you are charging people to call you, then you better be in touch with BMI and ASCAP.

□ 1300

Mr. SOUDER. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Indiana. A microphone will probably help. The gentleman will not be charged for using it.

Mr. SOUDER. Mr. Chairman, my understanding is that it is a violation of Federal copyright law if one is not paying a licensing fee, whether or not it is for profit.

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, if the gentleman is simply playing it in his office.

Let me put it this way to the gentleman. There is a commercial nexus here. No, not every time one turns on the radio and someone else listens does one have to pay the fee. If one turns on the radio in one's office and people wander in to talk, one does not owe them a thing, and that is the point that some of the opponents I think are missing here.

This is a charge for people who are charging the public to come in. Owners of businesses are not irrational, they do not do things randomly, at least not as a whole. When the owner of a restaurant plays music, he or she does it to enhance the attractiveness of the restaurant; it is part of the package of things that bring people in. And what we are saying is, yes, if you are going to use other people's work product to enhance the attractiveness of your commercial establishment, you should pay them something.

I was surprised to hear this referred to as a tax. I thought a tax was when one collected the money for the government. I do not think enforcing an obligation that one private owner owes another is a tax. People play the music in the restaurants or elsewhere because it brings in more customers. If not, there would not be a problem.

People say, well, it would cost more for the consumer. That is true. And if one could get one's food for free, it would be cheaper for the consumer. If one could get people to work for free, that would be cheaper for the consumer.

Mr. SCARBOROUGH. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Florida.

Mr. SCARBOROUGH. Mr. Chairman, there is a misperception with what the gentleman said, and knowing the gentleman, I know that he did not intend to make this mistaken statement, but he is talking about, it is going to be a new back-door tax increase, it is going to be a new expense. The gentleman was talking about a new expense.

It is not a new expense. It is existing, it is already there. In fact, even this compromise language subtracts how much restaurants would have to pay a hundredfold.

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, I think the gentleman is correct. We are talking about enforcing the existing obligation, and I guess if we agreed with the gentleman, we would have to assume that if the amendment of the gentleman from Wisconsin would pass, restaurant prices would drop, because suddenly they would not owe as much.

I do not think anyone in this building believes that.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from California.

Mr. BERMAN. Mr. Chairman, I guess if the gentleman from Wisconsin had offered an amendment saying that everyone who owns a restaurant gets to deduct 50 percent of their lease price, the gentleman from Indiana would say, in a Republican-controlled Congress, we have to support that amendment; otherwise, we will have an unnecessary tax increase on the patrons of that restaurant.

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, I think the gentleman is right. We are talking about an existing obligation.

But I want to talk about what it is all about. What we are saying is, if one earns money in part by playing music, then one should share some of that with the people whose music one is playing. There was reference to the fact that well, it might be played on one television on the local station and the network will charge in the long term; yes, because they want to make money off of it. Yes, the network makes money off the program, they sell advertising, and then the local people do it. This notion that there should only be one source of revenue for each program does not comport with reality.

This is the principle: If one is enhancing one's own money-making ability, which is a good thing, by playing music and increasing the attractiveness of one's place, one owes some small percentage. The gentleman calculated that it would only be about 5 percent of income.

Well, I do not think any of us think a 5 percent reduction in income is a minor or trivial matter. If we were talking about .005, maybe we would be in that category, but a 5 percent reduction in one's income seems to me a significant factor, and we ought not to be doing it.

I want to stress one other very important point here which will cause problems if we adopt the amendment of the gentleman from Wisconsin. We spend a lot of time, overwhelmingly supported in this Congress, in trying to enforce American intellectual property rights overseas.

The CHAIRMAN pro tempore (Mr. Gutknecht). The time of the gentleman from Massachusetts (Mr. FRANK) has expired.

(By unanimous consent, Mr. Frank of Massachusetts was allowed to proceed for 3 additional minutes.)

Mr. FRANK. Mr. Chairman, as was pointed out by the gentleman from Florida, the amendment of the gentleman from Wisconsin, unlike that of the gentleman from Florida, abolishes the doctrines of vicarious and contributory liability here.

What that means is that if one is not the one who is actually playing the music, even if one is facilitating that in various ways through one's economic arrangements with them, we cannot go after them and they may have deep pockets.

Here is the problem. If the United States Congress, in this, so substantially diminishes this notion of contributory and vicarious liability and exempts people who are making money by playing other people's music, or maybe showing other people's movies, or in other ways using other people's products, if we exempt them in some ways, we drive a hole in our efforts to enforce American intellectual property rights overseas that is enormous.

Think what the People's Republic of China could do with the amendment of the gentleman from Wisconsin. All they would have to do is say, okay, we are going to take these principles that the American Congress has adopted; there will be no vicarious and contributory liability. If you catch the individual, that is fine; otherwise, no, there is

no liability. And if it is only incidental to some other use, there is going to be no liability.

We severely threaten our ability to protect one of the major sources internationally by which America profits, and that is intellectual property.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from California.

Mr. BERMAN. Mr. Chairman, I thank the gentleman for yielding. Let us follow that a little further.

If a company in Russia proliferates missile technology in Iran, we are not going to make the Russian Government responsible. They did not make the decision, it was just some company in Russia. It undermines every aspect of enforcement here when we eliminate the major inducement to do something to ensure the law is not violated.

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, let me stress that because the doctrines of contributory and vicarious liability are not obscure, what they say is, if one has rented the premises to people, and as I read the amendment, even if one has rented the premises and one knows what they are using them for and one knows there is this symptomatic effort to violate other people's rights, one is not at all liable.

I ask Members to think what the People's Republic of China and other notorious abusers of intellectual property rights could do with these principles, and I guarantee the Members that if we enact these into law here in the United States House of Representatives, efforts by the United States Trade Representative or any others to enforce intellectual property overseas goes down the drain.

We are talking about movies. We are talking about books. We are talking about music. We are talking about a number of very important efforts. I do not think that this is an enormous burden.

By the way, we have heard from restaurant owners. People have said, well, it is a problem for appliance owners, this one, that one, convention centers. Nobody has heard from the convention centers of America complaining about this.

What this amendment does, the underlying amendment of the gentleman from Wisconsin is to make it very, very difficult for us internationally to defend our intellectual property rights. The gentleman from Florida has responded sensibly to the complaints of restaurant owners. He exempts most restaurant owners. He says, if one is a larger restaurant and playing this music enhances one's ability to make money, one will share a little with those who created it. That is a reasonable approach.

Mr. COBLE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, about 8 or 9 months ago, 4 or 5 of us from the Subcommittee on Courts and Intellectual Property were chatting one night, and in the group was the late Sonny Bono. One of the Members, I do not recall his identity, but one of the Members said to Sonny, Bono, you are a restaurateur, you are a song writer. Who do you support on this issue?

Sonny said, can we not support both? He said, must I reject one in favor of the other?

And I said to him, amen, Sonny.

The gentleman from Florida (Mr. MCCOLLUM) has crafted such a compromise, a compromise I am told that the song writers and the restaurateurs, neither of whom is completely ecstatic, but both of whom can live with.

I have said before, Mr. Chairman, I am a friend of restaurants in my district. Restaurateurs speak to me frequently, and if anybody accuses me of trashing restaurants just because I am supporting the McCollum amendment, I will meet him in the back lot, because that is simply not the case. But restaurateurs come to me and say, this issue is important, but there are other issues that are far more vital to us as operators of restaurants than music licensing. You all get that over with, and there will be other issues on our agenda that we want you to visit before you adjourn in the fall.

We had conducted 2 hearings on this, Mr. Chairman. Fair and open-minded, we invited all parties who had interest in the matter to appear. The second hearing occurred in Washington last July. One of the witnesses, a tavern and restaurant owner from Mr. SENSENBRENNER's home State of Wisconsin, in his testimony in response to a question, he admitted that his gross earnings for the current period were in excess of $400,000, and he furthermore admitted that his payment to play music was $500. Some of the folks almost fell out of their respective chairs when he announced that his gross was over $400,000, yet he was only required to pay $500.

Now, I am not suggesting, Mr. Chairman, that that gentleman typifies restaurant and tavern owners around the country; I am suggesting that he was the witness who was selected to appear by the coalition that the gentleman from Wisconsin (Mr. SENSENBRENNER) represents.

Now, Mr. Chairman, these are issues that talk about big business versus little business. That is not the case at all, and I tried to portray that earlier. I think both sides of the aisle have portrayed it, Republicans, Democrats, liberals, conservatives, mugwumps, if there are any, everybody has come to the plate on this.

Mr. CLEMENT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to express my strong opposition to the amendment of the gentleman from Wisconsin (Mr. SENSENBRENNER) and also my strong support for the McCollum amendment.

The Sensenbrenner amendment would be devastating to our Nation's song writers. Rather than deny their right to make a living, Congress should recognize the importance and significance of these gifted and talented individuals. As a Representative from Nashville, Tennessee, or as I might say it, Music City, USA, I am deeply concerned about this amendment's effort to compromise the intellectual property rights of our song writers and assault their ability to make a living.

Mr. Chairman, this amendment devalues the achievements and diligent efforts of our song writers and musicians. The property rights of any individual should not be considered secondary to the rights of others. For Congress to single out song writers would send a signal to both the American creative community and to the world at large that intellectual property no longer holds any value in the United States.

John F. Kennedy once said,

> I look forward to an America which will reward achievement in the arts as we reward achievement in business or statecraft. I look forward to an America which will steadily raise the standards of artistic accomplishment and which will steadily enlarge cultural opportunities for all of our citizens. I look forward to an America which commands respect throughout the world, not only for its strength, but for its civilization as well.

Songs are born in any number of magical and mystical ways. But what might appear to take 15 minutes to create often takes 15 years of hard work, sacrifice, dedication, practice, and persistence. We should be rewarding these creators and not punishing them by the Sensenbrenner amendment.

Mr. Chairman, I strongly urge my colleagues to oppose this amendment and support the McCollum substitute amendment in an effort to uphold intellectual property rights for all.

Mr. HEFLEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just want to say that I always thought that we were great when we got behind Radio Free Europe and others, and I thought we had free radio here in the United States. It is a shame to me that we are even arguing over this.

Mr. Chairman, I yield to the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Chairman, I thank the gentleman from Texas for yielding.

The gentleman from North Carolina, when he gave his statement, referred to the testimony of a Peter Madland who used to be the President of the Tavern League of Wisconsin, talking about how big his place was and how much his gross income was.

□ 1315

But what the gentleman from North Carolina did not tell us, and he would not yield to me so I could enlighten him, is that under the Sensenbrenner amendment, Mr. Madland's establishment would not be exempt from paying ASCAP fees.

He testified before the subcommittee of the gentleman from North Carolina (Mr. COBLE) on July 17, 1997, that he has 20,000 to 25,000 square feet in his establishment. It is a big bar. I have never been there, it is in the district represented by the gentleman from Wisconsin (Mr. OBEY). But the exemption contained in both the McCollum amendment and the Sensenbrenner amendment goes to 3,500 square feet, and Mr. Madland's establishment is way over that. He does not get a free ride. He is going to pay the same ASCAP fee as he has paid before because he has a big establishment.

For the gentleman from North Carolina, having presided over the hearing where Mr. Madland testified on how big his establishment is, to make a representation that this major operator was going to get a free ride I think is regrettable.

Mr. SAM JOHNSON of Texas. Mr. Chairman, I move to strike the requisite number of words, and I yield to the gentleman from North Carolina (Mr. COBLE).

Mr. COBLE. Mr. Chairman, I thank the gentleman from Texas for yielding to me.

I want to formally apologize to my friend, the gentleman from Wisconsin. Oftentimes, Mr. Chairman, in the heat of debate we become embroiled, and I should have yielded to him. But I assume, I would ask the gentleman from Wisconsin (Mr. SENSENBRENNER), that he is not suggesting that my testimony was inaccurate, or is he?

Mr. SENSENBRENNER. If the gentleman from Texas will yield to me, Mr. Chairman, absolutely not. The gentleman from North Carolina (Mr. COBLE) might have forgotten that Mr. Madland testified on how big his establishment is, and might not have made the connection with the exemption contained in the Sensenbrenner amendment.

I am just here to inform the gentleman from North Carolina that Mr. Madland would not be exempt, and representations that the operator of that big an establishment, whether it is in Chetek, Wisconsin, or anyplace else in the country, would be exempt, that person simply has not read what is in the text of the Sensenbrenner amendment.

Mr. Madland pays, and anybody else that has that big an establishment would pay under my amendment.

Mr. COBLE. If the gentleman would continue to yield, Mr. Chairman, I just wanted to apologize to the gentleman from Wisconsin (Mr. SENSENBRENNER) and to the Members. I should have yielded, but we are embroiled in this, and for that purpose, Mr. Chairman, I want to get that on the record.

Mr. SCARBOROUGH. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to talk about a couple of issues that have been brought up. The first has to do with what a good friend of mine, the gentleman from Indiana, talked about. He talked about the back-door tax increase. Again I want to reiterate to my friends who may be listening to this, this is a red herring. It is not a back-door tax increase. It is one small business owner paying another small business owner for their property, for using their property.

Secondly, there will be no increase in payments. This is talking about an existing payment that has to be done.

He also talked about the phone system. I think it is very important to realize, we talked about incidental use, or we talked about using music to enhance business, to make more money. There are marketing firms out there that actually get paid to tell dentists what type of music to play on their phone systems. I know, because I have a father-in-law who is a dentist. There are marketing firms who pay people to tell law firms what type of music to play on their phone systems to help them lure more business, more money.

It is a means, music is a means to make more money. I think it is unconscionable that all these people that have stormed Capitol Hill in the name of property rights in 1994, just 4 years later want to take away property rights from others, when it is clear that this property is being used to make a profit.

I wonder if these bar and tavern owners that are so offended about five different entities actually using the same property to make money would be that offended when they charge five people to come into their restaurant to use the same property, or 500 people? Or how about the Titanic? If we have theater owners who allow people to see the Titanic four or five times, do they pay once and get a free pass for the other four times they see it? Absolutely not. This is ridiculous. They are red herrings.

Unfortunately, a process was set up where reasoned people could get together, could compromise, and regrettably, one party did not want to compromise.

We have heard, talking about apologies on the floor, we have heard the McCollum amendment called ''a sham,'' when most reasoned people have said that the McCollum amendment was where the two parties were going before one party went aside.

We also heard somebody talked about property rights for songwriters being ''a scam.'' That is not the case. We have also heard people parade up to the microphone saying they have to go to New York, they have to hire a godawful New York attorney. That is not the case anymore. The McCollum amendment makes sure that we have boards go throughout the land.

For those people to suggest that we set up an arbitration system with absolutely no oversight whatsoever, we are talking about a wild, wild West judicial system with no oversight, with no guidance, and would lead to the most bizarre, inconsistent, crazy results. It is dangerous.

I hear people coming up to the microphone saying, well, there is no such thing as a free lunch. Yet, they turn around and advocate an amendment that provides a free lunch. We hear people coming up talking about how the small restaurants will be hurt.

Let me tell the Members, again, it needs to be reiterated, CRS has estimated a 406 percent increase in restaurants exempted under this provision. There is 406 percent of restaurants that will be exempted under this provision. Only the largest restaurants will pay any fee. The average paid is $30 a month, $30 a month.

When I hear people come up talking about how this is going to be crushing to small business, it is laughable. Small business is using this property to make a profit. I am a capitalist, I am a supporter of small business. I talk to the restaurant owners, I talk to the restaurant owners that elected me, talk to the people that I fought against the minimum wage for, talk to the people that I fought for to eradicate the capital gains tax.

I believe in free enterprise. I believe in the free market system, and I believe that if somebody has a product that helps somebody else make money, then I am all for it. Get it out in the marketplace. But let us forget this free market concept. Let us support the amendment offered by the gentleman from Florida (Mr. MCCOLLUM), and let us make sure people get paid fairly for their property rights.

Let us make sure we do not send the wrong message to China. China feels very, very free in taking our property rights, be it CDs or software. I do not hear anybody here saying Microsoft should only charge once for their program. I have yet to hear one person say that. Yet, it is the same concept. If you can copy a Microsoft program over and over and over again without paying Microsoft, what is the difference there? It is the same exact thing.

The CHAIRMAN pro tempore. The time of the gentleman from Florida (Mr. SCARBOROUGH) has expired.

(By unanimous consent, Mr. SCARBOROUGH was allowed to proceed for 3 additional minutes.)

Mr. SCARBOROUGH. Mr. Chairman, I ask my conservative brethren that came here in 1994 fighting for property rights, if they were to fight for Bill Gates' right to make sure that he protects what is his to protect, then we do the same thing for the small, struggling songwriter.

Mr. MCCOLLUM. Mr. Chairman, will the gentleman yield?

Mr. SCARBOROUGH. I yield to the gentleman from Florida.

Mr. MCCOLLUM. Mr. Chairman, I thank the gentleman for yielding. He has eloquently expressed where we are at this point.

I just wanted the gentleman to yield to bring out the fact that we are near the end of this debate, we may have one or two more speakers. The bottom line is that what I am offering truly is

a compromise. I would like to make the point, and drive it home, that a great many restaurants are going to be exempted by my amendment. We have already talked about a 400 percent increase over the current law.

These folks have been paying, restaurants have been paying these royalties, these fees for years. This is nothing new. We are talking about exempting 75 or 80 percent of those restaurants. I think probably it will be even more, because in this amendment we bumped up from what the negotiated status was, which is what I am trying to offer, pretty much, here; we bumped up the number of television sets you can have in a restaurant that get you exempted, no matter what your square footage is, to four. If you have six speakers in the restaurant you are exempted, no matter what your square footage is, how big you are. I think that takes care of anything but really big restaurants.

So I do not know what the squabble is about. We need to pass a copyright extension bill, we need to get this debate passed, and we need to do what the gentleman has suggested, and that is protect the property rights interests of both the small business restaurateur and the small business songwriter. Adopting the McCollum amendment substitute to Sensenbrenner will do that. His will not do that. It is not fair. I thank the gentleman for yielding time to me.

Mr. SCARBOROUGH. Mr. Chairman, I thank the gentleman for his amendment.

I am reminded by the remark the gentleman from California said a few minutes ago, that a lot of people would be absolutely shocked that they would be coming to the floor voting for legislation such as the gentleman's, an amendment such as that of the gentleman from Florida (Mr. MCCOLLUM), because we have compromised so much, and yet we are still told that is enough.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. SCARBOROUGH. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, on the international side, people have said the restaurant owners should not have to pay because someone has already paid for this once, the national TV, et cetera.

Put that doctrine in the hands of the Chinese or others overseas and you say to them, okay, as long as something was once paid for in America, this book, this movie, this recording, this CD, then I can sell it without paying the owner, and you have destroyed our capacity to defend American intellectual property overseas.

Mr. SCARBOROUGH. It would be absolutely devastating to the computer industry, the software industry. It is a dangerous, dangerous precedent.

Mr. GORDON. Mr. Chairman, I move to strike the requisite number of words. Mr. Chairman, there has been a lot of rhetoric on both sides of this issue. Let me just take a quick moment to try to summarize where we are, please.

The main bill that we are debating today is the Copyright Extension Act. What that does is extend the copyrights for music and film in this country to the same level of other countries around the world. If we do not do this, then the United States is going to lose hundreds of millions of dollars in revenue from other countries that should come in to the United States.

That is very reasonable, and I think most everybody agrees with that. But then, unfortunately, the gentleman from Wisconsin (Mr. SENSENBRENNER) has taken this noncontroversial bill and added a completely unrelated, very controversial amendment.

What the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) basically says is that unlike the present and the past, that restaurants and bars should not have to pay for the music or the royalties for the music that they play in their establishments, which amounts to just a little over $1.50 a day.

It really is somewhat amazing that the gentleman from Wisconsin, who is a strong property rights advocate, it is really ironic, he would never say that these same bars and restaurants should not have to pay the supplier for the chairs and tables, for the paint on the walls, for the chandeliers, or for anything else that helps them make the atmosphere for that particular restaurant or bar. However, for some reason they should not have to pay $1.50 a day for the music, knowing that if this $1.50 is not worthwhile, if the music does not enhance their establishment, they can turn it off. Nobody is telling them they have to play it. Only that they need to pay for it if they use it, like the tables and chairs.

Mr. Chairman, the gentleman from Florida (Mr. MCCOLLUM) has come along and introduced an amendment to that of the gentleman from Wisconsin (Mr. SENSENBRENNER), a compromise, and is trying to bring some rationality to this issue. He is, the gentleman from Florida (Mr. MCCOLLUM), exempting the smallest bars and restaurants in the country; as a matter of fact, two-thirds of the restaurants and bars in the country, which is a very reasonable amendment. Because we have to remember, if the songwriters are not paid, they cannot produce the songs, and when they do not produce the songs, the music is going to stop.

I would like to share with the Members a song that one of the songwriters back home has written about this issue. I say to my friend, the gentleman from Wisconsin (Mr. SENSENBRENNER), I am going to spare him me singing this, so I am going to read it here for the gentleman.

It is ''Dear, dear, U.S. Congress:

''Some merchants want to use my song, but they don't want to pay me, and I think that is wrong. How would you like to have a job where you work hard every day, you love what you are doing, but you don't get any pay? I can't give away my songs for free 'cause this is the way I feed me and my family. And if you merchants disagree, that's fine. Go write your own songs, just don't use mine.''

Now, Mr. Chairman, let me ask the Members today to keep the music. Do not stop the music from coming forward. I support a very reasonable compromise offered by the gentleman from Florida (Mr. MCCOLLUM) to keep the music for all America.

Mr. BONILLA. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, this is a debate that involves small business, and I think all of us who believe in the American way and in driving the American economy understand that small business is the backbone of that culture that drives the American economy.

Too often this Congress dumps on them: more regulations, higher mandated wages, taxes that are too high. So we have people, for example, that are running small restaurants in this country that are asking us not to dump on them one more time.

☐ 1330

In my hometown of San Antonio, small businesses and restaurants are at the forefront of job creation and economic opportunity. Anyone who has visited San Antonio and the River Walk know how these small businesses enhance my town's premier tourist attraction.

These businesses cannot afford in many cases any more ruinous fees. This amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER), which I am supporting, provides a reasonable compromise to protect jobs while protecting the copyrights of artists.

Simply put, the Sensenbrenner amendment makes needed changes in Federal law by providing for local arbitration of music licensing fee disputes. Small businesses will no longer be forced to travel across the country to New York to make their case. They could not afford to do that anyway. Today's small business has no local recourse. This is a more than reasonable compromise the gentleman from Wisconsin is offering in his amendment.

The amendment does not fully exempt businesses from paying royalties or change existing penalties. It merely recognizes that changing technology makes some of the current fees unfair and represents a double charge for licensing.

Mr. Chairman, I cosponsored H.R. 789, the Fairness in Music Licensing Act, because I believe it represents a responsibility compromise. I urge my colleagues to please join me in voting for the Sensenbrenner amendment, which will help ensure that small business remains the engine driving our economy.

Mr. NADLER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to oppose strongly the Sensenbrenner amendment and to support the McCollum amendment to the Sensenbrenner amendment.

The Sensenbrenner amendment would be essentially a license for restaurants, taverns, and other establishments to use songwriters' work product, their property, without paying for it. It would be a license to steal from America's creative community and, therefore, I must oppose it vigorously.

The late Justice Oliver Wendell Holmes said that, ''It is true that the music is not the sole object, but neither is the food,'' referring to a restaurant.

> The object is the repast and surroundings that give luxurious pleasure not to be had from eating a silent meal. If music did not pay, it would be given up. Whether it pays or not, the purpose of employing it is profit and that is enough.

Mr. Chairman, several people have said, and I will say it for myself, that I never thought I would come before the House, advocating support of an amendment that would exempt an establishment as large as 3,500 square feet. The McCollum amendment, frankly, I think goes far too far. But it is acceptable to the songwriters. I do not think they are getting as fair a deal as they ought out of it, but I will support it as the best we can get.

Mr. Chairman, I looked at this issue very carefully when I was a member of the Subcommittee on Courts and Intellectual Property of the Committee on the Judiciary, and I remember coming to several conclusions after hearing from both sides. The first conclusion is the question of equity. Ninety percent of songwriters make less than $10,000 a year. Many make more, but are still struggling. The average restaurant pays $400 to $450 a year for songwriter fees. The average income of the restaurant makes that a small proportion, a very small proportion, and yet for the songwriters it is very important. So as a matter of equity, when something is very important for one side as a percentage of their income and very small for the other, it makes sense to go with the side that we would really hurt if we went the other way.

Second of all, and here I fail to see how some of my friends on the other side of the aisle can even think of supporting this amendment, we are talking here about private property. We are talking about private arrangements between one group of property owners, the songwriters who own the songs that they have produced, and another group of property owners, the restaurant owners who want to purchase the use of those songs.

I am not a total believer in the efficacy of the free market in all circumstances, unlike some of my friends on the other side of the aisle. But I do believe that before the government should come in and pass a law dictating the terms of an arrangement between property owners, before we should come in and say some can use that music for free and some must pay, there has got to be a very, very strong showing of the public policy necessity. There has got to be a showing of why the free market and private negotiations cannot work its will to the best interest of the economy and the people of the country, as it usually does. One has to make a showing why the free market cannot work in a situation before we ask for government regulation.

What do we have here? We have some people coming in, some people who are normally great supporters of private property rights and against regulation and, based on nothing at all, saying let us dictate the terms of the arrangement and say to the restaurant owners they can use the other people's property for free.

Why? What is the necessity? Why do we not trust the market to work this out? Why do we not trust the songwriters and the restaurants to negotiate deals as they have for the last, I do not know, 70 or 80 years?

I see no reason. We hear that here it is a question of secondary use; that they have already paid once for it. Well, so what? So what? I would not be permitted, none of us would be permitted to purchase a CD or a tape of a movie, purchase it, go in and pay $15 for a tape of a movie, and then going go to my machine and making a lot of tapes of it and selling those. None of us would be permitted to do that. We are using that property, and it is exactly the same thing.

So on these grounds I do not see why we should pass any amendment at all on the subject. I will reluctantly go along with the amendment offered by the gentleman from Florida (Mr. MCCOLLUM) as a reasonable compromise, and certainly more reasonable than an attempt, frankly, to appropriate the songwriters' property for free, for the benefit of restaurant owners.

Mr. Chairman, I love restaurant owners. I have plenty of them in my district. But they are not entitled to the free use of other people's property. Period. So I urge my colleagues to oppose the Sensenbrenner amendment and support the McCollum amendment to the Sensenbrenner amendment.

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not take 5 minutes, but I rise in support of the McCollum-Conyers substitute and in opposition to the Sensenbrenner amendment.

I want to address two issues quickly. Number one, I do not think this is an issue of big business against small business or a small business issue. It seems to me that restaurants are small businesses, but music writers are also small businesses. So either way we vote on this, we are going to be trying to support, as all of us I believe do, small business in this country.

The second is an argument that I have heard a number of restaurant owners advance from time to time that music is just background music, and we ought not be obligated to pay for it, even though we are using somebody else's work product. And my typical response to that is, if what they are saying is true, if this is of no benefit to their company, if this is truly background music, cut it off. And if they cut it off, then nobody obligates them to pay for the use of it.

So I just think, as a matter of fairness and equity, that a person who has written a song and dealt with that song and put it in the stream of our intellectual property ought to be compensated for the use of it. And I think the McCollum amendment represents a reasonable approach to it. I have some concerns about it also, but I will support that substitute and vote against the amendment offered by the gentleman from Wisconsin.

Mr. BONIOR. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Michigan.

Mr. BONIOR. Mr. Chairman, I thank the gentleman from North Carolina (Mr. WATT) for his remarks and support him in his support of the McCollum-Conyers amendment. I think the gentleman hit the nail on the head when he talked about that these are small businesspeople, all of the folks who write songs, who write music for a living. This is an important work. It brings great joy and great dignity to our society. They pour their heart and soul into their work.

Mr. Chairman, I am just finishing a book called Lush Life, the story of Billy Strayhorn, one of the great song people of our time. And reading that gives a sense of the dignity and the tough work, but the joyous work of these individuals. And it just seems to me that they need as much protection as the folks who own the bars and the restaurants and all the other facilities that we have talked about.

So I thank the gentleman from North Carolina (Mr. WATT) for his comments and his remarks, and I hope that we will adopt the McCollum-Conyers amendment this afternoon.

The CHAIRMAN pro tempore (Mr. SUNUNU). The question is on the amendment offered by the gentleman from Florida (Mr. MCCOLLUM) to the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. SENSENBRENNER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN pro tempore. Pursuant to clause 2 of rule XXIII, the Chair announces that he may reduce to not less than 5 minutes the period of time within which a recorded vote may be taken without intervening business on the Sensenbrenner amendment.

The vote was taken by electronic device, and there were—ayes 150, noes 259, not voting 22, as follows:

[Roll No. 68]

AYES—150

Abercrombie
Ackerman
Allen
Baldacci
Becerra
Berman
Bliley
Bonior
Borski
Boucher
Brown (CA)
Brown (OH)
Bryant
Callahan
Canady
Capps
Carson
Clay
Clayton
Clement
Coble
Costello
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Dixon
Doggett
Dooley
Dreier
Ehrlich
Engel
Eshoo
Evans
Fattah
Fazio
Filner
Foley
Forbes
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gilchrest
Gilman
Goodlatte
Gordon
Gutierrez
Hall (OH)
Hansen
Hastings (FL)
Hefner
Hilleary
Hinchey
Hoyer
Hunter
Hutchinson
Hyde
Jackson (IL)
Jenkins
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kim
Kucinich
LaFalce
LaHood
Lampson
Lantos
Lazio
Levin
Lewis (GA)
Lipinski
Livingston
Lofgren
Lowey
Luther
Maloney (NY)
Manton
Markey
Martinez
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDade
McGovern
McKinney
Meehan
Meek (FL)
Meeks (NY)
Menendez
Miller (CA)
Mink
Moakley
Mollohan
Morella
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pascrell
Paul
Pease
Pelosi
Poshard
Radanovich
Rahall
Rivers
Rogan
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Scarborough
Schumer
Serrano
Shays
Sherman
Skaggs
Slaughter
Stokes
Stupak
Tanner
Tauscher
Thomas
Thurman
Tierney
Torres
Towns
Velazquez
Vento
Wamp
Watt (NC)
Waxman
Wexler
Wise
Yates

NOES—259

Aderholt
Andrews
Archer
Armey
Bachus
Baesler
Baker
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Berry
Bilbray
Bilirakis
Bishop
Blagojevich
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Boswell
Boyd
Brady
Bunning
Burr
Burton
Buyer
Calvert
Camp
Campbell
Castle
Chabot
Chambliss
Chenoweth
Christensen
Clyburn
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Coyne
Cramer
Crane
Crapo
Cubin
Cummings
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
DeLay
Diaz-Balart
Dickey
Dicks
Doolittle
Doyle
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Ensign
Etheridge
Everett
Ewing
Farr
Fawell
Fossella
Fowler
Fox
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gillmor
Goode
Goodling
Goss
Graham
Granger
Green
Greenwood
Gutknecht
Hall (TX)
Hamilton
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilliard
Hinojosa
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Hulshof
Inglis
Istook
John
Johnson (CT)
Johnson (WI)
Johnson, Sam
Jones
Kanjorski
Kasich
Kind (WI)
King (NY)
Kingston
Klink
Klug
Knollenberg
Kolbe
Largent
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Maloney (CT)
Manzullo
Mascara
McCrery
McHale
McHugh
McInnis
McIntosh
McIntyre
McKeon
McNulty
Metcalf
Mica
Miller (FL)
Minge
Moran (KS)
Moran (VA)
Murtha
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pallone
Pappas
Parker
Pastor
Paxon
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Quinn
Ramstad
Redmond
Regula
Reyes
Riley
Rodriguez
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Ryun
Salmon
Sandlin
Sanford
Sawyer
Saxton
Schaefer, Dan
Schaffer, Bob
Scott
Sensenbrenner
Sessions
Shadegg
Shaw
Shimkus
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Spratt
Stabenow
Stearns
Stenholm
Strickland
Stump
Sununu
Talent
Tauzin
Taylor (MS)
Taylor (NC)
Thompson
Thornberry
Thune
Tiahrt
Traficant
Turner
Upton
Visclosky
Walsh
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Weygand
White
Whitfield
Wicker
Wolf
Woolsey
Wynn
Young (AK)
Young (FL)

NOT VOTING—22

Brown (FL)
Cannon
Cardin
Conyers
Ford
Gonzalez
Harman
Houghton
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Kleczka
McDermott
Millender-McDonald
Payne
Rangel
Riggs
Rothman
Royce
Schiff
Stark
Waters

□ 1400

The Clerk announced the following pair:

On this vote:

Mr. McDermott for, with Mr. Rangel against.

Messrs. SMITH of Texas, HULSHOF, DICKS, FOX of Pennsylvania, PICKETT, THOMPSON, BATEMAN, COX of California, CUMMINGS, BERRY, Ms. STABENOW, Mrs. FOWLER, Mr. UPTON and Mr. FARR of California changed their vote from ''aye'' to ''no.''

Messrs. GUTIERREZ, MOAKLEY, SHAYS, Ms. LOFGREN, Mr. STOKES, Mr. RUSH, Mrs. MORELLA, and Mr. HINCHEY changed their vote from ''no'' to ''aye.''

So the amendment to the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore (Mr. SUNUNU). The question is on the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. SENSENBRENNER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 297, noes 112, not voting 22, as follows:

[Roll No. 69]

AYES—297

Aderholt
Andrews
Archer
Armey
Bachus
Baesler
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Berry
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Borski
Boswell
Boucher
Boyd
Brady
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Carson
Castle
Chabot
Chambliss
Chenoweth
Christensen
Clayton
Clyburn
Coburn
Collins
Combest
Condit
Cook
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cubin
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
DeLay
Diaz-Balart
Dickey
Dicks
Doolittle
Doyle
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Etheridge
Evans
Everett
Ewing
Farr
Fawell
Foley
Fossella
Fowler
Fox
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Goode
Goodlatte
Goodling
Goss
Graham
Granger
Green
Greenwood
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Hefner
Herger
Hill
Hilleary
Hinojosa
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Hulshof
Hunter
Hutchinson
Inglis
Istook
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, Sam
Jones
Kanjorski
Kaptur
Kasich
Kim
Kind (WI)
King (NY)
Kingston
Klink
Klug
Knollenberg
Kolbe
Kucinich
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
Livingston
LoBiondo
Lucas
Maloney (CT)
Manzullo
Mascara
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McIntyre
McKeon
McNulty
Metcalf
Mica
Miller (FL)
Minge
Mollohan
Moran (KS)
Moran (VA)
Murtha
Myrick
Neal
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Obey
Oxley
Packard
Pallone
Pappas
Parker
Pascrell
Pastor
Paxon
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pomeroy
Porter
Portman
Poshard
Price (NC)
Pryce (OH)
Quinn
Rahall
Ramstad
Redmond
Regula
Reyes
Riley
Rodriguez
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Rush
Ryun
Salmon
Sandlin
Sanford
Sawyer
Saxton
Schaefer, Dan
Schaffer, Bob
Scott
Sensenbrenner
Sessions
Shadegg
Shaw
Shimkus
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Spratt
Stabenow
Stearns
Stenholm
Strickland
Stump
Sununu
Talent
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thompson
Thornberry
Thune
Thurman
Tiahrt

| | | |
|---|---|---|
| Torres | Watkins | Whitfield |
| Traficant | Watts (OK) | Wicker |
| Turner | Weldon (FL) | Wise |
| Upton | Weldon (PA) | Wolf |
| Visclosky | Weller | Wynn |
| Walsh | Weygand | Young (AK) |
| Wamp | White | Young (FL) |

NOES—112

| | | |
|---|---|---|
| Abercrombie | Hilliard | Nadler |
| Ackerman | Hinchey | Oberstar |
| Allen | Hoyer | Olver |
| Becerra | Hyde | Ortiz |
| Berman | Jackson (IL) | Owens |
| Bonior | Kelly | Paul |
| Brown (CA) | Kennedy (MA) | Pease |
| Brown (OH) | Kennedy (RI) | Pelosi |
| Capps | Kennelly | Pombo |
| Clay | Kildee | Radanovich |
| Clement | Kilpatrick | Rivers |
| Coble | LaFalce | Rogan |
| Cummings | LaHood | Roybal-Allard |
| Davis (IL) | Lampson | Sabo |
| DeFazio | Lantos | Sanchez |
| DeGette | Levin | Sanders |
| Delahunt | Lewis (GA) | Scarborough |
| DeLauro | Lofgren | Schumer |
| Deutsch | Lowey | Serrano |
| Dingell | Luther | Shays |
| Dixon | Maloney (NY) | Sherman |
| Doggett | Manton | Skaggs |
| Dooley | Markey | Slaughter |
| Dreier | Martinez | Stokes |
| Engel | Matsui | Stupak |
| Eshoo | McCarthy (MO) | Tanner |
| Fattah | McCarthy (NY) | Tauscher |
| Fazio | McCollum | Tierney |
| Filner | McGovern | Towns |
| Forbes | McKinney | Velazquez |
| Frank (MA) | Meehan | Vento |
| Furse | Meek (FL) | Watt (NC) |
| Gejdenson | Meeks (NY) | Waxman |
| Gephardt | Menendez | Wexler |
| Gilman | Miller (CA) | Woolsey |
| Gordon | Mink | Yates |
| Gutierrez | Moakley | |
| Hastings (FL) | Morella | |

NOT VOTING—22

| | | |
|---|---|---|
| Brown (FL) | Jackson-Lee (TX) | Payne |
| Cannon | Jefferson | Rangel |
| Cardin | Johnson, E. B. | Riggs |
| Conyers | Kleczka | Rothman |
| Ford | McDermott | Royce |
| Gonzalez | Millender-McDonald | Schiff |
| Harman | | Stark |
| Houghton | | Waters |

□ 1414

The Clerk announced the following pair:

On this vote:

Mr. Kleczka for, with Mr. McDermott against.

Mr. MOAKLEY, Mr. FORBES and Mrs. KELLY changed their vote from ''aye'' to ''no.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. RIGGS. Mr. Chairman, on Rollcall Nos. 68 and 69, I was unavoidably detained on other business and unable to be present in the House Chamber. Had I been present, I would have voted ''no'' on No. 68 and ''yes'' on No. 69, respectively.

The CHAIRMAN pro tempore (Mr. SUNUNU). Are there any other amendments?

If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. GIBBONS) having assumed the chair, Mr. SUNUNU, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2589) to amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes, pursuant to House Resolution 390, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the adoption of the amendment.

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

## AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN THE ENGROSSMENT OF H.R. 2589, COPYRIGHT TERM EXTENSION ACT

Mr. COBLE. Mr. Speaker, I ask unanimous consent that the Clerk be authorized in the engrossment of the bill, H.R. 2589, to insert ''Sonny Bono'' before ''Copyright Term Extension Act'' each place it appears; in other words, the bill bear Sonny's name.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

## AUTHORIZING THE CLERK TO MAKE FURTHER CORRECTIONS IN ENGROSSMENT OF H.R. 2589, SONNY BONO COPYRIGHT TERM EXTENSION ACT

Mr. COBLE. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 2589, the Clerk be authorized to correct section numbers, punctuation, and cross-references and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

## GENERAL LEAVE

Mr. COBLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

## REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 3310

Mr. KUCINICH. Mr. Speaker, I ask unanimous consent to take my name off of H.R. 3310 as a cosponsor.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

## REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 2500

Mr. FATTAH. Mr. Speaker, I ask unanimous consent to remove my name as a cosponsor to H.R. 2500, the Responsible Borrower Protection Act.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

## REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 3246, FAIRNESS FOR SMALL BUSINESS AND EMPLOYEES ACT OF 1998

Mrs. MYRICK, from the Committee on Rules, submitted a privileged report (Rept. No. 105–463) on the resolution (H. Res. 393) providing for consideration of the bill (H.R. 3246) to assist small businesses and labor organizations in defending themselves against government bureaucracy; to ensure that employees entitled to reinstatement get their jobs back quickly; to protect the right of employers to have a hearing to present their case in certain representation cases; and to prevent the use of the National Labor Relations Act for the purpose of disrupting or inflicting economic harm on employers, which was referred to the House Calendar and ordered to be printed.

## REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 2515, FOREST RECOVERY AND PROTECTION ACT OF 1998

Mrs. MYRICK, from the Committee on Rules, submitted a privileged report (Rept. No. 105–464) on the resolution (H. Res. 394) providing for consideration of the bill (H.R. 2515) to address the declining health of forests on Federal lands in the United States through a program of recovery and protection consistent with the requirements of existing public land management and environmental laws, to establish a program to inventory, monitor, and analyze public and private forests and their resources, and for other purposes, which was referred to the House Calendar and ordered to be printed.

## EXTENDING THE VISA WAIVER PILOT PROGRAM

Mrs. MYRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 391 and ask for its immediate consideration.

The Clerk read the resolution, as follows: