Mr. WELLSTONE. I thank the Senator. I call to my colleagues attention the decision in Minnesota concerning baseball's status under the antitrust laws. Mr. ساعهول، I thank the Senator. I call to my colleagues attention the decision in Minnesota against the baseball owners over the，则 of the anti-trust exemption available to all unions and employers. The legislation is a success because it has been carefully crafted to make clear that only major league baseball players, and no other party, can bring suit under this amendment to the Clayton Act. This protection will help to ensure the continued viability of minor league baseball. Minor league baseball owners were concerned that any legislation preserve the anti-trust protections for the historic relationship between the major league clubs and the minor league clubs. The minor league owners were particularly concerned about the work rules and terms of employment that impact both major league and minor league baseball players. The language of the bill guarantee that neither major league players nor minor league players can use subsection (a) of new section 27 of the Clayton Act to attack conduct, acts, practices or agreements designed to apply only to minor league employment. I believe the compromise is successful because it protects minor league baseball by barring minor league players or amateur players from using the antitrust laws to attack issues unique to the continued economic success of minor league baseball.

Mr. CLAY. Mr. Speaker, I am in strong support of S. 53, the Curt Flood Act of 1998. This is the Senate counterpart of H.R. 21, legislation I introduced in the early last year Congress providing for the partial repeal of baseball’s antitrust exemption. I’d like to thank Chairman Hyde for his leadership in seeing that this vital and overdue legislation reached the House Floor.

Professional baseball is the only industry in the United States exempt from antitrust laws without being subject to alternative regulatory supervision. This circumstance resulted from an erroneous 1922 Supreme Court decision holding that baseball did not involve “interstate commerce” and was therefore beyond the reach of the antitrust laws. Congress has failed to overturn this decision despite subsequent court decisions holding that the other professional sports were fully subject to the antitrust laws.

There may have been a time when baseball’s unique treatment was a source of pride and distinction for the many loyal fans who loved our national pastime. But with baseball moving more and more over the last 25 years than all of the other professional sports combined—including the 1994–95 strike which ended the possibility of a World Series for the first time in 90 years and deprived our cities of thousands of jobs and millions of dollars in tax revenues—we now afford to treat professional baseball in a manner enjoyed by no other professional sport.

Because concerns have previously been raised that by repealing the antitrust exemption we could somehow be disrupting the operations of minor leagues, or professional baseball’s ability to limit franchise relocation, the legislation carefully eliminates these matters from the scope of the new antitrust coverage.

In the past, some in Congress had objected to legislating in this area because of their hesitancy to enter any action which could impact the ongoing labor dispute. But because the owners and players have recently agreed to enter into a new collective bargaining agreement, this objection no longer exists. In addition, the baseball owners are now in full support of this legislation as are the Major League Players Association.

I originally introduced the House version of the bill as H.R. 21, in honor of the courageous center fielder, Curt Flood, who passed away earlier this year. One of the greatest players of his time, risked his career when he challenged baseball’s reserve clause after he was traded from the St. Louis Cardinals to the Philadelphia Phillies. Although the Supreme Court rejected Flood’s challenge in 1972, we all owe a debt of gratitude for his willingness to challenge the baseball oligarchy.

This bill has gone through many iterations over the years, beginning with its first enactment by the House Judiciary Committee at the end of the 103rd Congress. That legislation was introduced by my former colleague Mike Synar. In order to address the concern of the minor leagues, it contains many redundancies. Accordingly, a court may have questions about how the provisions of this bill interrelate. Any court facing such questions would be well-advised to treat professional baseball in a manner consistent with the Clayton Act.

Mr. Speaker, baseball has seen a resurgence since the dark days of the 1994 strike. Who can forget Cal Ripken’s triumphant lap around Camden Yards the week breaking Lou Gehrig’s Iron Man streak of consecutive games played? Or the incredible run of Barry Bonds on his way to the home run record set by Roger Maris?

I felt immense personal pride when I watched my hometown team, the Tampa Bay Devil Rays, take the field for their inaugural season of the 2001 season. I felt immense personal pride when I watched my hometown team, the Tampa Bay Devil Rays, take the field for their inaugural season of the 2001 season.

The SPEAKER pro tempore (Mr. Sonny Bono). The question is on the motion offered by the gentleman from Illinois (Mr. Hyde) that the House suspend the rules and pass the Senate bill, S. 53.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill (S. 505) to amend
the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes.

The Clerk read as follows:

S. 505

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

TITLE I—COPYRIGHT TERM EXTENSION
SEC. 101. SHORT TITLE.
This title may be referred to as the "Sonny Bono Copyright Term Extension Act'.

SEC. 102. 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, 2041" 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 the subsection by striking "fifty" and inserting "70";

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

(A) by striking "seventy-five" and inserting "67"; and

(B) by striking "one hundred" and inserting "120"; and

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

(A) by striking "seven" and inserting "13";

(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";

(ii) in subparagraph (B) by striking "47" and inserting "67"; and

(iii) in subparagraph (C) by striking "47" and inserting "67";

(B) by striking "one hundred" and inserting "120"; and

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

SEC. 103. TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM.
Sections 304(c)(1) and 304(c)(2) of title 17, United States Code, are each amended—

(1) by striking "by his widow or her widower" and inserting "or his or her children or grandchildren"; and

(2) by inserting after subparagraph (A) the following:

"(ii) 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.".

SEC. 104. 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:

"(ii) 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, and perform any such work that is wholly contained in a 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—

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

(B) a copy or phonorecord of the work can be obtained without payment of royalty for any purpose; 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 good faith commercial exploitation for profit or to uses other than for the purposes for which the exemption was provided.

SEC. 105. 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 title, and the screenwriters, directors, and performers of those audiovisual works, should negotiate in good faith an effort to reach a voluntary agreement for modifications to agreements with respect to the establishment of a fund to compensate those copyright owners for the loss of remuneration.

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.

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."
gross square feet of space or more (excluding space used for customer parking and for no other purpose) and—

'(I) if the performance is by audio means only, the individual proprietor shall be held, in any one room or adjoining outdoor space;'

'(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 one room, and no such audiovisual device has a diagonal screen size of more 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 one room or adjoining outdoor space;'

'(iii) no direct charge is made to see or hear the transmission or retransmission;'

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

(2) 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 performances or displays as are exempted under paragraph (5) shall not be diminished in any respect as a result of such exemption.'

3. (b) RELATING TO PROMOTION.—Section 110(7) of title 17, United States Code, is amended by inserting 'or of the audiovisual or other devices utilized in such performance,' after 'phonorecords of the work,'.

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:

'Section 512. Determination of reasonable license fees 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, the rate charged by the performing rights society, notwithstanding the provisions of that consent decree, an individual proprietor who owns or operates fewer than 7 non-publicly traded establishments in which nondramatic musical works are performed publicly and who claims that any license agreement offered by that performing rights society is unreasonable in its license rate or fee as to that individual proprietor, shall be entitled to determination of a reasonable license rate or fee as follows:

'(1) The individual proprietor may commence such proceeding for determination of a reasonable license rate or fee by filing an application in the applicable district court under paragraph (2) of this subsection.

'(2) Following the grant by the court of a license rate or fee under this section, the rate is being correctly applied to the individual proprietor, and

'(3) Such proceeding shall be held before the judge of the court with jurisdiction over the controversy concerning the performing rights society. At the discretion of the court, the proceeding shall be held before a special master or magistrate judge appointed by the court for such purpose, and shall, if necessary, 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 shall be presumed to have been reasonable at the time it was agreed to or determined by the court. Such presumption shall in no way affect a determination of whether the rate is being correctly applied to the individual proprietor.

'(5) Pending the completion of such proceeding, the individual proprietor shall have the right to perform publically the copyrighted works licensed by the consent decree governing its operations. Any decision rendered in such proceeding 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.

'(6) The rate or fee agreed to by the parties on a seasonal basis or otherwise.'

(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:

'Section 512. Determination of reasonable license fees for individual proprietors.'
Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill under consideration.

Mr. SENSENBRENNER. Mr. Speaker, there was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume. S. 505 contains two important provisions and is substantially identical to H.R. 4712 which the gentleman from Florida (Mr. McCOLLUM) and I introduced earlier today. It adopts the Sonny Bono Copyright Term Extension Act identical to the language the House passed by an overwhelming margin in March. This section of the bill is a fitting tribute to our departed colleague Sonny Bono. The second part of the bill adopts an agreement on a difficult issue of fairness in music licensing issue. This agreement is the product of grueling and oftimes contentious negotiations. I am proud of the final product and am pleased that all sides were able to work together to bridge differences. This bill is a victory for small business and a tribute to the commitment of its supporters.

In March, the House overwhelmingly passed the Sensenbrenner amendment to the Copyright Term Extension bill by a 297-112 vote. That amendment reflected the core principles of my legislation, the Fairness in Music Licensing Act, and had the strong endorsement of groups, including the National Federation of Independent Business and the National Restaurant Association. Since that time, we have been working hard to strike an agreement with the other body over this language. I am pleased to report we have arrived at a compromise that is supported by the same groups and is acceptable to the opponents of the original Sensenbrenner amendment. In short, passage of this bill today will allow the Sonny Bono Copyright Term Extension Act and the Fairness in Music Licensing Act to become law in very short course.

Under this licensing compromise, restaurants and bars with 3,750 gross square feet or less will be exempt from paying music licensing fees for playing the radio or television in their establishments. Retail businesses will benefit from a 2,000 gross square foot exemption for radio and television. Importantly, both types of establishments, regardless of size, will be exempt if they have six or fewer external speakers or four televisions. Mr. Chairman, I respectfully request your assurance that this understanding be included in the record for purposes of providing legislative history on this subject.

Sincerely,

F. James Sensenbrenner, Jr.,
Member of Congress.
struggles bring about the fairest resolutions, and I think we may have achieved such a result tonight.

I appreciate the work of the gentleman from North Carolina (Mr. Coble) and certainly the gentleman from Wisconsin (Mr. Sensenbrenner) who I know has worked on this issue for a very long time, the ranking minority member the gentleman from Massachusetts (Mr. Frank) and the gentleman from Michigan (Mr. Conyers) who have worked on this issue as well. I know that there has been some disagreement and may still continue to be. But I think we have come to a point in this legislation that we have recognized the importance of our small businesses like restaurants, like various other centers who need to have the ability to create and improve their enjoyment. Again I commend all of those who have been working on this matter for their hard work and I am very pleased to have seen this come to a good end. I am asking my colleagues to support this legislation.

I rise today in strong support of the Copyright Term Extension Act before us this evening, the passage of which marks an important moment for those of us who support copyright and specifically my domestic copyright and creative industries. The enactment of this legislation will bring United States copyright creators and owners into full citizenship with respect to the international community, and finally permit us to enjoy the full and appropriate term that European copyright owners have enjoyed for some time now.

There is a provision in this legislation which I am especially happy to see, and that is the resolution of the long simmering dispute between copyright owners and restaurants and other small businesses, the latter of whom have sought and argued for a fair exemption from music licensing fees for some time. I am sorry that the dispute was so protracted, and difficult, but I am as I say delighted that we have reached a workable compromise on this difficult legislation. Sometimes the most difficult thing is to address the fairest resolutions, and I think we may have achieved such a result tonight.

I commend those in the majority and the minority who worked hard to get to this day. I commend Chairman Coble, ranking member Conyers, and Mr. Sensenbrenner for their hard work and efforts on this important bill, and I am pleased to support it strongly.

Madam Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Madam Speaker, I yield 4 minutes to the gentleman from North Carolina (Mr. Coble).

Mr. COBLE. I thank the gentleman for yielding me this time, Madam Speaker. I wish to report on the long extended journey that we have traveled. The gentleman from Wisconsin and I have slugged it out literally as well as figuratively on this matter, but I think tonight we are finally in the position to maybe put it to bed.

I rise to report on the bill, S. 505, Madam Speaker. Copyright extension is essential legislation that will ensure that the United States will continue to receive the enormous export revenues that it does today from the sale of its copyrighted works abroad. At the same time, S. 505 resolves the question of music licensing fees for restaurants and small businesses.

I want to commend the efforts of the parties and Members involved in negotiating the music licensing agreement. This legislation is the result of much hard work and diligent negotiation. I want to express my thanks to the Speaker the gentleman from Georgia (Mr. Conyers) who has been facilitating the parties together. I also want to express my thanks to the gentleman from Wisconsin (Mr. Sensenbrenner) and the gentleman from Florida (Mr. McCollum) for their work in bringing about a fair resolution. It was no small task. Of course, I would be remiss if I did not mention the late Mr. Bono, the gentleman from California, regarding his work and interest in the copyright extension feature of this.

S. 505 will double the length of the United States copyright term 20 more years of foreign sales revenue from movies, books, records and software products sold abroad. We are by far the world’s largest producer of copyrighted works and the copyright system is an essential part of our most significant trade surpluses. 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 the United States works the same amount of protection which under international agreements requires reciprocity.

This bill is also good for consumers. Madam Speaker. 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 the movie theater, in a home, in an automobile, or in a retail establishment. It lets the marketplace address the concern of restaurants and small businesses regarding the payment of licensing fees for the use of music broadcasts over the radio or television. It gives qualifying establishments an exemption from paying music licensing fees and forums in addition to the Southern District of New York which the gentleman from Wisconsin previously mentioned in which to challenge the reasonableness of the fees charged.

I believe this bill will protect small business interests which represent a key sector of our society.

This bill, Madam Speaker, recognizes the importance of the business community, the small business community in particular. That is, the entrepreneurs who operate restaurants across our land but at the same time recognizes the importance and the obvious significance of our maintaining a sound copyright system.

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I urge Members to vote “yes” on S. 505.

Ms. JACKSON-LEE of Texas. Madam Speaker, I yield 3 minutes to the distinguished gentleman from New York (Mr. Nadler), a member of the Committee on the Judiciary.

Mr. NADLER. Madam Speaker, I thank the distinguished gentlewoman for yielding me this time. I want to commend the gentlewoman for her support of the bill regulating music licensing fees. This is a very interesting occasion. Here we have under the leadership of the party that believes preeminently in the free enterprise system that government should not intervene against the free operation of the private sector but yet we have a bill that would interfere between an arm’s length relationship between two different business interests.

Now, I do not agree with most of my friends on the other side of the aisle in as great a degree of the sanctity of the free market system as they might. I probably support more government regulation than they would. I probably think the government should intervene in the free market more often. But I do think that before you have the government intervene in the free market, you have to have a showing of necessity.

What showing of necessity have we here? Restaurants that pay an average of $400 a year in music licensing fees, a rather small, I would say minute percentage of the revenues of an average restaurant, do not want to pay the $400 a year to the songwriters. Well, that is interesting. Let them try to negotiate a different deal. Or let them not use the music. But what necessity, what public interest is served by the government coming in and making a decision and saying, “Thou shalt not pay the $400; you shall get it free”?

Is there a great housing shortage that necessitates rent control? Is there a great shortage of restaurant musicians or of restaurant radios that necessitates that, my God, if we do not pass this bill, people are not going to be able to eat because they will be so nervous without the radio music as to just not go into the restaurant in the free market here, to come in and say, “We’re not going to let you make this deal, we’re going to upset the licensing arrangements”?

I do not see the point. Why is government intervening in the free market here? Point One.

Point Two: Assuming we want the government to intervene in the free market, assuming that we should arrogate to ourselves the power of determining what the deal should be, the deal should be very different. We are saying that the restaurant that pays a maximum of $400 in licensing fees, a minute part of its expenses to the restaurant to which it makes virtually no difference, that is the one interest. The other interest is the song writer to whom this revenue may be a very large part of his or her income and say, “You can’t get that income because the restaurants
for whom this is a minute expense, we don’t want them to have this expense.”

So if government should make this decision, I would make it the other way around and leave the situation as it is, but why should government make this decision? Government should not intervene in the free market when there is a real public policy purpose only, when there is a necessity, when the free market is not working right, when there is not an arm’s length relationship, when consumers have to be protected, when they have to be trusted, when it is promoted, when the free market is leading to exploitation of wages, when some real public policy purpose necessities the intervention.

What is the public policy purpose? I have been asking that question for 2 years. I have never heard any answer suggested. So I would hope that this part of this bill, which I otherwise support, would not be adopted.

Mr. SENSENBERNRENNER. Madam Speaker, you have 8 minutes to the gentleman from Florida (Mr. McCOLLUM).

Mr. McCOLLUM. Madam Speaker, I thank the gentleman from Wisconsin for yielding this time to me.

Madam Speaker, I am pleased to support S. 505 which will extend copyright protection and resolve a long standing issue concerning music licensing. I am also pleased to be joined by my colleague, the gentleman from Wisconsin (Mr. SENSENBERNRENNER) who has devoted extensive time and energy to reaching the solution on this issue. It is clear to me that today we would not be here if it were not for Mr. SENSENBERNRENNER’s committed effort, and I believe that that deserves recognition, and I want to thank him personally for the time he has put in on it. I also wanted to express my gratitude to the gentleman from Illinois (Mr. HYDE) and to the gentleman from North Carolina (Mr. COBLE) and to Senator HATCH for their dedicated commitment to copyright protection.

Extending the term of copyright protection by 20 years will ensure that the American public continues to enjoy the contributions made by our creative community. In addition, it would eliminate harmful discrimination against American works abroad. Copyright protection benefits the public. It promotes the creation of educational materials, widens the dissemination of information and provides countless hours of entertainment. Copyright products such as movies, software, music and books contributed more than $275 billion to the U.S. economy in 1996 and employed more than 6½ million workers.

It is clear that we must be as vigilant in protecting intellectual property as we are protecting physical property. Unfortunately, without the enactment of this legislation, U.S. copyright owners would continue to be at a disadvantage in overseas markets. The European Union, which is the largest market for U.S. copyrighted products protects its own products for 20 years longer than it protects American works. This is due to the fact that foreign countries only protect U.S. works for as long as the U.S. itself protects its own works. Enactment of S. 505 would eliminate this economic disadvantage and would contribute to America’s balance of trade.

With S. 505 we will no longer be abandoning 20 years worth of copyright protection for our creative community. In addition, we will be promoting the creation of new copyrighted works for the American public. By strengthening our international trading position abroad. Also, S. 505 resolves the longstanding dispute between song writers, music publishers and the performing rights societies on the one side, one side, and the restaurants and the other, and commercial users of music on still the other. The compromise provides certain exemptions from copyright infringement for the limited commercial use of radios and televisions. It also provides for additional forums for individuals to be heard in court concerning music licensing rates and fees.

This fair and balanced compromise is the result of years of work, and I am pleased to be joined by the gentleman from Wisconsin (Mr. SENSENBERNRENNER) upon me in urging my colleagues to support the passage of this resolution and the resolution of this matter by the adoption of S. 505 which I certainly encourage tonight.

Mrs. JACKSON-LEE of Texas. Madam Speaker, I yield myself such time as I may consume.

Let me conclude by adding again my emphasis on the importance of the compromise and resolution of this bill that brings the restaurants and copyright entities together. It is important that we do recognize that this was a very vital part of the economic structure of these businesses, and it is our responsibility to ensure their viability as well as to make recognition of those in the copyright industry.

With that I would ask my colleagues to support this legislation.

Madam Speaker, I yield back the balance of my time.

Mr. SENSENBERNRENNER. Madam Speaker, I yield 2 minutes to the gentleman from Florida (Mr. FOLEY).

Mr. FOLEY asked and was given permission to revise and extend his remarks.

Mr. FOLEY. Madam Speaker, I want to take a moment to thank the gentleman from Wisconsin (Mr. SENSENBERNRENNER), the gentleman from Florida (Mr. McCOLLUM), the gentleman from North Carolina (Mr. COBLE) and, of course, the House leadership for bringing this important measure to the floor tonight and spend a moment of special tribute to our good friend Sonny Bono who was basically the one that brought this bill to the attention of the floor. Sonny, as many of my colleagues know, was a song writer and cared deeply about the rights of performers like himself who had created music and wanted that protection under law as other nations have recognized. The gentleman from Florida (Mr. McCOLLUM) eloquently laid out that European nations protect their copyrighted materials, and we should do no less for our artists.

So, again I want to take a moment because I know it has been difficult, and I know it has been stressful to reach a compromise. But thanks to the leadership of the gentleman from Wisconsin (Mr. SENSENBERNRENNER) bringing all parties together, we were able to really produce what this House is all about. Comity. And I would also like to thank the minority and certainly those that have worked so hard at this, the gentlewoman from Texas (Ms. JACKSON-LEE), the gentleman from Massachusetts (Mr. FRANK) in the Committee on the Judiciary for their hard work in this effort because they too recognize the importance of the artistic community.

So really this is a spirit of bipartisanship, this is a good bill, and I urge all Members to support it as it reaches the floor tonight.

Mrs. BONO. Mr. Speaker, I rise to extend my deep appreciation to my colleagues, including the gentleman from Florida, for honoring Sonny and pirated.

Copyright term extension is a very fitting memorial for Sonny. This is not only because of his experience as a pioneer in the music and television industries. The most important reason for me was that he was a legislator who understood the delicate balance of the constitutional interests at stake. Last year he sponsored the term extension bill, H.R. 1621, in conjunction with Sen. HATCH. He was active on intellectual property issues because he knew, as all Members to support it as it reaches the floor tonight.

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also, software. It is said that "it all starts with a song," and these works have defined our culture to audiences worldwide.

Actually, Sonny wanted the term of copyright protection to last forever. I am informed by staff that such a change would violate the Constitution. I invite you to work with us to strengthen our copyright laws in all of the ways available to us. As you know, there is also Jack Valenti's proposal for term to last forever less one day. Perhaps the Committee may look at that next Congress.

In addition, this bill also presents a significant change to the music licensing laws of the United States. Everyone must remember that I was a small business woman before I came to Washington. I am sympathetic to the concerns raised by many industries. Unfortunately the generous exemption included in this bill tests my patience because it comes at the expense of songwriters. The current system has worked for decades, and in my view serves the public well.

Yet, we must bring this bill forward today. Our inaction risks a response from the international community. While one of the goals of term extending our system of protection to a strong international standard, I am troubled to learn that with the music licensing section, we risk violating our international treaty obligations. These treaties protect American property overseas, for example under the Berne Convention and the TRIPS Agreement. I ask that the RECORD include the following letters from the U.S. Trade Representative, the Patent and Trademark Office, the Department of Commerce, and the Register of Copyrights concerning the possible serious international consequences of this portion of the bill.

I am hopeful that we in the House Judiciary Committee will have the chance to revisit this issue, and pursuant to our oversight powers, review its effect on American songwriters and our multi-lateral trade obligations. Further, this Committee could be made aware of the depth of his concerns. I am pleased to share the Administration's views on this issue with you.

CONGRESSIONAL RECORD – HOUSE
October 7, 1998

H9522

Hon. Mary Bono, this tribute to Sonny.

DEAR MR. SPEAKER: The House may consider H.R. 2589, the Copyright Term Extension Act, next week. The Administration strongly opposes the provisions passed by the House Judiciary Committee, and urges favorable consideration. I have been informed that a Department of Justice representative will be used against us internationally, when we expand the exemptions in our law as contemplated in H.R. 789, other countries may use that as an excuse to adopt this and other exemptions in their copyright laws, thereby leading to economic losses to U.S. music copyright owners in hundreds of millions of dollars.

Accordingly, the Administration strongly urges the House to reject any attempt to attach the provisions of H.R. 789 to H.R. 2589. Thank you for your consideration.

Sincerely,

William M. Daley.

PATENT AND TRADEMARK OFFICE

Hon. Howard Coble, Chairman, Subcommittee on Courts and Intellectual Property, Committee on the Judiciary, House of Representatives, Washington, DC.

Chairman Coble: I received the attached letter from the late Representative Sonny Bono raising issues concerned with certain provisions in H.R. 789, the 'Fairness in Musical Licensing Act.'

Chairman, Subcommittee on Courts and Intellectual Property, Committee on the Judiciary, House of Representatives, Washington, DC.

Dear Mr. Speaker: This House may consider H.R. 2589, the "Copyright Term Extension Act," next week. The Administration strongly opposes the provisions passed by the House Judiciary Committee, and urges favorable consideration. I have been informed that a Department of Justice representative will be used against us internationally, when we expand the exemptions in our law as contemplated in H.R. 789, other countries may use that as an excuse to adopt this and other exemptions in their copyright laws, thereby leading to economic losses to U.S. music copyright owners in hundreds of millions of dollars.

Accordingly, the Administration strongly urges the House to reject any attempt to attach the provisions of H.R. 789 to H.R. 2589. Thank you for your consideration.

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Accordingly, the Administration strongly urges the House to reject any attempt to attach the provisions of H.R. 789 to H.R. 2589. Thank you for your consideration.

Sincerely,
Communities to investigate the consistency of the "home style exception" with the Berne Convention. We believe that this request is groundless. We believe that the courts' ability to apply the "home style exception" on a case-by-case basis is appropriate and that legislating a specific size exception would be problematic. If there are to be future changes on the public performance right, such limitations should be the subject of private agreements and not set in legislation.

We express our concern that, if it is determined that there must be specific guidance in the copyright law, an exception tailored to the kind of equipment used might be more appropriate. In this case, we are concerned that it could lead to substantial erosion of the public performance right, and could lead to the erosion of other rights. As we continue to urge other countries to improve their intellectual property protection, we should not be weakening our own laws by the imposition of additional limitations on the rights of copyright creators. As we noted in our earlier testimony, we believe that private negotiations to exempt certain performances or size of establishments are the appropriate solution, consistent with our treaty obligations.

Sincerely,

BRUCE A. LEHMANN, 
Assistant Secretary of Commerce and 
Commissioner of Patents and Trademarks.

THE REGISTER OF COPYRIGHTS, 

Hon. WILLIAM J. HUGHES, 
Chairman, House Subcommittee on Intellectual 
Property, House Committee on Judical Administration, 
Washington, DC.

DEAR CHAIRMAN HUGHES: I would like to comment on H.R. 4936, the "Fairness in Music Licensing Act of 1994," which was introduced on August 10, 1994. I have a number of concerns that I would like to share with you.

AMENDMENT TO SECTION 110(5)

My first concern is with the proposed amendments to 17 U.S.C. §110(5); that section represents a narrowly crafted exemption to the copyright owner's exclusive right of public performance under section 106(4). I believe that H.R. 4936 would make major changes and would violate our treaty obligations.

At the time section 110(5) was enacted into law, there was not a member of the Berne Convention. The United States became a signatory to the Berne Convention on March 1, 1989. In joining the Berne Convention the United States reviewed its copyright law to make sure that it was consistent with the requirements of Berne. For the most part deficiencies in our law were corrected in the Berne Convention Implementation Act of 1988; P.L. 100-568, 102 Stat. 2853 (1988). One of the sections reviewed was section 110(5). An Ad Hoc Working Group on U.S. Adherence to the Berne Convention noted that section 110(5) was an extremely narrow exemption to the public performance right and that the case law interpreting that section had not broadened the exemption beyond Congress' intent. The Working Group noted that the exemption did not extend to the use of loudspeakers or any sort of speaker arrangement which was the characteristic of a commercial sound system and therefore found section 110(5) compatible with the provisions of the Convention.

Let me quickly review part of the legislative history of section 110(5). The 1965 Supplemental Report of the Register on the General Revision of the Copyright Law stated:

"The intention behind this exception is to make clear that it is not an infringement of copyright merely to turn on, in a public place, an ordinary radio or television receiving apparatus of a type commonly sold to members of the public for private use. This exemption is part of the incidental entertaining by small public audiences. The incidental performance right is a right to perform in small establishments, such as shopping centers, public streets, schools, churches, etc., without the author's authorization. " 17 U.S.C. §110(5).

During the revision process the Supreme Court decided Twentieth Century Music Corp. v. Aiken, 422 U.S. 151 (1975) and, although a case involving addressing the issue of what constituted a performance under the 1909 law, raised questions about the proper interpretation of section 110(5). The Supreme Court held that section 110(5) had not broadened the exemption beyond the outer limit of the exemption; (Aiken operated a small fast-food restaurant which had a radio with four ordinary speakers in the ceiling.) I believe that the line should be drawn here. It goes on to say "the clause would exempt small commercial establishments whose proprietors merely bring in music equipment and have it played over a radio or television equipment and turn it on for their customers' enjoyment." H.R. Rep. No. 1476, 94th Cong., 2d Sess. 87 (1976). The House Report also suggests some of the factors to consider in particular cases—the size, physical arrangement, and noise level of areas within the establishment where the transmissions are made audible or visible. The Conference Committee Report states that the establishment involved is "of the size, physical arrangement, and noise level that the public is not aware of the broadcast under the usual manner of a private reception, but the incidental entertainment of small public groups to pay license fees for performing seashore music." H.R. Conf. Rept. No. 1733, 94th Cong., 2d Sess. 75 (1976).

It is true that there has been litigation on the scope of section 110(5) exemption; some courts have relied on the legislative history while others have refused to go beyond the plain language of the statute.

At the time that the United States joined the Berne Convention courts had consistently held that the §110(5) exemption was not available financially capable of paying reasonable licensing fees for the use of music. However, since that time two decisions have significantly expanded the scope of the section. The first decision is Twentieth Century Music Corp. v. Claire's Boutiques, 949 F.2d 1482 (7th Cir. 1991) and Edison Brothers Stores, Inc. v. Broadcast Music, Inc., 954 F.2d 1419 (8th Cir. 1992). It has been argued by some courts that the inclusion of performance in these cases violate the spirit, if not the letter, of the Berne Convention.

My concern is that the proposed amendment to section 110(5) would do further violence to our Berne Convention obligations.

Berne allows only narrow exemptions to the right of public performance of nondramatic literary and musical works, and the Berne Convention (Paris Act 1971) (1978) states:

"First, the third case dealt with in this paragraph is that in which the work which is broadcast is a musical composition distributed, e.g., by loudspeaker, or otherwise, to the public. The case is becoming more common. In places where people gather (cafes, restaurants, tea-rooms, shops, etc.) the practice is growing of providing broadcast programs . . . The question is whether the license given by the Berne Convention courts had consisted of broadened the exemption beyond the outer limit of the exemption; (Aiken operated a small fast-food restaurant which had a radio with four ordinary speakers in the ceiling.) I believe that the line should be drawn here. It goes on to say "the clause would exempt small commercial establishments whose proprietors merely bring in music equipment and have it played over a radio or television equipment and turn it on for their customers' enjoyment." H.R. Rep. No. 1476, 94th Cong., 2d Sess. 87 (1976). The House Report also suggests some of the factors to consider in particular cases—the size, physical arrangement, and noise level of areas within the establishment where the transmissions are made audible or visible. The Conference Committee Report states that the establishment involved is "of the size, physical arrangement, and noise level that the public is not aware of the broadcast under the usual manner of a private reception, but the incidental entertainment of small public groups to pay license fees for performing sea-. . .'' 17 U.S.C. §110(4). If there is a charge, the exemption is still available if the net
proceeds are used exclusively for educational, charitable or religious purposes. Although a copyright owner may prohibit such a performance by serving the performing party with a signed writen notice, this is rarely done. Thus, it would seem that virtually all performances by such choral groups are already covered either by existing consent exemptions or by you to reconsider the necessity for a further exemption.

**Arbitration of Rate Disputes**

The proposed legislation allows a defendant in copyright infringement suits involving a licensed nondramatic musical work to admit liability but contest the amount being charged. Either the defendant or the plaintiff in the suit would be able to request arbitration of the licensing fee under 28 U.S.C. 652(e).

This section would reconfigure the dispute resolution process between the performing rights societies and their licensees. Currently, ASCAP rates may be altered by the federal District Court of the Southern District of New York, although this is far from a daily practice. Neither BMI nor SESAC has such a mechanism; disputes about their rates must be resolved by negotiation. However, BMI has asked the United States Department of Justice for permission to amend its rates to provide for the establishment of a rate court similar to that now in place for ASCAP. The Justice Department has agreed, and opened a public comment period on this matter. BMI would like to designate the Southern District of New York as its rate court. When the comment period closes, that court may agree to BMI's requested changes, or may reject them and suggest an alternative. We feel a trend may be developing that would provide more efficient administration of rate disputes and that amendment at this time is premature.

Furthermore, H.R. 4936 would allow any party who disagrees with the licensing organizations to demand arbitration proceedings. This proposal may be a more cost effective system for an individual defendant who admits liability, but it could create a tremendous burden on the licensing organizations to address each complaint individually. Even arbitration proceedings are time-consuming and expensive, and at the end of the day, may not result in an arrangement that is fairer to copyright owners or users than a negotiated licensing agreement would have been. Such a result would make it difficult for rural performers to get prices for use consistently, as they are required to do now.

I am also troubled by the proposed conforming amendment to Title 28 of the United States Code concerning civil actions for copyright infringement. The proposed amendment says that upon a request by either party for arbitration, as set out in section 4 of H.R. 4936, a district court may refer the dispute with respect to that defendant to arbitration. It states that "[e]ach district court shall establish procedures by local rule authorizing the use of arbitration under this subsection.

Should each district court be charged with creating a set of rules and procedures regarding arbitration for public performance of nondramatic musical works? Since courts have extremely busy schedules, it does not appear to be judicially efficient to impose new duties on all district courts. Moreover, permitting each court to set its own rules would only result in an uneven, patchwork effect that is undesirable as well as unpredictable. In addition, the Southern District Court of New York and the legal representatives of the parties have developed a certain expertise in music licensing matters that other courts would take time to gain.

**Conferences Report on H.R. 3150, Bankruptcy Reform Act of 1998**

Mr. Gekas submitted the following conference report and statement on the bill (H.R. 3150) to amend title 11 of the United States Code, and for other purposes:

**Conference Report (H. Rep. 105-794)**

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3150), to amend title 11 of the United States Code, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

**SECTION I. SHORT TITLE; TABLE OF CONTENTS**

(a) Short Title—This Act may be cited as the "Bankruptcy Act of 1998."

(b) TABLE OF CONTENTS—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.