

97-NM-29-AD; Amendment 39-10061; AD 97-14-04] (RIN: 2120-AA64) received March 24, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8213. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB-120 Series Airplanes [Docket No. 97-NM-46-AD; Amendment 39-10249; AD 97-26-06] (RIN: 2120-AA64) received March 24, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8214. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Establishment of Class E Airspace; Cleveland, OK [Airspace Docket No. 97-ASW-29] received March 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8215. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Bartlesville, OK [Airspace Docket No. 97-ASW-28] received March 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8216. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Muskogee, OK [Airspace Docket No. 98-ASW-12] received March 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8217. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Stillwater, OK [Airspace Docket No. 98-ASW-15] received March 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8218. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Pryor, OK [Airspace Docket No. 98-ASW-14] received March 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8219. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Poteau, OK [Airspace Docket No. 98-ASW-13] received March 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8220. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Tahlequah, OK [Airspace Docket No. 98-ASW-16] received March 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8221. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Grove, OK [Airspace Docket No. 98-ASW-07] received March 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8222. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Shawnee, OK [Airspace Docket No. 98-ASW-06] received March 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8223. A letter from the General Counsel, Department of Transportation, transmitting

the Department's final rule—Revision of Class E Airspace; Claremore, OK [Airspace Docket No. 98-ASW-05] received March 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8224. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Bristow, OK [Airspace Docket No. 98-ASW-04] received March 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8225. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Gallup, NM [Airspace Docket No. 97-ASW-25] received March 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8226. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Revision of Class E Airspace; Eastland, TX [Airspace Docket No. 97-ASW-26] received March 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8227. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; GE Aircraft Engines CT7 Series Turboprop Engines [Docket No. 97-ANE-41-AD; Amendment 39-10231; AD 97-25-07] (RIN: 2120-AA64) received March 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8228. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Certain Textron Lycoming 320 and 360 Series Reciprocating Engines [Docket No. 94-ANE-44; Amendment 39-10291; AD 98-02-08] (RIN: 2120-AA64) received March 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8229. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Eurocopter France Model SA-365N, SA-365N1, and SA-366G1 Helicopters [Docket No. 97-SW-23-AD; Amendment 39-10313; AD 97-15-15] (RIN: 2120-AA64) received March 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8230. A letter from the General Counsel, Department of Transportation, transmitting the Department's final rule—Airworthiness Directives; Fokker F28 Mark 1000, 2000, 3000, and 4000 Series Airplanes [Docket No. 96-NM-174-AD; Amendment 39-10266; AD 98-01-02] (RIN: 2120-AA64) received March 19, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8231. A letter from the Associate Administrator for Procurement, National Aeronautics and Space Administration, transmitting the Administration's final rule—Amending the NASA FAR Supplement (NFS) coverage on award fee evaluations to correct inaccurate references and improve clarity [48 CFR Parts 1816 and 1852] received March 20, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Science.

8232. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property [Revenue Ruling 98-18] received March 20, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

8233. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting

the Department's final rule—Last-In, First-out Inventories [Revenue Ruling 98-16] received March 20, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

8234. A letter from the National Director, Tax Forms and Publications Division, Internal Revenue Service, transmitting the Service's final rule—Tax forms and instructions [Revenue Procedure 98-26] received March 24, 1998, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

¶25.4 PROVIDING FOR THE CONSIDERATION OF H.R. 2589

Mr. DIAZ-BALART, by direction of the Committee on Rules, called up the following resolution (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 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.

When said resolution was considered. After debate,

On motion of Mr. DIAZ-BALART, the previous question was ordered on the resolution to its adoption or rejection and under the operation thereof, the resolution was agreed to.

A motion to reconsider the vote whereby said resolution was agreed to was, by unanimous consent, laid on the table.

25.5 COPYRIGHT TERM EXTENSION

The SPEAKER pro tempore, Mr. SHIMKUS, pursuant to House Resolution 390 and rule XXIII, declared the House resolved 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.

The SPEAKER pro tempore, Mr. SHIMKUS, by unanimous consent, designated Mr. EVERETT as Chairman of the Committee of the Whole.

The Acting Chairman, Mr. DIAZ-BALART assumed the Chair; and after some time spent therein,

25.6 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment submitted by Mr. MCCOLLUM to the amendment by Mr. SENSENBRENNER:

Amendment submitted by Mr. MCCOLLUM:

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, tele-