

105TH CONGRESS  
2D SESSION

# H. R. 4712

To amend title 17, United States Code, to extend the term of copyright, to provide for a music licensing exemption, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1998

Mr. SENSENBRENNER (for himself and Mr. MCCOLLUM) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 17, United States Code, to extend the term of copyright, to provide for a music licensing exemption, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—COPYRIGHT TERM**  
4 **EXTENSION**

5 **SEC. 101. SHORT TITLE.**

6 This title may be referred to as the “Sonny Bono  
7 Copyright Term Extension Act”.

8 **SEC. 102. DURATION OF COPYRIGHT PROVISIONS.**

9 (a) PREEMPTION WITH RESPECT TO OTHER  
10 LAWS.—Section 301(c) of title 17, United States Code,

1 is amended by striking “February 15, 2047” each place  
2 it appears and inserting “February 15, 2067”.

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

6 (1) in subsection (a) by striking “fifty” and in-  
7 serting “70”;

8 (2) in subsection (b) by striking “fifty” and in-  
9 serting “70”;

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

11 (A) by striking “seventy-five” and insert-  
12 ing “95”; and

13 (B) by striking “one hundred” and insert-  
14 ing “120”; and

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

16 (A) by striking “seventy-five” and insert-  
17 ing “95”;

18 (B) by striking “one hundred” and insert-  
19 ing “120”; and

20 (C) by striking “fifty” each place it ap-  
21 pears and inserting “70”.

22 (c) DURATION OF COPYRIGHT: WORKS CREATED  
23 BUT NOT PUBLISHED OR COPYRIGHTED BEFORE JANU-  
24 ARY 1, 1978.—Section 303 of title 17, United States

1 Code, is amended in the second sentence by striking “De-  
2 cember 31, 2027” and inserting “December 31, 2047”.

3 (d) DURATION OF COPYRIGHT: SUBSISTING COPY-  
4 RIGHTS.—

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

7 (A) in subsection (a)—

8 (i) in paragraph (1)—

9 (I) in subparagraph (B) by strik-  
10 ing “47” and inserting “67”; and

11 (II) in subparagraph (C) by  
12 striking “47” and inserting “67”;

13 (ii) in paragraph (2)—

14 (I) in subparagraph (A) by strik-  
15 ing “47” and inserting “67”; and

16 (II) in subparagraph (B) by  
17 striking “47” and inserting “67”; and

18 (iii) in paragraph (3)—

19 (I) in subparagraph (A)(i) by  
20 striking “47” and inserting “67”; and

21 (II) in subparagraph (B) by  
22 striking “47” and inserting “67”;

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

1           “(b) COPYRIGHTS IN THEIR RENEWAL TERM AT THE  
2 TIME OF THE EFFECTIVE DATE OF THE SONNY BONO  
3 COPYRIGHT TERM EXTENSION ACT.—Any copyright still  
4 in its renewal term at the time that the Sonny Bono Copy-  
5 right Term Extension Act becomes effective shall have a  
6 copyright term of 95 years from the date copyright was  
7 originally secured.”;

8                   (C) in subsection (c)(4)(A) in the first sen-  
9                   tence by inserting “or, in the case of a termi-  
10                   nation under subsection (d), within the five-year  
11                   period specified by subsection (d)(2),” after  
12                   “specified by clause (3) of this subsection,”;  
13                   and

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

16           “(d) TERMINATION RIGHTS PROVIDED IN SUB-  
17 SECTION (c) WHICH HAVE EXPIRED ON OR BEFORE THE  
18 EFFECTIVE DATE OF THE SONNY BONO COPYRIGHT  
19 TERM EXTENSION ACT.—In the case of any copyright  
20 other than a work made for hire, subsisting in its renewal  
21 term on the effective date of the Sonny Bono Copyright  
22 Term Extension Act for which the termination right pro-  
23 vided in subsection (c) has expired by such date, where  
24 the author or owner of the termination right has not pre-  
25 viously exercised such termination right, the exclusive or

1 nonexclusive grant of a transfer or license of the renewal  
2 copyright or any right under it, executed before January  
3 1, 1978, by any of the persons designated in subsection  
4 (a)(1)(C) of this section, other than by will, is subject to  
5 termination under the following conditions:

6           “(1) The conditions specified in subsection  
7 (c)(1), (2), (4), (5), and (6) of this section apply to  
8 terminations of the last 20 years of copyright term  
9 as provided by the amendments made by the Sonny  
10 Bono Copyright Term Extension Act.

11           “(2) Termination of the grant may be effected  
12 at any time during a period of 5 years beginning at  
13 the end of 75 years from the date copyright was  
14 originally secured.”.

15           (2) COPYRIGHT AMENDMENTS ACT OF 1992.—  
16 Section 102 of the Copyright Amendments Act of  
17 1992 (Public Law 102–307; 106 Stat. 266; 17  
18 U.S.C. 304 note) is amended—

19           (A) in subsection (c)—

20                   (i) by striking “47” and inserting  
21 “67”;

22                   (ii) by striking “(as amended by sub-  
23 section (a) of this section)”;

24                   (iii) by striking “effective date of this  
25 section” each place it appears and insert-

1                   ing “effective date of the Sonny Bono  
2                   Copyright Term Extension Act”; and

3                   (B) in subsection (g)(2) in the second sen-  
4                   tence by inserting before the period the follow-  
5                   ing: “, except each reference to forty-seven  
6                   years in such provisions shall be deemed to be  
7                   67 years”.

8 **SEC. 103. TERMINATION OF TRANSFERS AND LICENSES**  
9                   **COVERING EXTENDED RENEWAL TERM.**

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

12                  (1) by striking “by his widow or her widower  
13                  and his or her children or grandchildren”; and

14                  (2) by inserting after subparagraph (C) the fol-  
15                  lowing:

16                                  “(D) In the event that the author’s widow  
17                                  or widower, children, and grandchildren are not  
18                                  living, the author’s executor, administrator, per-  
19                                  sonal representative, or trustee shall own the  
20                                  author’s entire termination interest.”.

21 **SEC. 104. REPRODUCTION BY LIBRARIES AND ARCHIVES.**

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

24                  (1) by redesignating subsection (h) as sub-  
25                  section (i); and

1           (2) by inserting after subsection (g) the follow-  
2           ing:

3           “(h)(1) For purposes of this section, during the last  
4 20 years of any term of copyright of a published work,  
5 a library or archives, including a nonprofit educational in-  
6 stitution that functions as such, may reproduce, distrib-  
7 ute, display, or perform in facsimile or digital form a copy  
8 or phonorecord of such work, or portions thereof, for pur-  
9 poses of preservation, scholarship, or research, if such li-  
10 brary or archives has first determined, on the basis of a  
11 reasonable investigation, that none of the conditions set  
12 forth in subparagraphs (A), (B), and (C) of paragraph  
13 (2) apply.

14           “(2) No reproduction, distribution, display, or per-  
15 formance is authorized under this subsection if—

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

18           “(B) a copy or phonorecord of the work can be  
19 obtained at a reasonable price; or

20           “(C) the copyright owner or its agent provides  
21 notice pursuant to regulations promulgated by the  
22 Register of Copyrights that either of the conditions  
23 set forth in subparagraphs (A) and (B) applies.

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

4 **SEC. 105. VOLUNTARY NEGOTIATION REGARDING DIVISION**  
5 **OF ROYALTIES.**

6 It is the sense of the Congress that copyright owners  
7 of audiovisual works for which the term of copyright pro-  
8 tection is extended by the amendments made by this title,  
9 and the screenwriters, directors, and performers of those  
10 audiovisual works, should negotiate in good faith in an ef-  
11 fort to reach a voluntary agreement or voluntary agree-  
12 ments with respect to the establishment of a fund or other  
13 mechanism for the amount of remuneration to be divided  
14 among the parties for the exploitation of those audiovisual  
15 works.

16 **SEC. 106. EFFECTIVE DATE.**

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

19 **TITLE II—MUSIC LICENSING**  
20 **EXEMPTION**

21 **SEC. 201. SHORT TITLE.**

22 This title may be cited as the “Fairness In Music  
23 Licensing Act of 1998”.



1 **SEC. 202. EXEMPTIONS.**

2 (a) EXEMPTIONS FOR CERTAIN ESTABLISHMENTS.—

3 Section 110 of title 17, United States Code is amended—

4 (1) in paragraph (5)—

5 (A) by striking “(5)” and inserting

6 “(5)(A) except as provided in subparagraph

7 (B),”; and

8 (B) by adding at the end the following:

9 “(B) communication by an establishment  
10 of a transmission or retransmission embodying  
11 a performance or display of a nondramatic mu-  
12 sical work intended to be received by the gen-  
13 eral public, originated by a radio or television  
14 broadcast station licensed as such by the Fed-  
15 eral Communications Commission, or, if an  
16 audiovisual transmission, by a cable system or  
17 satellite carrier, if—

18 “(i) in the case of an establishment  
19 other than a food service or drinking es-  
20 tablishment, either the establishment in  
21 which the communication occurs has less  
22 than 2000 gross square feet of space (ex-  
23 cluding space used for customer parking  
24 and for no other purpose), or the establish-  
25 ment in which the communication occurs  
26 has 2000 or more gross square feet of

1 space (excluding space used for customer  
2 parking and for no other purpose) and—

3 “(I) if the performance is by  
4 audio means only, the performance is  
5 communicated by means of a total of  
6 not more than 6 loudspeakers, of  
7 which not more than 4 loudspeakers  
8 are located in any 1 room or adjoining  
9 outdoor space; or

10 “(II) if the performance or dis-  
11 play is by audiovisual means, any vis-  
12 ual portion of the performance or dis-  
13 play is communicated by means of a  
14 total of not more than 4 audiovisual  
15 devices, of which not more than one  
16 audiovisual device is located in any 1  
17 room, and no such audiovisual device  
18 has a diagonal screen size greater  
19 than 55 inches, and any audio portion  
20 of the performance or display is com-  
21 municated by means of a total of not  
22 more than 6 loudspeakers, of which  
23 not more than 4 loudspeakers are lo-  
24 cated in any 1 room or adjoining out-  
25 door space;

1           “(ii) in the case of a food service or  
2           drinking establishment, either the estab-  
3           lishment in which the communication oc-  
4           curs has less than 3750 gross square feet  
5           of space (excluding space used for cus-  
6           tomer parking and for no other purpose),  
7           or the establishment in which the commu-  
8           nication occurs has 3750 gross square feet  
9           of space or more (excluding space used for  
10          customer parking and for no other pur-  
11          pose) and—

12                   “(I) if the performance is by  
13                   audio means only, the performance is  
14                   communicated by means of a total of  
15                   not more than 6 loudspeakers, of  
16                   which not more than 4 loudspeakers  
17                   are located in any 1 room or adjoining  
18                   outdoor space; or

19                   “(II) if the performance or dis-  
20                   play is by audiovisual means, any vis-  
21                   ual portion of the performance or dis-  
22                   play is communicated by means of a  
23                   total of not more than 4 audiovisual  
24                   devices, of which not more than one  
25                   audiovisual device is located in any 1

1 room, and no such audiovisual device  
2 has a diagonal screen size greater  
3 than 55 inches, and any audio portion  
4 of the performance or display is com-  
5 municated by means of a total of not  
6 more than 6 loudspeakers, of which  
7 not more than 4 loudspeakers are lo-  
8 cated in any 1 room or adjoining out-  
9 door space;

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

12 “(iv) the transmission or retrans-  
13 mission is not further transmitted beyond  
14 the establishment where it is received; and

15 “(v) the transmission or retrans-  
16 mission is licensed by the copyright owner  
17 of the work so publicly performed or dis-  
18 played;” and

19 (2) by adding after paragraph (10) the follow-  
20 ing:

21 “The exemptions provided under paragraph (5) shall not  
22 be taken into account in any administrative, judicial, or  
23 other governmental proceeding to set or adjust the royal-  
24 ties payable to copyright owners for the public perform-  
25 ance or display of their works. Royalties payable to copy-

1 right owners for any public performance or display of their  
2 works other than such performances or displays as are ex-  
3 empted under paragraph (5) shall not be diminished in  
4 any respect as a result of such exemption”.

5 (b) EXEMPTION RELATING TO PROMOTION.—Section  
6 110(7) of title 17, United States Code, is amended by in-  
7 serting “or of the audiovisual or other devices utilized in  
8 such performance,” after “phonorecords of the work,”.

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

10 (a) IN GENERAL.—Chapter 5 of title 17, United  
11 States Code, is amended by adding at the end the follow-  
12 ing:

13 **“§ 512. Determination of reasonable license fees for**  
14 **individual proprietors**

15 “In the case of any performing rights society subject  
16 to a consent decree which provides for the determination  
17 of reasonable license rates or fees to be charged by the  
18 performing rights society, notwithstanding the provisions  
19 of that consent decree, an individual proprietor who owns  
20 or operates fewer than 7 non-publicly traded establish-  
21 ments in which nondramatic musical works are performed  
22 publicly and who claims that any license agreement offered  
23 by that performing rights society is unreasonable in its  
24 license rate or fee as to that individual proprietor, shall

1 be entitled to determination of a reasonable license rate  
2 or fee as follows:

3           “(1) The individual proprietor may commence  
4 such proceeding for determination of a reasonable li-  
5 cense rate or fee by filing an application in the ap-  
6 plicable district court under paragraph (2) that a  
7 rate disagreement exists and by serving a copy of  
8 the application on the performing rights society.  
9 Such proceeding shall commence in the applicable  
10 district court within 90 days after the service of  
11 such copy, except that such 90-day requirement shall  
12 be subject to the administrative requirements of the  
13 court.

14           “(2) The proceeding under paragraph (1) shall  
15 be held, at the individual proprietor’s election, in the  
16 judicial district of the district court with jurisdiction  
17 over the applicable consent decree or in that place  
18 of holding court of a district court that is the seat  
19 of the Federal circuit (other than the Court of Ap-  
20 peals for the Federal Circuit) in which the propri-  
21 etor’s establishment is located.

22           “(3) Such proceeding shall be held before the  
23 judge of the court with jurisdiction over the consent  
24 decree governing the performing rights society. At  
25 the discretion of the court, the proceeding shall be

1 held before a special master or magistrate judge ap-  
2 pointed by such judge. Should that consent decree  
3 provide for the appointment of an advisor or advi-  
4 sors to the court for any purpose, any such advisor  
5 shall be the special master so named by the court.

6 “(4) In any such proceeding, the industry rate  
7 shall be presumed to have been reasonable at the  
8 time it was agreed to or determined by the court.  
9 Such presumption shall in no way affect a deter-  
10 mination of whether the rate is being correctly ap-  
11 plied to the individual proprietor.

12 “(5) Pending the completion of such proceed-  
13 ing, the individual proprietor shall have the right to  
14 perform publicly the copyrighted musical composi-  
15 tions in the repertoire of the performing rights soci-  
16 ety by paying an interim license rate or fee into an  
17 interest bearing escrow account with the clerk of the  
18 court, subject to retroactive adjustment when a final  
19 rate or fee has been determined, in an amount equal  
20 to the industry rate, or, in the absence of an indus-  
21 try rate, the amount of the most recent license rate  
22 or fee agreed to by the parties.

23 “(6) Any decision rendered in such proceeding  
24 by a special master or magistrate judge named  
25 under paragraph (3) shall be reviewed by the judge

1 of the court with jurisdiction over the consent decree  
2 governing the performing rights society. Such pro-  
3 ceeding, including such review, shall be concluded  
4 within 6 months after its commencement.

5 “(7) Any such final determination shall be  
6 binding only as to the individual proprietor com-  
7 mencing the proceeding, and shall not be applicable  
8 to any other proprietor or any other performing  
9 rights society, and the performing rights society  
10 shall be relieved of any obligation of nondiscrimina-  
11 tion among similarly situated music users that may  
12 be imposed by the consent decree governing its oper-  
13 ations.

14 “(8) An individual proprietor may not bring  
15 more than one proceeding provided for in this sec-  
16 tion for the determination of a reasonable license  
17 rate or fee under any one license agreement with re-  
18 spect to any one performing rights society.

19 “(9) For purposes of this section, the term ‘in-  
20 dustry rate’ means the license fee a performing  
21 rights society has agreed to with, or which has been  
22 determined by the court for, a significant segment of  
23 the music user industry to which the individual pro-  
24 prietor belongs.”.



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

“512. Determination of reasonable license fees for individual proprietors.”.

5 **SEC. 204. PENALTIES.**

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

8 “(d) ADDITIONAL DAMAGES IN CERTAIN CASES.—In  
9 any case in which the court finds that a defendant propri-  
10 etor of an establishment who claims as a defense that its  
11 activities were exempt under section 110(5) did not have  
12 reasonable grounds to believe that its use of a copyrighted  
13 work was exempt under such section, the plaintiff shall  
14 be entitled to, in addition to any award of damages under  
15 this section, an additional award of two times the amount  
16 of the license fee that the proprietor of the establishment  
17 concerned should have paid the plaintiff for such use dur-  
18 ing the preceding period of up to 3 years.”.

19 **SEC. 205. DEFINITIONS.**

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

22 (1) by inserting after the definition of “display”  
23 the following:

24 “An ‘establishment’ is a store, shop, or any  
25 similar place of business open to the general public

1 for the primary purpose of selling goods or services  
2 in which the majority of the gross square feet of  
3 space that is nonresidential is used for that purpose,  
4 and in which nondramatic musical works are per-  
5 formed publicly.

6 “A ‘food service or drinking establishment’ is a  
7 restaurant, inn, bar, tavern, or any other similar  
8 place of business in which the public or patrons as-  
9 semble for the primary purpose of being served food  
10 or drink, in which the majority of the gross square  
11 feet of space that is nonresidential is used for that  
12 purpose, and in which nondramatic musical works  
13 are performed publicly.”;

14 (2) by inserting after the definition of “fixed”  
15 the following:

16 “The ‘gross square feet of space’ of an estab-  
17 lishment means the entire interior space of that es-  
18 tablishment, and any adjoining outdoor space used  
19 to serve patrons, whether on a seasonal basis or oth-  
20 erwise.”;

21 (3) by inserting after the definition of “per-  
22 form” the following:

23 “A ‘performing rights society’ is an association,  
24 corporation, or other entity that licenses the public  
25 performance of nondramatic musical works on behalf

1 of copyright owners of such works, such as the  
2 American Society of Composers, Authors and Pub-  
3 lishers (ASCAP), Broadcast Music, Inc. (BMI), and  
4 SESAC, Inc.”; and

5 (4) by inserting after the definition of “pic-  
6 torial, graphic and sculptural works” the following:

7 “A ‘proprietor’ is an individual, corporation,  
8 partnership, or other entity, as the case may be, that  
9 owns an establishment or a food service or drinking  
10 establishment, except that no owner or operator of a  
11 radio or television station licensed by the Federal  
12 Communications Commission, cable system or sat-  
13 ellite carrier, cable or satellite carrier service or pro-  
14 grammer, provider of online services or network ac-  
15 cess or the operator of facilities therefor, tele-  
16 communications company, or any other such audio  
17 or audiovisual service or programmer now known or  
18 as may be developed in the future, commercial sub-  
19 scription music service, or owner or operator of any  
20 other transmission service, shall under any cir-  
21 cumstances be deemed to be a proprietor.”.

22 **SEC. 206. CONSTRUCTION OF TITLE.**

23 Except as otherwise provided in this title, nothing in  
24 this title shall be construed to relieve any performing  
25 rights society of any obligation under any State or local

1 statute, ordinance, or law, or consent decree or other court  
2 order governing its operation, as such statute, ordinance,  
3 law, decree, or order is in effect on the date of the enact-  
4 ment of this Act, as it may be amended after such date,  
5 or as it may be issued or agreed to after such date.

6 **SEC. 207. EFFECTIVE DATE.**

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

○