

Fairness In Music Licensing Act  
By Alan S. Bergman

On October 8, Congress passed the controversial "Fairness In Music Licensing Act." It consists of two parts: one is the so-called Sonny Bono Copyright Term Extension Act, which extends the length of copyright in the United States by another 20 years from the current life plus 50 to life plus 70. This is to make the U.S. copyright act consistent with the European community, where the life plus 70 standard applies. It also extends, for 20 years, the pre-1978 term of copyright which was 75 years (28 + 28 + 19). The 75 years is now 95 years. Most notable was Gershwin's "Rhapsody in Blue," which was slated to go into the public domain next year but now will have an additional 20 years.

The other part of the Act was opposed vehemently by ASCAP, BMI and all other composer and publisher organizations. It essentially exempts from licensing fees businesses that perform music only from radio, television, cable and satellite sources and do not transmit beyond their establishments and do not charge admission. Therefore, all restaurants, bars and grills containing less than 3,750 square feet and all non-food service and beverage establishments containing less than 2,000 square feet are exempt. Those businesses where square footage exceeds these limits are still exempt, if they use six or fewer speakers with no more than four in any one room, or where they use audio/visual equipment, use no more than four TVs, with no more than one TV in each room, with no TV having a diagonal screen size greater than 55 inches while meeting the above speaker restrictions. What this means, practically then, is that according to BMI, more than 75% of bars and restaurants, which now have to have licenses, will not have to have an ASCAP or a BMI license if they use radio or TV music. This will also apply to retail establishments because the "record store exemption", which allowed music to be listened in a record store (listening posts, etc.), has been expanded to include retail establishments whose sole purpose in performing music is to promote the retail sale of recordings, or the devices (radios, TVs, CD players) utilized in the performances.

According to Frances Preston, President of BMI: "This is a sad day for all creators of music in America and intellectual property rights owners. This legislation challenges the spirit of the Constitution as it expropriates, without compensation, the intellectual property of our songwriters, composers, and music publishers. Legislation which was first introduced under the

guise of protecting morn and pop establishments now is revealed as a scheme to prelect the largest restaurants in the nation while damaging tens of thousands of genuine small business people, America's songwriters and composers. It also puts us in violation of the international treaties governing intellectual property, including the Berne Convention and the TRIPS Agreement”

Both BMI and ASCAP consider Congress's action to be inherently unfair, A joint letter from them states that: “The average songwriter earns approximately \$4,700 from performance royalties; while the average restaurant owner earns about \$44,000, according to National Restaurant Association figures. Even before this anti-music legislation was passed, music licensing costs constituted far less than 1% of the average restaurant gross sales. The earnings of songwriters, composers and publishers have now been reduced by tens of millions of dollars annually.”

Marilyn Bergman of ASCAP echoes these sentiments as follows: “In one sweeping legislative action, the House and Senate have passed music copyright term extension with one hand yet severely curtailed music copyright protection with the other. With this music licensing legislation, which seizes the private property of copyright owners, the United States Government has severely penalized America's songwriters, composers and publishers. Not only will our earnings be reduced, but so will the creative incentive for future generations of songwriters. It is important to let music creators everywhere know that we did everything humanly possible to combat this unconscionable legislation.”

Obviously, to the societies who collect and distribute your performing rights, "The Fairness In Music Licensing Act" is a misnomer for legislation which is extremely damaging for songwriters, composers and music publishers.

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