

SENATE BILL REPORT

SJM 8002

As Reported By Senate Committee On:
Energy, Telecommunications & Utilities, January 26, 1995

Brief Description: Requesting amending the Copyright Act to address current situations.

Sponsors: Senator Sutherland.

Brief History:

Committee Activity: Energy, Telecommunications & Utilities: 1/24/95, 1/26/95 [DPS].

SENATE COMMITTEE ON ENERGY, TELECOMMUNICATIONS & UTILITIES

Majority Report: That Substitute Senate Joint Memorial No. 8002 be substituted therefor, and the substitute joint memorial do pass.

Signed by Senators Sutherland, Chair; Loveland, Vice Chair; Finkbeiner, Hochstatter and Owen.

Staff: David Danner (786-7784)

Background: Under federal copyright law, performances of copyrighted music must be licensed or otherwise permitted by the copyright owner. Playing music on television or radio is deemed a performance under the law. Owners of copyrights sometimes assign their rights to licensing organizations such as the American Society of Composers, Authors and Publishers (ASCAP), and Broadcast Music, Inc. (BMI).

There are a few exceptions to the license/permission requirement. One of these, known as the "homestyle exemption," allows businesses to use a television or radio for their customer's enjoyment if the television or radio is "a single receiving apparatus of a kind commonly found in private homes," unless a direct charge is made to watch it or if the signal is further transmitted to the public.

The copyright law does not define what kind of television or radio is "commonly used in private homes." Licensing organizations claim that small retailers, restaurants, and other businesses must pay royalties for playing a radio or television on their premises based on such criteria as store size, stereo speaker configuration, television screen size, or the owner's ability to pay. While the federal courts in Washington have not addressed the issue, courts in other jurisdictions have held some of these criteria invalid.

Licensing organizations have used ambiguities in the homestyle exemption to demand payments from numerous businesses in Washington State under threat of litigation, such as a small business owner who has a 40-inch television in his restaurant.

The copyright law was adopted in 1976. Technology, home viewing habits, and commercial practices have changed during the past 19 years.

Summary of Bill: Congress is asked to clarify the Copyright Act with regard to the "homestyle exemption," and to reexamine it in light of current technological and commercial considerations. Congress is also asked to amend the Copyright Act to exempt from licensing requirements any non-commercial performances of copyrighted music on television if the performance has only an indirect benefit to the person, such as a small business owner, who permits the performance. Congress is further asked to designate a federal agency to adopt rules and provide definitions for the provisions of the Copyright Act.

Substitute Bill Compared to Original Bill: Congress is asked to revisit the Copyright Act exemptions not only as they concern television reception, but also radio. Ambiguities in court interpretations of the Copyright Act's licensing exemptions are noted.

Appropriation: None.

Fiscal Note: Not requested.

Testimony For: Ambiguities in the law have favored licensing organizations over numerous small businesses who are unversed in the law and uncertain whether royalties must be paid. Licensing organizations may be collecting millions of dollars from local businesses to which they are not entitled by law.

Testimony Against: Copyright law ensures that artists, songwriters, and film makers are compensated for the use of their intellectual property. Revisions of law must not harm efforts to stop video pirating in Washington or abroad.

Testified: Ray Eggert, Pied Piper Pizza (pro); Vito Chiechi, WA State Lic. Bev. Assn. (pro); Becky Bogard, WA State Assn. of Broadcasters (pro); Bill Fritz, Motion Picture Assn. of America (con); Jeff Cox, WA Retail Assn. (pro); Mildred Trapelle, Grays Harbor E911 (pro); Karen Terwilliger, L&I (pro); Kit Hawkins, Restaurant Assn. (pro).