
SUBSTITUTE SENATE JOINT MEMORIAL 8002

State of Washington 54th Legislature 1995 Regular Session

By Senate Committee on Energy, Telecommunications & Utilities
(originally sponsored by Senator Sutherland)

Read first time 01/30/95.

1 TO THE HONORABLE BILL CLINTON, PRESIDENT OF THE UNITED STATES, AND
2 TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF
3 REPRESENTATIVES, AND TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE
4 UNITED STATES, IN CONGRESS ASSEMBLED, AND TO THE HOUSE OF
5 REPRESENTATIVES SUBCOMMITTEE ON INTELLECTUAL PROPERTY AND
6 ADMINISTRATION OF JUSTICE, AND TO THE SENATE SUBCOMMITTEE ON PATENTS,
7 COPYRIGHTS AND TRADEMARKS:

8 We, your Memorialists, the Senate and House of Representatives of
9 the State of Washington, in legislative session assembled, respectfully
10 represent and petition as follows:

11 WHEREAS, Under the United States Copyright Law, performances of
12 copyrighted music must be licensed; and

13 WHEREAS, This copyright protection includes music played over
14 television and radio; and

15 WHEREAS, In the 1976 Copyright Act, Congress exempted noncommercial
16 "performances" of copyrighted music if there were no direct or
17 nondirect commercial purpose; and

18 WHEREAS, Congress attempted to provide an exemption to businesses
19 whose proprietors merely bring a television or radio onto their
20 premises for their customer's enjoyment if the television or radio was
21 "of the kind commonly used in private homes"; and

1 WHEREAS, Licensing organizations representing composers, authors,
2 and publishers of music have traditionally claimed that businesses must
3 pay royalties on music broadcast over sound reproduction equipment "of
4 the kind commonly used in private homes" where that equipment or those
5 businesses meet certain arbitrary criteria such as screen size, speaker
6 configuration, floor size, and the businesses' ability to pay; and

7 WHEREAS, Some federal circuit courts have determined that some of
8 these traditional criteria are not valid under federal copyright law;
9 and

10 WHEREAS, The Ninth Federal Circuit Court has not yet resolved this
11 issue; and

12 WHEREAS, Ambiguities in the law create confusion for Washington
13 businesses who are uncertain whether royalties are owed to licensing
14 organizations; and

15 WHEREAS, These ambiguities tend to favor licensing organizations
16 over small businesses when negotiating royalty payments and licensing
17 agreements; and

18 WHEREAS, The licensing organization, the American Society of
19 Composers, Authors and Publishers (ASCAP), has construed any television
20 over thirty-six inches, including big screen televisions, to be other
21 than "of a kind commonly used in private homes"; and

22 WHEREAS, ASCAP has therefore threatened a Washington state small
23 pizza parlor with a copyright lawsuit because it has a standard forty-
24 inch television set at its establishment tuned solely to a sports
25 channel; and

26 WHEREAS, Numerous businesses throughout Washington and the country
27 such as restaurants, taverns, hotels and motels, retailers, beauty
28 parlors, haircutting salons, and airports are at risk of expensive
29 licensing fees or litigation for doing nothing more than making
30 commercial television or radio available to customers; and

31 WHEREAS, It is necessary for Congressional intent to reflect the
32 technological and commercial realities of our time;

33 NOW, THEREFORE, Your Memorialists respectfully pray that the
34 President and Congress conduct a complete review of the Copyright Act
35 to determine whether it reflects the realities of technology and its
36 goals and policies are in need of revision.

37 BE IT RESOLVED, That the Copyright Act be amended to exempt from
38 licensing requirements any noncommercial performance of copyrighted

1 music over television or radio if the performance has only an indirect
2 benefit to the person who permits the performance; and

3 BE IT FURTHER RESOLVED, That Congress designate a federal agency to
4 adopt rules to implement the provisions of the Copyright Act; and

5 BE IT FURTHER RESOLVED, That copies of this Memorial be immediately
6 transmitted to the President of the United States, the President of the
7 United States Senate, the Speaker of the House of Representatives, each
8 member of Congress from the State of Washington, the House of
9 Representatives Subcommittee on Intellectual Property and
10 Administration of Justice, and the Senate Subcommittee on Patents,
11 Copyrights and Trademarks.

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