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REPEAL OF POOLED MUSIC COPYRIGHT LAW

AS 45.50.330-.460

It is recommended that Alaska's 1939 pooled music copyright law, AS 45.50.330-.460, be repealed. The law is archaic, obsolete, imposes massive useless paperwork burdens on State agencies, and is of doubtful validity in light of subsequent federal legislation and court decisions.

1. Obsolete. The law was adopted by the Alaska Territorial Legislature in 1939 in response to conditions and practices then existing in the licensing and use of copyrighted musical compositions. In the forty-three years since then, the industry has changed dramatically, but the Alaska law remains as an anachronism.

2. Repeals by Other States. In the late 1930's several states adopted similar statutes. These statutes have now been repealed in Washington, Florida, Montana, Nebraska, Tennessee and Wyoming.

3. Conflict with Federal Law. The validity of the Alaska law is doubtful in light of post-1939 developments in federal statutory and case law. These developments include a comprehensive revision of copyright law under the Federal Copyright Act of 1976, which pre-empted State copyright laws, and two consent decrees governing licensing of copyrighted musical works.

4. Useless Collection and Accumulation of Paperwork. The Alaska law requires that massive amounts of paperwork be filed with and retained by the Department of Administration, none of which serves any useful purpose. The filings create expensive and unnecessary administration and storage problems and have not been used by either the public or the State. Comparable information is available to the public from the Federal Copyright Office.

COPY JUDICIARY MEMBERS

W. EUGENE GUESS 1932-1975
JOSEPH RUDD 1933-1978
THEODORE E. FLEISCHER
FRANCIS E. SMITH, JR.
HERBERT BERKOWITZ
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DEBRA J. BRANDWEIN
KIRSTEN TINGLUM
ROBERT A. BASSETT

LAW OFFICES OF
ELY GUESS & RUDD
A PROFESSIONAL CORPORATION
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SEVENTH FLOOR
ANCHORAGE, ALASKA 99501
TELEPHONE [907] 276-5121
TELEX [090] 25-292
TELECOPIER [907] 279-8354

318 FOURTH STREET
JUNEAU, ALASKA 99801
TELEPHONE [907] 586-3210
TELECOPIER [907] 586-3762

OF COUNSEL:
ROBERT C. ELY
JOSEPH A. McLEAN

March 29, 1984

Senator Bill Ray
Pouch V
Juneau, Alaska 99811
(Mail Stop 3100)

Re: SB 427
Repeal of
AS 45.50.330-.460
Our File 3300.16

Dear Senator Ray:

Thank you for meeting with Gordon Evans and me last Tuesday regarding SB 427.

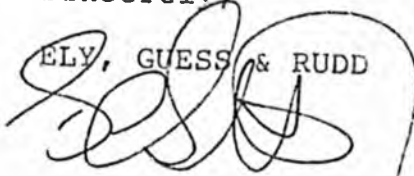
I trust that you found our answers to your questions responsive. And I hope that the background we provided with respect to the U.S. Copyright Law and the history of our client's operations fully explained the context of ASCAP's interest in the repeal of AS 45.50.330 through .460.

I would like to emphasize once again that ASCAP has no "ulterior motives" in wishing to see SB 427 passed. Its earlier passage would not have affected in the least our client's activities in Alaska or the litigation in which its members have engaged in Alaska. Its passage hereafter will not affect in any way our pending litigation (we have only one suit unresolved at this time). In short, our interest in the passage of SB 427 is as simply explained as we said: ASCAP would like to be relieved of a filing requirement which serves no public interest of any kind. The balance of the existing statutory scheme is generally procedural or redundant with federal law, would generally be made irrelevant by the repeal of the filing requirements, and should, we believe, be repealed also.

Senator Bill Ray
Page 2
March 29, 1984

Thank you again for meeting with us. If you have any further questions of any kind, I hope you will not hesitate to call me. And I do hope that you will agree that SB 427 should be passed.

Sincerely,

ELY, GUESS & RUDD


Francis E. Smith, Jr.

FES:gm

HELENE M. ANTEL
MICHAEL W. DUNDY
BRIAN W. DURRELL
DAVID R. MILLEN
DOUGLAS S. PARKER
JAMES N. REEVES
THOMAS K. WILLIAMS

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900 WEST FIFTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 276-4357 TELEX: 090-26-693
TELECOPIER: 907-276-4152

PLEASE REPLY TO ANCHORAGE OFFICE

SEATTLE OFFICE
THE BANK OF CALIFORNIA CENTER
SEATTLE, WASHINGTON 98164
CABLE "BOGLE SEATTLE"
(206) 682-8161 TELEX: 32-1087
WASHINGTON, D. C. OFFICE
SUITE 900
ONE THOMAS CIRCLE, N. W.
WASHINGTON, D. C. 20005
(202) 293-3600 TELEX: 89-7410

February 15, 1984

The Hon. Bill Ray, Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 427 (Our File No. 1221/01249)

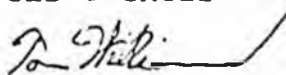
Dear Senator Ray:

The enclosed letter explains in somewhat more detail why SB 427 (repealing Alaska's 1939-vintage law on pools for licensing the public performance of copyrighted music) should be passed.

My initial reaction if I were in your position would probably be to do nothing with this legislation unless I was sure in my own mind that there was no further need for these laws and that the interests of the Alaskan public would not be compromised by such a repeal, so I can understand it if your feelings are similar. However, there really are sound reasons for repealing these laws, and the public will not be harmed by doing so. With all respect, I urge you to schedule a hearing of the Judiciary Committee on this bill in the near future, so that you can satisfy yourself whether such is the case or not. Additional reasons for repeal, besides those in my letter, could also be presented and explained at such a hearing.

Very truly yours,

BOGLE & GATES



Thomas K. Williams

cc (w/ encl.): Senate Judiciary Committee Members

Edward W. Chapin, Broadcast Music, Inc.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
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PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

March 15, 1984

The Honorable Richard D. Eliason
Chairman, Senate Labor and Commerce
Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: SB 427

Dear Chairman Eliason:

We have received your inquiry of March 6, asking for our comments on SB 427, which would repeal AS 45.50.330 -- 460, the pooled music copyright law. In response to your request, we have reviewed the state law, federal copyright law, and applicable case law. We conclude that AS 45.50.330 -- 460 is obsolete and should be repealed.

The pooled music copyright law was enacted by the Alaska Territorial Legislature in 1939. The law was similar to legislation adopted at about that same time in several states. The purpose of these laws was to prevent certain practices that existed in the music industry at that time. Since then, because of changes in the industry itself and in federal law, each of the states that enacted a pooled music copyright law has repealed its legislation, except Alaska.

The pooled music copyright law has, for the most part, been pre-empted by federal copyright law. It offers no protection to the copyright owner or to the general public beyond that available under the federal statutes. The one purpose it might now serve is providing information to owners and the public, but even that function is covered by the federal copyright act. The information that the law requires the Departments of Revenue and Administration to file is readily available in printed form from the U.S. Copyright Office.

We find no reason to retain the pooled music copyright law. Its only remaining function appears to be to create an ad-

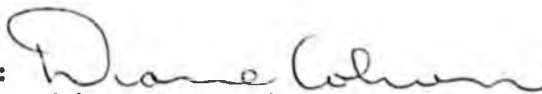
The Honorable Richard D. Eliason
Chairman, Senate Labor & Commerce Committee

March 15, 1984
Page 2

ministrative burden for two agencies of the state. We recommend
its repeal.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Diane T. Colvin
Assistant Attorney General

NCG:DTC::eja

- CALONGAR -



ALASKA STATE LEGISLATURE - SENATE
COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

OFFICIAL BUSINESS

MEMORANDUM

TO: Sen. Bill Ray, Chair
Senate Judiciary Committee
FROM: Sen. Dick Eliason *DE*
DATE: March 9, 1984
RE: SB 427 - "An Act repealing the pooled music copyright law"

As requested I reviewed the above-referenced legislation and I am now reporting my findings to you.

This legislation will repeal AS 45.50.330-45.50.460, which requires persons holding certain pooled copyrights on musical works to file lists of these copyrights with the State. The purpose of these filings is to allow the public to "avoid using the copyrighted compositions and to avoid conflict with them". In fact, however, no one ever examines these filings any more. In 1983 only one person examined the files in the Department of Revenue or the duplicate files at the Department of Administration.

Repeal of the state law would not make the information unavailable to the Alaskan public. Federal copyright laws require the same information to be filed with the Copyright Office, and copies of the lists of copyrighted materials may be purchased from the Federal Superintendent of Documents. A new list is published every six months.

Additional back-up information is attached.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date _____

REQUEST

Bill/Resolution No: SB 427
 Title: Act repealing the pooled music copyright law.
 Sponsor: Fahrenkamp
 Requestor: Senate Judiciary
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Revenue
 Program Category Affected: Commissioner's Office
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES	-	-0-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 SUPPLIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-0-	-	-	-	-
CAPITAL	-	-0-	-	-	-	-
REVENUE	-	-0-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-0-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis.

Prepared By: Bruce M. Botelho
 Division: Revenue

Phone: 465-2300
 Date: 03/07/84

Approved by Commissioner: *Bruce M. Botelho*
 Agency: Revenue

Date: 3/8/84

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Analysis for SB 427

The Department of Revenue is in favor of repeal of sections AS 45.50.330-45.50.460. In the last five years the department has had only one request for information pertaining to these statutes. It is important to note that Alaska is the only state in the Union that continues to have such a law on its books.

Position Paper

SB 427

February 28, 1984

This bill will repeal AS 45.50.330-45.50.460, which requires persons holding certain pooled copyrights on musical works to file lists of these copyrights with the State.

The Department of Administration believes that AS 45.50.330-45.50.460 should be repealed and, therefore, favors passage of this legislation.

We feel that the statute is unnecessary and of no significant benefit. In the past eight months only one person has inquired about filing information. We anticipate no staff reduction due to passage since it is one of the minor miscellaneous duties of a secretary.

Frances H. Rose

Frances H. Rose
Special Assistant to the Commissioner
Department of Administration

Date

2/29/84

A. Rudd for

Commissioner Lisa Rudd
Department of Administration

Date

3-1-84

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: February 28, 1984
Page 1 of 2

REQUEST

Bill/Resolution No.: SB 427
 Title: An Act repealing the pooled music copyright law
 Sponsor: Fahrenkamp
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Administration
 Program Category Affected: _____
 BRU, Program or Subprogram(s) Affected: _____
 Commissioner's Office _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Frances H. Rose *Frances H. Rose*
 Division: Commissioner's Office

Phone: (907) 465-2200
 Date: 2-29-84

Approved by Commissioner: Lisa Rudd *L. Rudd*
 Agency: DEPARTMENT OF ADMINISTRATION

Date: 3-1-84

Distribution (by Agency preparing fiscal note):
 Legislative Finance
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THOMAS K. WILLIAMS

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(202) 293-2600 TELEX: 89-7410

February 15, 1984

The Hon. Bill Ray, Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 427
(Our File No. 1221/01249)

Dear Mr. Chairman:

I am writing for myself and on behalf of our client, Broadcast Music, Inc. ("BMI"), to advise that we support the passage of SB 427, which would repeal Alaska's pooled-music copyright law (AS 45.50.330 - 45.50.460). This law, which was passed in 1939, has become badly outdated as circumstances have changed and the federal copyright statutes have been comprehensively rewritten in the 45 years since then.

The Alaska law applies to societies or organizations like BMI and ASCAP, which are formed by owners of the copyrights to copyrighted musical works to license the public performance of those works on behalf of the copyright owners. Such organizations then collect royalties from the public performances and distribute them back to the copyright owners.

Essentially, the Alaska law requires each such organization to file each year a list of all the copyrighted musical compositions that it licenses. The purpose of these filings is to allow the public to "avoid using the copyrighted compositions, if they so desire, and [to] avoid conflict with them, and avoid committing innocent infringements of the works." AS 45.50.360. In fact, however, no one ever examines these filings any more. In 1983 not one person examined the files at

Senator Bill Ray
February 15, 1984
Page 2

the Department of Revenue or the duplicate files at the Department of Administration.

Repeal of the state law would not make the information unavailable to the Alaskan public. Federal copyright laws require the same information to be filed with the Copyright Office, and copies of the lists of copyrighted materials may be purchased from the federal Superintendent of Documents. A new list is published every six months.

A further reason for repealing the Alaska law is the great change in conditions from those in 1939. At that time there was only one organization licensing the performance of copyrighted music, and its dominant position allowed abuses that prompted Florida, Montana, Nebraska, Tennessee, Wyoming and Washing, as well as Alaska, to enact remedial legislation in the late 1930s. Since that time other licensing organizations have been formed, so that there is more competition and less opportunity for monopolistic abuse. Moreover, the two largest organizations, ASCAP and BMI, operate under direct supervision of the federal courts, pursuant to their respective consent decrees that were entered in federal antitrust litigation against them.

In 1976 Congress passed a comprehensive revision of the federal copyright statute, effective January 1, 1978. This legislation replaced the dual system of copyright laws, one federal and the other by the states, and created a unified federal system instead. This complete federal system eliminates the need for state laws to "fill in the gaps" that had been left in prior federal copyright law. Congress not only eliminated the need for state copyright laws with the enactment of its comprehensive federal system, but it also eliminated the state laws themselves by exercising its preemption power (see 17 U.S.C. § 301) under the Supremacy Clause of the United States Constitution.

As the result of these changes, the states that enacted legislation in the late 1930s to remedy the then-prevailing abuses with music copyrights have repealed their statutes, except for Alaska. It is time for us to recognize these changes as our sister states have done.

Senator Bill Ray
February 15, 1984
Page 3

Finally, it is not easy or cheap to prepare these filings with the State. Each report by ASCAP, for example, takes up about half of a full-sized drawer in a filing cabinet. By the same token, it is not cheap for the State to keep these voluminous files. Yet the continued presence of these laws on the books requires both the filers and the Departments of Revenue and Administration to suffer these needless expenses.

Had I been personally aware of this situation when I was still Commissioner of Revenue, I would have advocated repealing these statutes as a prime example of wasteful, pointless paperwork imposed by state government on the public. It is our understanding from the officials in the State of Washington that they have been pleased by the repeal of that state's pooled-music law in 1982 and by being relieved from keeping the massive files required under that law. I believe the Departments of Revenue and Administration would likewise wish to be spared the time, expense and space that are needed for their files under Alaska's law.

The biggest problem with a bill like SB 427 is that there is no large constituency to support it. Clearly, the public is indifferent to whether these filings continue or not, since no one ever looks at them. There is only a small handful of organizations that are subjected to the burden of filing. Without a constituency to support such a bill, the easiest course is simply not to advance it out of committee.

I respectfully urge you not to let the bill die, but to hold a hearing on it before your committee. If possible, please schedule such a hearing in the near future so that, if you are satisfied that these statutes are no longer necessary to protect and promote the interests of the public, there will still be time for the bill to have a realistic chance of passage during this Session.

Please do not hesitate to call me at 276-4557 or to write me at the address above, if you have any questions on this subject or if you decide to hold a hearing on the bill. I can arrange for testimony before the committee on behalf of BMI if there is to be a hearing.

BOGLE & GATES

Senator Bill Ray
February 15, 1984
Page 4

Very truly yours,

BOGLE & GATES

A handwritten signature in dark ink, appearing to read "Thomas K. Williams", written in a cursive style.

Thomas K. Williams

cc: Members of the Senate Judiciary Committee

Edward W. Chapin, Counsel
Broadcast Music, Inc

LAW OFFICES OF
ELY, GUESS & RUDD

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TRICIA COLLINS
JOHN A. McDONAGH
PAUL S. STAHL

* ADMITTED IN D.C. AND ALASKA
OTHERS ADMITTED IN ALASKA

May 18, 1983

Ms. Gladys Williamson
Department of Administration
Pouch "C"
Juneau, Alaska 99811

Re: American Society of Composers, Authors
and Publishers
Our File No. 3300.10

Dear Ms. Williamson:

This letter is written with reference to our recent telephone conversations regarding the documents and other materials filed each year on behalf of the American Society of Composers, Authors and Publishers (ASCAP). Under requirements of AS 45.50.330-.460, the original of the filing is delivered to the Department of Revenue and a duplicate copy is filed with the Commissioner of Administration for public review.

It is my understanding that apparently there has been little, if any, public review of these documents since the law was enacted. The Alaska statute had been based on the Washington state law, which was repealed this year apparently because nobody had made use of the public review provision. Accordingly, it may be appropriate to consider possibly seeking repeal of the Alaska statute for the same reason, thus cutting down on the paperwork and archival requirements of the State. Any such repeal effort, however, would not be undertaken until the 1984 legislative session.

In the meantime, and in order to help ascertain whether in fact any use is being made of the documents on file for public review, it would be appreciated if you would attach to the documents in your office a sign-up/tally sheet similar to the enclosed sample. It would merely have any person reviewing the documents note this fact and the date of his or her review so that early in 1984 a compilation of that

Ms. Gladys Williamson
Page -2-
May 18, 1983

information could be provided to the Legislature to support the repeal effort.

Thank you in advance for your assistance in this matter. If you have any questions, please let me know.

Very truly yours,

ELY, GUESS & RUDD

Gordon E. Evans
Gordon E. Evans

Enclosure:

cc: Francis E. Smith, Jr., Esq.

GEE/pm

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS

LIST OF PERSONS REVIEWING ANNUAL FILING
OF COPYRIGHTED WORKS OF ASCAP MEMBERS

Name (Printed)	Signature	Date