

SB

263

TESTIMONY ON SENATE BILL 263
COPYRIGHT LICENSING & ROYALTIES

Before the House Judiciary Committee
Brian Porter, Chairman
April 17, 1996

Chairman Porter, Committee Members, my name is Ruth Hamilton.

I am speaking here today on behalf of the American Society of Composers, Authors and Publishers, otherwise known as ASCAP.

We have worked hard with representatives from the Cabaret Hotel and Restaurant Retail Association (CHARR) to formulate legislation which protects the interests of both organizations. A number of changes have been made since the bill was originally introduced in the Senate Judiciary, many of which were made in order to prevent conflict with federal copyright law. This cooperative effort has resulted in the Senate Judiciary Committee Substitute bill now under review by your Committee.

ASCAP basically supports the current bill. However, there are two technical problems with the legislation which we think need to be clarified and documented for the record, if not by committee amendment to the bill, then at least by legislative history.

First, subparagraph (3) of Section 45.45.500 provides that the most recent listings of copyright members, their affiliates and copyrighted works are

available to business proprietors on "electronic media" through CHARR. It is not entirely clear what "electronic media" means. ASCAP maintains, and we believe CHARR concurs, that "electronic media" in this context means the Internet and other contact which ASCAP currently has with CHARR's parent association providing the list of members and their works.

Second, Section 45.45.510(b) of the bill provides that contracts made pursuant to a "national agreement" are not subject to a one-year contract term. However, there is no such copyright licensing contract called a "national agreement." Rather, the standard contract is called a "uniform agreement," which is used on a routine basis between performing rights societies and business proprietors. Thus, the term "national agreement" does not appropriately identify the type of contract entered into for the performance of copyrighted works in a place of business.

ASCAP requests that these clarifications should be part of the legislative history for the Senate Bill 263.

Thank you.

Alaska State Legislature

Senator Tim Kelly, Chair
Senator John Torgerson, Vice Chair
Senator Mike Miller
Senator Jim Duncan
Senator Judy Salo



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Sponsor Statement

CSSB 263 (JUD)

"An Act relating to copyright licensing and royalties; and providing for an effective date"

SB 263 was introduced in response to growing outrage amongst Alaskan restaurateurs at the heavy handed enforcement and arbitrary pricing of the national music licensing giants. SB 263 would level the playing field between small businesses and the large multi-billion dollar music licensing giants such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC.

As required under Federal Copyright Law, a restaurant, retailer, or other establishment which plays music must pay for the music it uses. Under current federal copyright law, restaurants are liable even for the music played during TV commercials and sports programs. ASCAP, BMI, SESAC and other companies authorized to collect licensing fees are often overzealous in the enforcement of their copyrights. Local Alaskan restaurateurs have become increasingly alarmed by abusive collection practices, discriminatory enforcement, and random pricing by these organizations. SB 263 seeks to remedy these concerns by leveling the playing field in the contractual relationships between the licensing giants and the local restaurateur.

Specifically, SB 263 requires a copyright owner to provide notice before entering into a contract with a business proprietor. This notice must be received at the time of the offer or within 72 hours of entering into the contract. The notice must contain the rates and terms of the contract, a toll-free number which the business owner can use to contact

the licensing agents with questions, and notice that the most recent list of works from the performing rights society's repertoire will be available through the CHARR Association.

Further, SB 263 sets a mandatory minimum level of contents for royalties contracts. A royalties contract must be in writing and signed by the parties. It must be completed in one year. The contract should also include: (1) the business proprietors name, address, and location to which the contract applies, (2) the duration of the contract, and (3) the terms for royalty collection and a rate schedule for royalties. Collection of royalties will not be permissible if the contract does not meet the enumerated minimum standards.

SB 263 also requires a copyright owner or society to disclose to a business proprietor or the business proprietor's employees the name of the copyright owner or society before discussing a contract or the use of copyrighted works. Under SB 263, a business proprietor can bring a civil action against a copyright owner or society for the violation of any of the above requirements. This civil action could be in the form of an injunction, an action seeking damages for a violation, or an action to terminate the contract.

SB 263 would level the playing field between large music licensing groups and small business owners, at least on a contractual level. It lays significant ground rules for the dealings between the parties. At least 20 states are working on similar legislation to protect the interests of local business against the power and dominance of large licensing firms.

FISCAL NOTE

No. 1

Bill Version: CS SB 263 (JUD)

(S) Publish Date: 4/9/96

**STATE OF ALASKA
1996 LEGISLATIVE SESSION**

Revision Date: 4/4/96 Dept. Affected: Department of Law
 Title: "An Act relating to copyright licensing and royalties..." BRU: Criminal Division/Civil Division
 Sponsor: Senate Labor and Commerce Committee Component: Criminal Division/General Legal Services
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 2085/2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Judiciary Committee Substitute for SB 263 drops criminal sanctions as suggested in the Department of Law's original fiscal note analysis. The bill will not have a fiscal impact for the Department.

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 Date: 4/4/96
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