

SB

263

FISCAL NOTE

No. 1

Bill Version: CS SB 263(JUD)

(S) Publish Date: 4/9/96

STATE OF ALASKA
96 LEGISLATIVE SESSION

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

Operating Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
UTILITIES						
EQUIPMENT						
LAND & STRUCTURES						
LIABILITIES, CLAIMS						
miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

Revenue Source (Thousands of Dollars)

REVENUE SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
02 Federal Receipts						
03 GF Match						
04 GF						
05 GF/Program Receipts						
06 GF/MHTIA						
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.

Prepared by: Richard T. Peques, Director Phone: 465-3672
 Title: Administrative Services Division
 Approved by Commissioner: Bruce M. Batelino, Attorney General Date: 4/4/96
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 263

Revision Date: _____ Dept. Affected: Department of Law
 Title: "An Act relating to copyright licensing and BRU: Criminal Division, Civil Division
royalties..." Component: Criminal Division, General Legal Services
 Sponsor: Senate Labor and Commerce Committee
 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 ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends Alaska's Trade Practices Act, AS 45.45, to provide certain protections for business proprietors in the payment of royalties to copyright owners for the public performance of nondramatic music or similar work. The bill sets out several provisions by which the copyright holders must deal with business proprietors, including disclosing the rates and terms under a royalty contract, and the rates and terms in agreements with other business proprietors in the same area. The bill provides for a self-enforcing mechanism by allowing aggrieved business proprietors to enjoin violations of copyright holders and to seek treble damages in private consumer protection actions. The bill also provides that a person who knowingly violates the contracting and disclosure provisions commits a class A misdemeanor. The Department of Law believes that the criminal sanction should be dropped, because the civil remedies provided by the bill are adequate, and they are a more appropriate means of resolving disputes between private business interests.

Richard L. Pegues

Prepared by: Richard L. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/12/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/12/96
 Agency: Department of Law

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/7/96

FURTHER:

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4-4-96

The Judiciary Committee considered SB 263

Relating to copyright licensing and royalties.

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Richard Miles</i>	<input checked="" type="checkbox"/>	<i>C. Adams</i>	<input checked="" type="checkbox"/>		
<i>Richard Miles</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>Richard Miles</i>		CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

CHARR Position Paper

Senate Bill 263

Music Licensing Reform

CHARR strongly supports SB 263 which will place limitations on the way BMI, ASCAP, and SESAC conduct business in our state.

*SB 263 will NOT
do away with licensing fees, lower them or eliminate your obligations to pay for the public performance of music.*

*SB 263 WILL
prevent music licensing agencies from harassing, threatening, or setting arbitrary fees on business.*

To affect this legislation, the Legislature must hear from citizens impacted by the proposed legislation.

The louder the voice, the more likely we will win this piece of legislation.

Won't you take a moment to voice your opinion and be heard?

*Send a letter...
a fax, call your local Legislative Information office and send a
Public Opinion Message...*

***TELL YOUR SENATOR AND REPRESENTATIVE THAT
YOU SUPPORT SB263!!!***

~~_____~~ Amendments to CSSB 263 (JUD)

Amendment #1

Pg. 1, Section 1, Line 9.

Replace [seven days] with seventy two hours

Amendment #2

Page 2, Section 1, Line 4-8 is amended to read:

(3) in the case of a Performing Rights Society, notice that the most recent available list of the members or affiliates represented by the Performing Rights Society and the most recent available list of the copyrighted musical works in the Performing Rights Society's repertoire will be available on electronic media through the State Restaurant Association (CHARR) at the expense of the Performing Rights Society.

Amendment #3

Page 3, Section 45.45.540 Line 10-22 is deleted.

Notice Required before inspection of premises

Amendment #4

Page 4, Line 5, is amended to read:

an investigation by a law enforcement agency or other persons concerning a suspected violation of AS 45.50.900 (a) (2).

Amendment #5

Page 4, Section 2, Line 28-30 is deleted.

*refers to violating AS 45.45.500 - 45.45.590
(copyright royalties + licensing)*

9-LS0803VF
Bannister
3/29/96

CS FOR SENATE BILL NO. 263(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 45.45 is amended by adding new sections to read:

5 ARTICLE 7A. COPYRIGHT ROYALTIES AND LICENSING.

6 Sec. 45.45.500. NOTICE REQUIRED BEFORE CONTRACT. A copyright
7 owner or a performing rights society may not enter into, or offer to enter into, a
8 contract for the payment of royalties by a business proprietor unless at the time of the
9 offer, or within seven days before entering into the contract, the copyright owner or
10 performing rights society provides to the business proprietor a notice containing

11 (1) the rates and terms of the royalties under the contract, including any
12 sliding scale, discounts, or reductions in rates on any basis, for which the business
13 proprietor may be eligible, and any scheduled increases or decreases in rates during
14 the term of the contract;

1 (2) in the case of a performing rights society, a toll free number from
2 which the business proprietor may obtain answers to inquiries concerning musical
3 works and copyright owners represented by the performing rights society; and

4 (3) in the case of a performing rights society, how a business proprietor
5 can obtain on request at the expense of the performing rights society the most recent
6 available list of the members or affiliates represented by the performing rights society
7 and the most recent available list of the copyrighted musical works in the performing
8 rights society's repertoire.

9 Sec. 45.45.510. MINIMUM CONTENTS OF ROYALTIES CONTRACTS.

10 (a) A royalties contract entered into, issued, or renewed in this state must be in
11 writing and signed by the parties. The contract must include at least the

12 (1) business proprietor's name and business address, and the name and
13 location of each place of business of the business proprietor to which the contract
14 applies;

15 (2) duration of the contract; and

16 (3) terms for the collection of the royalties and a rate schedule for the
17 royalties, including any sliding scale, discount, or schedule for an increase or decrease
18 of the rates during the term of the contract.

19 (b) A contract for the payment of royalties entered into, issued, or renewed in
20 this state may not exceed one year at a time, unless the contract is under the terms of
21 a national agreement. When each year of the contract ends, the contract is
22 automatically renewed on the same terms and conditions unless either party to the
23 contract provides the other party with written notice of the party's desire to terminate
24 the contract or to change the terms and conditions. The notice must be given at least
25 30 days before the termination of the current term.

26 Sec. 45.45.520. COLLECTION OF ROYALTIES. A copyright owner, a
27 performing rights society, or an agent or employee of a copyright owner or performing
28 rights society may not collect or attempt to collect a payment or another fee under a
29 royalties contract between the copyright owner or performing rights society and a
30 business proprietor unless the contract complies with AS 45.45.500 - 45.45.590.

31 Sec. 45.45.530. PROHIBITED PRACTICES. (a) A performing rights society,

1 or an agent or employee of a performing rights society, may not collect or attempt to
2 collect a royalty payment or another fee from a business proprietor licensed by the
3 performing rights society, unless the collection or collection attempt is made under a
4 contract entered into in accordance with AS 45.45.500 - 45.45.590.

5 (b) An agent or employee of a performing rights society may not enter a
6 business proprietor's premises to discuss a contract for the performance of copyrighted
7 works or payment of royalties unless the agent or employee immediately discloses the
8 purpose of the discussion and that the agent or employee is an agent or employee of
9 a performing rights society.

10 Sec. 45.45.540. NOTICE REQUIRED. A performing rights society whose
11 agent or employee enters a proprietor's business to investigate the possible
12 performance, broadcasting, or transmission of musical works shall, not later than seven
13 days after entering the proprietor's business, provide the proprietor with written notice
14 that the performing rights society's agent or employee entered the premises for the
15 purposes of investigation. The notice must include

- 16 (1) the name of the performing rights society;
- 17 (2) the date when the agent or employee visited the proprietor's
18 business;
- 19 (3) that the purpose of the visit was investigation; and
- 20 (4) the name of each copyrighted musical work in the performing rights
21 society's repertoire that was performed at the proprietor's business during the
22 investigation.

23 Sec. 45.45.550. PRIVATE ACTION. A person who suffers a loss as a result
24 of another person knowingly engaging in conduct that violates AS 45.45.500 -
25 45.45.590 may bring a civil action to recover actual damages and reasonable attorney
26 fees, to enjoin the violation, and to seek any other remedy available at law or equity
27 for the violation. In this section, "knowingly" has the meaning given in AS 11.81.900.

28 Sec. 45.45.560. EXEMPTIONS. The provisions of AS 45.45.500 - 45.45.590
29 do not apply to

- 30 (1) a royalties contract between copyright owners, or performing rights
31 societies, and

1 (A) broadcasters licensed by the Federal Communications
2 Commission; or

3 (B) a cable television operator, a cable television programmer,
4 or another transmission service;

5 (2) an investigation by a law enforcement agency.

6 Sec. 45.45.570. CONSTRUCTION. AS 45.45.500 - 45.45.590 may not be
7 construed to prevent a performing rights society from informing a business proprietor
8 of the business proprietor's obligations under 17 U.S.C. (federal copyright law) or
9 from exercising any exclusive rights preempted under 17 U.S.C. 301(a).

10 Sec. 45.45.590. DEFINITIONS. In AS 45.45.500 - 45.45.590.

11 (1) "business proprietor" means a person who owns a place of business
12 in which the public may assemble and in which copyrighted musical works may be
13 performed, broadcasted, or otherwise transmitted; in this paragraph, "place of business"
14 includes a store, professional office, sports facility, entertainment facility, restaurant,
15 hotel, or an alcoholic beverage establishment licensed under AS 04.11;

16 (2) "copyright owner" means the owner of a copyright of a musical
17 work if the copyright is recognized and enforceable under 17 U.S.C.; "copyright
18 owner" does not include the owner of a copyright in all or part of a motion picture or
19 an audiovisual work;

20 (3) "musical work" means a nondramatic musical or similar work;

21 (4) "performing rights society" means an association or corporation that
22 licenses the public performance of musical works on behalf of copyright owners, and
23 includes Broadcast Music, Inc., SESAC, Inc., and The American Society of
24 Composers, Authors, and Publishers;

25 (5) "royalties" means the fees payable to a copyright owner or a
26 performing rights society for the public performance of a musical work;

27 (6) "royalties contract" means a contract for the payment of royalties.

28 * Sec. 2. AS 45.50.471(b) is amended by adding a new paragraph to read:

29 (4) violating AS 45.45.500 - 45.45.590 (copyright royalties and
30 licensing).

31 * Sec. 3. AS 45.45.500 - 45.45.530, enacted by sec. 1 of this Act, do not apply to a

- 1 contract entered into, issued, or renewed before the effective date of this Act.
- 2 * Sec. 4. SEVERABILITY. If a provision of AS 45.45.500 - 45.45.590 or its application
- 3 to a person or circumstance is held invalid, the invalidity does not affect other provisions or
- 4 applications of this Act that can be given effect without the invalid provision or application
- 5 and, to this end, the provisions of this Act are declared to be severable.
- 6 * Sec. 5. This Act takes effect July 1, 1996.

for Steven Blinn



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001
Contact:

CARL GOLDEN
609-777-2205

TRENTON, N.J. 08625

Release: IMMEDIATE
APRIL 27, 1995

Gov. Christie Whitman today exercised her power of conditional veto over legislation to regulate practices and agreements concerning the licensing of nondramatic musical works copyrighted under Federal law.

The legislation, A-1610, was sponsored by Assemblyman Walter Kavanaugh, R-Somerset.

The Governor said she had been advised by the Attorney General that the bill "impermissibly intrudes upon the ability of copyright owners to enforce and enjoy their copyrighted works by imposing restrictions beyond those intended by Congress."

The Governor submitted proposed amendments to the bill for legislative consideration.

A COPY OF THE CONDITIONAL VETO MESSAGE IS ATTACHED

**STATEMENT OF BROADCAST MUSIC, INC.
BEFORE THE NEW JERSEY ASSEMBLY COMMITTEE ON COMMERCE AND
REGULATED PROFESSIONS IN OPPOSITION TO A. 1610**

AUGUST 26, 1994

Mr. Chairman and members of the Committee, my name is Marvin Berenson and I am Senior Vice President and General Counsel for Broadcast Music, Inc. (BMI), a United States performing rights organization that represents approximately 100,000 U.S. songwriters and composers and 50,000 U.S. publishers. BMI collects license fees on behalf of those American creators it represents, as well as for the thousands of creators from around the world who have chosen BMI for U.S. representation. The license fees collected by BMI for the "public performances" of BMI's repertoire of approximately 2,500,000 compositions are then distributed as royalties to the writers and copyright holders BMI represents and include radio airplay, broadcast and cable television carriage, and live and recorded performances by all other users of music.

BMI is headquartered in New York, with offices in Nashville, Los Angeles, Red Bank, Phoenix, San Juan, Middleboro (MA) and London. It was created in 1939 to provide a competitive source of music licensing in the United States. A not-for-profit-making corporation, BMI opened the door to performing rights representation for songwriters and composers of all types of music,

many of whom were not eligible under the membership guidelines of the older American performing rights organizations.

BMI grants legal access to its repertoire through blanket license agreements. A blanket license agreement allows music users to make unlimited use of the works in BMI's repertoire during the year for one annual fee. BMI's blanket licenses cover all classes and categories of music users, including major television networks using millions of copyrighted music performances per year, radio and television broadcast stations, and cable networks as well as hotels, restaurants, universities, and many other venues. BMI logs 500,000 hours annually of airplay performances on radio and conducts a census of performances on television through the most comprehensive and advanced techniques. Our most performed work, "Yesterday" by Paul McCartney and John Lennon, just surpassed the 6 million performance mark.

BMI writers have won numerous Grammys, American Music Awards, Oscars, Emmys, Tonys, Pulitzer Prizes, MTV and CMA Awards. BMI's roster includes such notable songwriters and composers as Alan Menken, John Williams, Lionel Hampton, Buddy Holly, Sandy Patti, John Lennon, Ray Charles, Eric Clapton, Paul Simon, Elvis Presley, Miles Davis, David Foster, Carole Bayer Sager, Bee Gees, Beach Boys, Willie Nelson, Thelonious Monk, Dolly Parton, Gloria Estefan, Nirvana, R.E.M., Michael Bolton, Mariah Carey, Lou Reed, Vince Gill, Carole King, Aretha Franklin and Chet Atkins.

Public Performances Under U.S. Copyright Law (Title 17, U.S. Code)

Pursuant to the U.S. Copyright Law, if a person desires to publicly perform a copyrighted musical composition, the person must obtain permission from the creator of the musical composition. BMI enters into affiliation agreements with the writers, composers and publishers of musical compositions. These agreements grant to BMI a non-exclusive right of public performance. BMI, in turn, licenses to users of music the right of public performance to the musical compositions contained in its repertoire. As stated above, BMI is operated on a not for profit basis, and all fees received, less administrative expenses and certain reserves, are distributed to its affiliates.

Music is pervasive in the American lifestyle. It is so readily available that people tend to think it's free, and they believe they have the right to use music as they please. It's not scrambled like HBO on cable TV. It isn't something like Coca-Cola where the formula is secret. Music is not so protected. You can buy music in one form and then use it for other purposes. For example, you can buy tapes for use in your home and then play them over and over again in your restaurant so your customers can better enjoy the restaurant's ambience and thus enjoy their dinner. Buying that record meant that you paid for that right to listen to the musical works in your home, but not perform them in public for your commercial benefit or advantage.

Without an organization such as BMI, a music user would be compelled to seek out every copyright owner whose music the user

is publicly performing to obtain permission for such performances. The availability of a BMI blanket license saves the user time and money in obtaining the necessary rights. Without BMI's efforts, the creations that we can hear with the push of a button would otherwise go uncompensated. If that were to happen, the incentive for a composer to continue at his or her livelihood would disappear, leaving society all the poorer.

Since its inception more than 50 years ago, BMI and its business of music licensing has been periodically examined in various contexts by the U.S. Congress, the courts and the U.S. Department of Justice, with the result that has been reaffirmed time and time again, namely, that a performing rights organization is the most effective and practical means to protect the rights to copyrighted music.

BMI's Licensing Practices

Because A. 1610 seeks to put limits on BMI's licensing practices, let me give you a brief summary of our standard operating procedures in this area so you can see that most of what you seek to accomplish is already in effect, making legislation unnecessary and, in the long run, detrimental to both creators and music users.

In 1990, BMI developed new methods of communications to businesses using music in order to increase public awareness of the need to obtain permission to publicly perform copyrighted music. Such efforts have been in the form of direct mail and telemarketing

in addition to telephone and in person contacts made by our Licensing Executives. BMI also utilizes advertising in industry publications on a regional and national basis in an effort to build awareness and establish credibility about BMI and music licensing and to convey a user-friendly image. The objective is also to promote the use of music and its benefits to current and potential music users.

BMI's communication efforts focus on providing education and information to both potential music users and known music users.

The heart of the matter is that performing rights organizations are implementing the law, and it is difficult to explain our function without referring to the Copyright Law. The fact is that no "fence" can be put around the public performance of our music. Given this reality, BMI does its best to explain the music user's need to comply with the obligations of the Copyright Law. At some point we may have to advise the user that the possibility of litigation is in fact the only recourse we have to prevent our product from being illegally taken from us. It seems to us inevitable that some music users will interpret these explanations as threats or intimidation. They are not so intended, and BMI constantly reviews its materials and presentations to find the best ways of conveying the information.

BMI uses every tool of communication that it can to support the Licensing Executive and prepare an establishment for a visit from the Licensing Executive. It would, we suppose, be our

fondest dream that businesses would contact BMI for a license before they begin using music as the law requires, that visits were not needed, that our direct mail and telemarketing were totally successful in explaining the need for permission to publicly perform music, and we received all licenses through the mail. Such is not the case, and visits are sometimes necessary. When they are made, we have made every reasonable effort possible to notify the establishment, and we do not appear out of nowhere and demand a license and a fee. Most pieces of our literature suggest to users that they consult an attorney if they have any questions, and our Licensing Executives do the same.

When our efforts to license music using establishments do not succeed, BMI brings copyright infringement actions. Approximately 300-400 such actions are brought throughout the United States each year. This represents, however, only a small fraction of the 15,000 licenses we receive each year, and an even smaller fraction of the number of establishments we are contacting during a year for license agreements.

Our fee in a restaurant, nightclub or similar establishment with occupancy of up to 75 and using only recorded music is \$195 a year. If the establishment has between 226 and 300 occupancy, the fee is \$360 a year, which is about average. If, however, multiple television sets are used, their fee is 35% higher. Our fee in a retail store or other commercial establishment is based upon square footage: \$60 a year for up to 1,500 square feet; \$480 a year for over 5,000 square feet. Fees

for audiovisual uses are somewhat higher. Thus, a user has access to all of the over 2,500,000 songs created by BMI's affiliates, and can use this music to enhance and make more profitable his or her business, for about 50¢ a day in a small restaurant and 15¢ a day in a store. This is truly a modest sum for music which enhances one's business.

In an effort to reduce the cost of licensing and thereby to reduce the amount of fees which users would be responsible for, BMI will negotiate group license agreements with a business association. Such an agreement is administered by the association for the benefit of its members and will usually provide for a reduced rate. Recently, BMI had a series of discussions with the New Jersey Restaurant Association. While BMI and the Association did not reach an agreement, BMI believes the negotiations showed that both parties recognized the value of music and the benefits a group license can confer. Unfortunately, instead of pursuing the best arrangement they could for their members, the NJRA has instead sought to look to legislation to either tie the hands of BMI and similar organizations to enforce federal rights or to seek exemptions from payment altogether. Neither approach is at all fair to the legitimate interests of creators of music from New Jersey or the rest of the country.

Why A. 1610 is unnecessary and detrimental

This bill virtually would prevent BMI or its affiliated songwriters and music publishers from restraining unauthorized use

of their music in New Jersey. It would therefore give free rein to those who choose to take that property without paying for it and the freedom to benefit from another's labors free of charge.

Much of A. 1610 constitutes unnecessary legislation, inasmuch as it attempts to codify longstanding BMI business practices and it interferes with the implementation of BMI's Consent Decree. Moreover, by putting obstacles in the way of effective enforcement of federally-granted rights, it essentially undermines those rights.

BMI has operated under a Consent Decree with the Department of Justice since 1966 which requires it to treat music users of the same kind alike. The relevant provision states that "[BMI] shall not enter into, recognize as valid or perform any performing rights licensing agreement which shall result in discriminating in rates or terms between licensees similarly situated...." As a result, our license agreements are standardized for uniform national treatment. That annual fee I mentioned for a restaurant with a 75 person maximum occupancy that only uses recorded music is \$195 whether the establishment is located in New Jersey or Nebraska and, by the same token, whether the New Jersey locale is Toms River, Sayreville, Pennsauken or Westwood. No special deals are or can be made. Thus, every restaurant proprietor in New Jersey is paying no more for music than competitors across the street or across the country.

Certain fees, however, are calculated upon the basis of information provided to us by the licensee. BMI's fee for live music, for example, depends upon the licensee's range of live

entertainment expenses. If two restaurants which are spending the same amount each year for live music and have no other music are paying two different fees, it is because one of them is not accurately reporting to us. Similarly, if a restaurant submits a license through the mail, it reports its occupancy. BMI cannot in every instance be certain of the numbers, although we do try to ascertain accuracy. Unfortunately, we do not have the staff to verify this kind of information from every establishment, so we must rely on random audits, as the license agreement permits, to do our best to make sure that no user in a class is getting a leg up on his competitors by being dishonest.

All BMI agreements are in writing, specifying the parties, duration and rate schedules, so that both BMI and the licensee know clearly each other's rights and obligations. To do otherwise would create such chaos that BMI could not do business. Since the royalties BMI pays out to its writers, composers and publishers comes from the universe of license fees we collect, we must be cognizant at all times of the fees we can expect to receive from our licensees. The only way we can monitor that would be to have precise, written agreements, which are the only kind of licenses we grant.

The requirement of A. 1610 that BMI attach a list of its repertoire and affiliates to every contract would be of little practical use to the user. With a repertoire of over 2.5 million songs owned by 150,000 people and entities which change on a daily basis, as soon as a document of that size was printed it would be

outdated and unreliable, to say nothing of the fact that it would be many thousands of pages long. Also, it would be very expensive to print the list and the cost would be passed along to the users as higher license fees. Furthermore, BMI answers phone or mail inquiries as to whether particular songs are licensed by us. We are also exploring the possibility of making our title data base available on-line to licensees and prospective licensees.

Also very troubling about the bill is the prohibition against one's entering a premises to investigate unauthorized music use without identifying himself or herself to the owners or employees. Certainly, BMI licensing executives make themselves known when they first approach a prospective licensee; not to do so would negate the purpose of their visit. But once a known unlicensed music user has been identified, educated, written to, visited, telephoned and urged to comply with federal law, BMI is duty bound to uphold the copyrights entrusted to it by instituting litigation, the basis for which are specific BMI songs performed at that location, as witnessed by an investigator who visited the establishment on a random evening. This bill would compel by law the investigator to identify himself or herself and state the reason for the visit to a proprietor who has been contacted repeatedly about the need to be licensed, has refused to become licensed and has continued to use music, now face-to-face with someone who announces that he is gathering proof of that unauthorized use for a lawsuit. This Committee could well imagine the sort of physical jeopardy in which the investigator would be placed. Furthermore, the proprietor could

easily stop the music until the investigator left. Under either scenario, the bill would make the upholder of federal law a lawbreaker in New Jersey. Without the ability to acquire evidence of unauthorized use, federal remedies could not be enforced, making free music use the order of the day. That would soon bring an end to new music.

Moreover, threatening to bring litigation if one does not license is a matter of perspective. BMI tells every licensee that if they play music without a license they will be in violation of federal law. That is not a threat; it is simply a statement of fact. To outlaw that would be to hide the fact that there is a penalty attached to one's illegal conduct. Is it not fairer to tell someone how they can avoid being in violation of law rather than to keep quiet about it and merely present them with a lawsuit?

Finally, the provisions allowing a three-day cancellation period or the voiding of a contract will hurt rather than help the licensee. BMI's contracts already provide that if one discontinues music the contract is cancelable. If a licensee seeks to cancel or void a contract yet still uses music, the moment the contract is ended the licensee is in violation of copyright law for using music without a license, subjecting him to serious damages. Therefore, nothing would be accomplished by this provision. There is no reason to legislate matters the parties as a matter of course have already agreed among themselves.

The only people in New Jersey who have anything to gain by this bill are those who use music without paying for it. Looked at

from the creator's perspective, this legislation is the equivalent of creating an atmosphere which would legally allow a songwriter to go into a restaurant, eat a meal and leave without paying the check. In order for the more than 2000 BMI songwriters and composers from New Jersey, as well as those from the rest of the country, to have the incentive to continue to create the music all of us enjoy, they need to know that there will be compensation for their creations, and that those who would use their music without paying for it will not be rewarded. Since the U.S. Copyright Law creates, and our Consent Decree controls, the mechanism for BMI to keep that knowledge secure, I urge you to reject this bill so that the destruction of effective licensing and enforcement of copyrights is prevented in New Jersey.

SB813

LRB8904929FNsb

1	AN ACT concerning copyright royalty collection.	60
2	Be it enacted by the People of the State of Illinois,	64
3	represented in the General Assembly:	65
4	Section 1. Short title. This Act may be cited as the	66
5	Copyright Royalty Collection Act.	69
6	Section 5. Definitions. As used in this Act:	72
7	"Area" means a circular geographical region having a	74
8	25-mile radius surrounding the business location of a	76
9	proprietor. In the case of a proprietor with more than one	77
10	business location, there shall be a separate area for each	
11	location for the purposes of this Act.	78
12	"Copyright owner" means the owner of a copyright of a	80
13	nondramatic musical or similar work recognized and	81
14	enforceable under the copyright laws of the United States	82
15	pursuant to Title 17 of the United States Code, Pub. L.	
16	94-553 (17 U.S.C. 101 et seq.).	83
17	"Performing rights society" means an association or	85
18	corporation that licenses the public performance of	86
19	nondramatic musical works on behalf of copyright owners, such	87
20	as the American Society of Composers, Authors and Publishers	
21	(ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.	88
22	"Proprietor" means the owner of a retail establishment,	90
23	restaurant, inn, bar, tavern, sports or entertainment	91
24	facility, or any other similar place of business or	92
25	professional office located in this State in which the public	
26	may assemble and in which nondramatic musical works or	93
27	similar copyrighted works may be performed, broadcast, or	94
28	otherwise transmitted for the enjoyment of the members of the	95
29	public there assembled.	
30	"Royalty" means the fees payable to a copyright owner or	97
31	performing rights society for the public performance of	98

1	nondramatic musical or other similar work.	99
2	Section 10. Contract provisions. No copyright owner or	102
3	performing rights society shall enter into, or offer to enter	104
4	into, a contract for the payment of royalties by a proprietor	
5	unless at the time of the offer, or any time thereafter, but	105
6	no later than 72 hours prior to the execution of that	106
7	contract, it provides to the proprietor, in writing, all of	107
8	the following:	
9	(1) A schedule of the rates and terms of royalties	109
10	under the contract.	
11	(2) A schedule of the rates and terms of royalties	111
12	under agreements executed by the copyright owner or	112
13	performing rights society and proprietors of comparable	113
14	businesses in the area.	
15	(3) In the case of a performing rights society, the	115
16	copyright owners represented by that society and the	116
17	works licensed under the contract.	
18	(4) Notice, in a form prescribed by the Attorney	118
19	General, that the proprietor is entitled to the	119
20	information contained in paragraphs (1), (2), (3), of	120
21	this Section, and that the failure of the copyright owner	121
22	or performing rights society to provide that information	123
23	is a violation of, and may render a contract	
24	unenforceable under, the provisions of this Act.	124
25	Section 15. Contract terms. Every contract for the	127
26	payment of royalties executed in this State shall:	128
27	(1) Be in writing; and	130
28	(2) Be signed by the parties; and	132
29	(3) Not exceed one year; and	134
30	(4) Include at least the following information:	136
31	(A) The proprietor's name and business address and	138
32	the name and location of each place of business to which	139

1 the contract applies; and

2 (B) The name and address of the copyright owner and 141

3 any performing rights society authorized by him to act on 142

4 his behalf; and

5 (C) The copyrighted works licensed under the 144

6 contract; and

7 (D) The duration of the contract; and 146

8 (E) The schedule of rates and terms of the 148

9 royalties to be collected under the contract, including 149

10 any sliding scale or schedule for any increase or

11 decrease of those rates for the duration of that 150

12 contract.

13 Section 20. Prohibited acts. No copyright owner or 153

14 performing rights society or any agent or employee thereof 155

15 shall do any of the following:

16 (1) Enter onto the premises of a proprietor's business 157

17 for the purpose of investigating as to the use of copyrighted 158

18 works by that proprietor without first identifying himself to 159

19 the proprietor or his employees and making known to them the 160

20 purpose of the investigation.

21 (2) Collect or attempt to collect a royalty payment or 162

22 any other fee except as provided in a contract executed under 163

23 the provisions of this Act.

24 (3) Use or attempt to use or practice in negotiating 165

25 with a proprietor, or in retaliation for a proprietor's 166

26 failure or refusal to negotiate, with respect to a contract 167

27 for the payment of royalties, including, but not limited to 168

28 any of the following:

29 (A) Threatening to commence legal proceedings in 170

30 connection with an alleged copyright violation with the 171

31 intent of coercing the proprietor to negotiate or enter 172

32 into a contract for the payment of royalties.

33 (B) Charging or collecting a royalty that is 174

1	unreasonable in comparison to the royalties for similar	175
2	licenses in the same area.	
3	Section 25. Fines. A person who violates any of the	178
4	provisions of this Act commits a business offense and shall	179
5	be fined not more than \$7,500 for a first offense and not	180
6	more than \$15,000 for a second and each subsequent offense.	
7	Section 30. A proprietor may bring an action or assert a	183
8	counterclaim, in a court of competent jurisdiction, against a	184
9	copyright owner or performing rights society, or both, to	185
10	enjoin any violation of this Act and to recover any damages	186
11	sustained by the proprietor as a result of a violation of	
12	this Act. The proprietor may petition the court to terminate	187
13	a contract that violates the provisions of this Act, and the	188
14	court in its discretion may void the contract. If	189
15	successful, the proprietor shall be entitled to recover	
16	threefold the damages sustained by him, together with	190
17	reasonable attorney's fees, filing fees, and reasonable costs	191
19	in addition to any other legal or equitable relief.	192
19	Section 35. Additional rights, remedies, and	195
20	prohibitions. The rights, remedies, and prohibitions	196
21	accorded by the provisions of this Act shall be in addition	198
22	to and cumulative of any other right, remedy, or prohibiting	199
23	accorded by common law, federal law, or the statutes of this	
24	State, and nothing contained herein shall be construed to	200
25	deny, abrogate, or impair any such common law or statutory	201
26	right, remedy, or prohibition.	
27	Section 40. Federal Communications Commission licensees.	204
28	This Act shall not apply to contracts between copyright	205
29	owners or performing rights societies and broadcasters	206
30	licensed by the Federal Communications Commission, except	207

SB813

1 if a copyright owner or performing rights society is 208
 2 licensed by the Federal Communications Commission, this Act
 3 shall apply to contracts between that copyright owner or 209
 4 performing rights society and a proprietor as otherwise 210
 5 provided herein.

6 Section 99. Effective date. This Act takes effect upon 213
 7 becoming law.

A BILL

FOR AN ACT ENTITLED

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45.45 is amended by adding new sections to read:

Article 7A. COPYRIGHT ROYALTIES AND LICENSING

Sec. 45.45.500. NOTICE REQUIRED BEFORE CONTRACT. (a) A copyright owner or a performing rights society may not enter into, or offer to enter into, a contract for the payment of royalties by a business proprietor unless at the time of the offer, or within seven days before entering into the contract, the copyright owner or performing rights society provides to the business proprietor a written notice containing:

- (1) the rates and terms of royalties under the contract, including any sliding scale, discounts, or reductions in fees on any basis for which the business proprietor may be eligible, and any scheduled increases or decreases in fees during the term of the contract;
- (2) in the case of a performing rights society, a toll free number from which the business proprietor may obtain answers to inquiries concerning musical works and copyright owners represented by the performing rights society;
- (3) in the case of a performing rights society, the procedure wherein a business proprietor may obtain upon request at the expense of the performing rights society, the most recent available list of the members or affiliates represented by the performing rights society and the most recent available list of the copyrighted musical works in the performing rights society's repertory;
- (4) in the case of a performing rights society, a statement that it is in compliance with state and federal law, and orders of courts having jurisdiction over rates and terms of royalties and the licensing for public performance of copyrighted nondramatic musical works.

Sec. 45.45.510. MINIMUM CONTENTS OF ROYALTIES CONTRACTS

(a) A royalties contract entered into, issued, or renewed in this state must be in writing and signed by the parties and may not exceed one year, except if the contract is under the terms of a national agreement. The contract must include at least the

- (1) business proprietor's name and business address, and the name and location of each place of business of the business proprietor to which the contract applies;
- (2) name and address of the copyright owner and any performing rights society authorized by the copyright owner to act on the copyright owner's behalf;
- (3) duration of the contract, and

(4) terms for the collection of the royalties and a rate schedule for the royalties, including any sliding scale, discount, or schedule for an increase or decrease of rates during the term of the contract

(b) A contract for the payment of royalties entered into, issued, or renewed in this state may not exceed one year at a time, except if the contract is under the terms of a national agreement. When each year of the contract ends, the contract is automatically renewed on the same terms and conditions unless either party to the contract provides the other party with written notice of the party's desire to terminate the contract or to change the terms and conditions. The notice must be given at least 45 days before termination each year.

Sec. 45.45.530 **COLLECTION OF ROYALTIES** A copyright owner, performing rights society, or an agent or employee of a copyright owner or a performing rights society may not collect or attempt to collect a payment or another fee under a royalties contract between the copyright owner or performing rights society and a business proprietor unless the contract complies with AS 45.45.500 - 45.45.590.

Sec. 45.45.540 **PROHIBITED NEGOTIATION AND RETALIATION PRACTICES**

(a) A performing rights society or an agent or employee of a performing rights society shall not

(1) except under provisions of a contract executed in accordance with the provisions of this act, collect or attempt to collect a royalty payment or another fee from a business proprietor licensed by the performing rights society,

(2) enter a business proprietor's premises to discuss a contract for the performance of copyrighted works or payment of royalties without first disclosing the purpose of the discussion and that the individual is an agent or employee of a performing rights society.

(b) A performing rights society whose agent or employee enters a proprietor's business to investigate the possible performance, broadcasting, or transmission of nondramatic musical works shall, not later than seven days after entering the proprietor's business, provide written notice to the business proprietor that the performing rights society's agent or employee entered the premises for the purpose of investigation. The notice must include the following:

(1) The name of the performing rights society,

(2) The date on which the agent or employee visited the proprietor's business,

(3) That the purpose of the visit was investigation,

(4) The name of each copyrighted work in the performing rights society's repertory that was performed at the proprietor's business during the investigation.

(c) Nothing in this act shall be construed to prevent the performing rights society from informing the business proprietor of his obligations under the federal copyright law, Title 17 of the United States Code, or from exercising any exclusive rights preempted under section 301(a) of Title 17 of the United States Code.

Sec. 45.45.550 **PENALTY** A person who knowingly violates a provision of AS 45.45.500 - 45.45.590 commits a class A misdemeanor.

Sec. 45.45.560 **PRIVATE ACTION** A person who suffers a loss as a result of a violation of this article may bring a civil action to recover actual damages and attorney's fees, to enjoin a violation of AS 45.45.500 - 590, and to seek any other remedy available at law or equity.

Sec 45.45.570 EXEMPTION The provisions of AS 45 45 500 - 45 45 590 do not apply to a royalties contract between copyright owners or performing rights societies and a broadcaster licensed by the Federal Communications Commission, a cable television operator or programmer, or another transmission service. The provisions of AS 45 45 500 - 45 45 590 also do not apply to an investigation by a law enforcement agency.

Sec 45.45.590 DEFINITIONS In AS 45 45 500 - 45 45 590

(1) "business proprietor" means a person who owns a place of business including a store, professional office, sports or entertainment facility, non-profit organization, restaurant, inn, hotel, or licensed beverage establishment in which the public may assemble and in which nondramatic musical works or similar copyrighted works may be performed, broadcast, or otherwise transmitted.

(2) "copyright owner" means the owner of a copyright, recognized and enforceable under 17 U.S.C. 101 et seq., of a nondramatic musical or similar work. The term does not include the owner of a copyright in a motion picture, an audiovisual work, or in part of a motion picture or an audiovisual work.

(3) "performing rights society" means an association or a corporation that licenses the public performances of nondramatic musical or similar works on behalf of copyright owners. Examples of performing rights societies include The American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc (BMI), and The Society of European Stage Authors and Composers, Inc (SESAC).

(4) "royalty" or "royalties" means a fee or fees payable to a copyright owner or a performing rights society for the public performance of nondramatic musical or other similar work.

(5) "royalties contract" means a contract for the payment of royalties.

* Sec. 2. AS 45 50.471(b) is amended by adding a new paragraph to read

(38) violating AS 45 45 500 - 45 45 590 (copyright royalties and licensing)

* Sec. 3. AS 45 45 500 - 45 45 510 and 45 45 530, enacted by Sec. 1 of this Act, do not apply to a contract entered into, issued, or renewed before the effective date of this Act.

* Sec. 4. If any provision of AS 45 45 500 - 45 45 590 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this ACT are declared to be severable.

* Sec. 5. This Act takes effect immediately under AS 01 10 070(c).

JUDICIARY COMMITTEE
DELIVERY ACCEPTANCE LOG

MEETING DATE 2/12/94

BILL NUMBERS SB 263

LEGISLATOR ACCEPTED BY TIME DATE.....

SEN. GREEN. Under Seal

SEN. MILLER. mj

SEN. ADAMS. Clayton Davis

SEN. ELLIS W. Speight

Alaska State Legislature

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



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Sponsor Statement

SB 263

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

SB 185 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 185 would level the playing field between small businesses and the large multi-billion dollar music licensing giants such as the American Society of Composer, 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, the rates and terms of similar contracts executed by the copyright owner with other business proprietors similarly situated, a list of the copyright owners and their works, a list of commission rates, the amounts and terms of any discounts, and a

statement, on a form established by the Department of Law, that the business proprietor is entitled to the above information and that failure to provide such information is a misdemeanor and may render the contract unenforceable.

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 name and address of the copyright owner and any society authorized to act on the owner's behalf, (3) a list of works authorized, (4) the duration of the contract, and (5) 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. Additionally, a copyright owner or society may not: (1) threaten court action to coerce a business proprietor to enter into a contract, or (2) charge or collect royalties which are unreasonable in comparison to royalties for similar licenses. A knowingly violation of these provisions would constitute a class A misdemeanor.

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. Treble damages shall be awarded to a business proprietor who prevails in an action.

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.



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MEMORANDUM IN OPPOSITION TO ALASKA SENATE BILL 263

The Motion Picture Association of America, Inc. (MPAA) respectfully submits this memo in opposition to Alaska SB 263 which would permit the State to regulate the business practices and agreements concerning the licensing of certain federally copyrighted works. MPAA represents the leading producers, distributors and copyright owners* of motion pictures in the U.S. released in theatres, home video, and pay and broadcast television.

This legislation is overbroad and ambiguous, and would have unfair and adverse consequences on MPAA member companies as well as all copyright owners of motion picture, home video and television properties. Moreover, all states are pre-empted by federal law from enacting their own copyright statutes. Therefore, if this statute were enacted it would be subject to an immediate federal court challenge and would likely be permanently enjoined from enforcement.

Although intended to address the licensing, investigation, and enforcement of licenses of public performances of "nondramatic musical works" (NMWs) to restaurants, inns, bars, and taverns, SB 263 applies to copyrighted works "similar" to nondramatic musical works performed at retail establishments and other places of business. Moreover, the provision applies to any such establishment where NMWs and similar works may be "performed, broadcast, or otherwise transmitted" as a public performance. Thus, by its terms, the provision encompasses virtually all retail establishments, whether or not a nondramatic musical work has ever been performed at the location.

* MPAA members include: Buena Vista Pictures Distribution, Inc. (Disney); Metro Goldwyn-Mayer Inc.; Paramount Pictures Corp.; Sony Pictures Entertainment, Inc.; Turner Pictures; Twentieth Century Fox Film Corp.; Universal City Studios, Inc.; and Warner Bros.

SB 263 is also ambiguous and overbroad with respect to the copyrighted material it attempts to reach. Wholly unanswered is what kinds of copyrighted works are similar to nondramatic musical works and thus covered by its proscriptions. This bill may apply to music contained in dramatic works, dramatic works with accompanying music, musical works generally, motion picture soundtracks, motion picture soundtracks containing nondramatic works, phonorecords of motion picture soundtracks, music videos, television programming containing music as well as a host of other audiovisual works containing music.

MPAA is particularly concerned that SB 263 may be read by litigants or the courts as applying to most forms of entertainment which may be publicly performed. After musical works, motion pictures, television programming and sports events are the works most commonly performed publicly. Proprietors of bars and other retail establishments receive this programming over electronic media and rebroadcast these works of entertainment "for the enjoyment of the members of the public assembled on the premises[.]" Litigants, focusing on the similarity in the public performance and rebroadcast of musical works and these other forms of entertainment, are expected to argue that these copyrighted works are "similar works" covered by SB 263.

BILL WOULD HARM LEGITIMATE INVESTIGATIONS

Unlicensed public performances of motion pictures and television programming in bars, taverns, inns, and other retail establishments are investigated by representatives of the MPAA. These investigators usually do not identify themselves as MPAA representatives or as agents of copyright owners when attending the performances. Moreover, no evidence exists that such investigations have been conducted in an arbitrary or capricious manner. MPAA is aware of no example where such an investigation has even led to a complaint to law enforcement or to MPAA.

Such investigations are designed to detect the deliberate and systematic misappropriation of the creative work of thousands of persons employed in the motion picture and television industries. To

detect systematic piracy of such programming and distinguish it from incidental or unintentional misappropriation, MPAA investigators attend multiple performances. If required to identify themselves and their purpose, they would be denied admission by those engaging in regular and deliberate piracy. By definition, these performances are open to the public. Other patrons are not required to state their purpose or identify themselves. Inasmuch as MPAA investigators have conducted such investigations in an exemplary manner without complaint even from proprietors habitually engaging in unlicensed public performances, the proposed legislation appears to arbitrarily restrict these legitimate investigations.

SB 263 IS PRE-EMPTED BY FEDERAL LAW

As we indicated previously, the State of Alaska is pre-empted from enacting their own copyright law and would be subject to immediate litigation if such a measure was enacted. In 1976, Congress passed the Copyright Revision Act (17 U.S.C. § 101, *et seq.*). Section 301 of that Act¹ was enacted for the purpose of ending the then existing dual system of statutory copyright protection. (H.Rep. No. 94-1476, reprinted in 1976 U.S.C.A. at 17 U.S.C. § 301, pp. 271-72). The Notes of the Committee on the Judiciary stated ". . . [t]he intention of section 301 . . . is to preempt and abolish any rights under the common law or statutes of a State that are the equivalent to copyright and that extend to works coming within the scope of federal copyright law. The declaration of this principle in section 301 . . . is intended to be stated in the clearest and most unequivocal language possible, so as to foreclose any conceivable misinterpretation of its unqualified intention that Congress shall act preemptively, and to avoid the development of any vague borderline areas between State and Federal protection." *Id.*

¹ 17 U.S.C. §301(a) reads: "On and after January 1, 1978, all legal or equitable rights that are the equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statute of any State."

MPAA is convinced that SB 263 invades this borderline area and is preempted by Section 301 and The Supremacy clause of the United States Constitution (Art. VI, cl. 2).

#

We urge the Alaska Legislature to defeat SB 263.

February 1996