

also, software. It is said that "it all starts with a song," and these works have defined our culture to audiences world-wide.

Actually, Sonny wanted the term of copyright protection to last forever. I am informed by staff that such a change would violate the Constitution. I invite all of you to work with me to strengthen our copyright laws in all of the ways available to us. As you know, there is also Jack Valenti's proposal for term to last forever less one day. Perhaps the Committee may look at that next Congress.

In addition, this bill also presents a significant change in the music licensing system. Everyone must remember that I was a small business woman before I came to Washington. I am sympathetic to the concerns raised by many industries. Unfortunately the generous exemption included in this bill tests my patience because it comes at the expense of songwriters. The current system has worked for decades, and in my view serves the public well.

Yet, we must bring this bill forward today. Our inaction risks a response from the international community. While one of the goals of term extension is having our system conform to a strong international standard, I am troubled to learn that with the music licensing section, we risk violating our international treaty obligations. These treaties protect American property overseas, for example under the Berne Convention and the TRIPS agreement. I ask that the RECORD include the following letters from the U.S. Trade Representative, the Patent and Trademark Office, the Department of Commerce, and the Register of Copyrights concerning the possible serious international consequences of this portion of the bill.

I am hopeful that we in the House Judiciary Committee will have the chance to revisit this issue, and pursuant to our oversight powers, review its effect on American songwriters and our multi-lateral trade obligations. Further, this may be an unconstitutional taking of property. The talented men and women who write our music may rest assured that I will continue to be their advocate in the House.

Again, I truly thank all of my colleagues for this tribute to Sonny.

THE U.S. TRADE REPRESENTATIVE,  
Washington, DC, August 26, 1998.

Hon. MARY BONO,  
U.S. House of Representatives, Washington, DC.

DEAR CONGRESSWOMAN BONO: Thank you for your recent letter regarding the Fairness in Musical Licensing Act. As you note in your letter, Administration officials have expressed serious concerns about this legislation on a number of occasions. If this legislation is passed, we believe that our trading partners will argue that it violates our international obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

You have asked whether it is fair to conclude that there would be repercussions in the global community if Congress passed legislation that violated U.S. multilateral treaty obligations. Your question is phrased as a hypothetical one and we assume that it is not limited to the music licensing context. In general, we would expect that our relations with our trading partners would be impaired if the United States enacted legislation that was inconsistent with its previous commitments. In response to your second question—again, as a general matter—we would also expect that our trading partners might pursue action in the World Trade Organization (WTO) if the United States en-

acted legislation that those countries believed violated our WTO obligations and impaired their interests.

You have also asked whether our trading partners could respond to the passage of music licensing legislation in a manner that would compromise the integrity of the copyright sectors and other sectors of the U.S. economy. It is difficult to predict exactly how our trading partners would react to the passage of legislation resembling the Fairness in Musical Licensing Act. We are certain, however, that the reaction would be a strong negative one. One of our most important trading partners, the European Union (EU), has already expressed significant concern about the pending legislation, and we know that EU officials are following its progress in Congress very closely. The EU is currently threatening to bring dispute settlement proceedings in the WTO challenging the existing "home style" exception in U.S. copyright law as overly broad. The pending legislation, as you know, would expand that exception, and thus would likely elicit a strong reaction.

Finally, you have asked whether it is the policy of the Administration to oppose a legislative package that violates our multilateral trade obligations. We cannot generalize about the Administration's likely position on legislation in the abstract, but can reiterate the seriousness with which we take all of our international commitments. With respect to music licensing, the Administration has opposed the pending legislation for a wide variety of policy reasons.

I appreciate this opportunity to reiterate the Administration's concerns regarding the pending legislation and would be pleased to respond to any further questions that you might have.

Sincerely,

RICHARD W. FISHER,  
Acting.

THE SECRETARY OF COMMERCE,  
Washington, DC, March 20, 1998.

Hon. NEWT GINGRICH,  
Speaker of the House of Representatives,  
Washington, DC.

DEAR MR. SPEAKER: The House may consider H.R. 2589, the "Copyright Term Extension Act," next week. The Administration supports passage of this bill, as reported by the House Judiciary Committee, and urges favorable consideration. I have been informed, however, that there also may be an attempt by supporters of H.R. 789, the "Fairness in Musical Licensing Act of 1997," to add the provisions of that bill to H.R. 2589. The Administration strongly opposes the provisions of H.R. 789 and urges that any such amendment be rejected.

The Administration strongly opposes H.R. 789 because it would amend section 110 of the Copyright Act of 1976 in ways that effectively strip music copyright owners of one of their fundamental rights under the Copyright Act—the right of copyright owners of literary, musical, dramatic, audiovisual and other works to publicly perform their copyrighted work or to authorize the performance by others. For example, the bill replaces the limited "small business" or "home style" exemptions of current law, which provide for minimal public use of a private-type radio or television under section 110(5) of the Copyright Act, with a much broader exemption based on whether an "admission fee" is charged or the transmission is otherwise not licensed. This change would thereby expand the limited "home style" exemption to encompass profitable restaurants and bars and would favor these establishments at the expense of the copyright owner and his or her Constitutionally granted rights.

If the amendment were adopted, we know that our trading partners will claim that it is an overly broad exception that violates our obligations under the Berne Convention for the Protection of Literary Works and the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement). We are equally concerned that enactment could sacrifice the interests of U.S. music copyright owners abroad to satisfy the demands of those domestic interests that seek uncompensated use of their music. The American music industry is the most successful in the world, and royalties from foreign performances are an important source of income for U.S. artists and composers. If we expand the exemptions in our law as contemplated in H.R. 789, other countries may use that as an excuse to adopt this or other exemptions in their copyright laws, thereby leading to economic losses to U.S. music copyright owners in hundreds of millions of dollars.

Accordingly, the Administration strongly urges the House to reject any attempt to attach the provisions of H.R. 789 to H.R. 2589. Thank you for your consideration.

Sincerely,

WILLIAM M. DALEY.

PATENT AND TRADEMARK OFFICE  
Washington, DC, January 16, 1998.

Hon. HOWARD COBLE,  
Chairman, Subcommittee on Courts and Intellectual Property,  
Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: We received the attached letter from the late Representative Sonny Bono raising issues concerned with certain provisions in H.R. 789, the "Fairness in Music Licensing Act." In view of the tragic and untimely death of Mr. Bono and the importance of these issues, I thought we should send this response to you so that the Committee could be made aware of the depth of his concerns. I am pleased to share the Administration's views on this issue with you.

As we testified last summer, the Administration is concerned that the United States maintain its role as the world's leader in ensuring adequate and effective intellectual property protection. We are seriously concerned, as are you, that, if enacted, section 110(5) of H.R. 789, could be challenged by our trading partners, who could argue that it is an overly broad exception that would violate our obligations under the Berne Convention for the Protection of Literary and Artistic Works.

We are also concerned that we should not sacrifice the interests of U.S. music copyright owners—authors, composers and publishers—abroad to satisfy the demands of those domestic interests who would seek to permit uncompensated use of their music. The American music industry is the most successful in the world, and American popular music is publicly performed widely in virtually every country on the planet. Royalties from those foreign performances is an important part of the income for U.S. artists and composers. Creating in our own copyright law anything more than a *de minimus* exception to the public performance right will be used against us internationally, when other countries seek to enact similar limitations. If put in place, such limitations would keep U.S. music copyright owners from collecting royalties for the public performance of their works in those countries which would cause hundreds of millions of dollars in losses to U.S. music copyright owners.

As you have noted in your letter, the current "home style exception" has been applied by the courts to exempt establishments of approximately 1000 square feet. The Irish Performing Rights Organization has requested the Commission of the European