

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1004

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 2, 1996

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 1004.

This bill establishes certain rights and responsibilities between the parties to contracts for the payment of royalties for the performance of nondramatic musical works on certain business premises. The owners of copyrighted music are usually represented by "performing rights societies," such as ASCAP (the American Society of Composers, Authors and Publishers), BMI (Broadcast Music, Inc.), and SESAC, Inc. Among their other activities on behalf of the copyright owners they represent, these societies negotiate contracts with restaurants, bars, retail establishments, professional offices and others for the performance, either live or recorded, or broadcast on television or radio, of the copyrighted works in their respective repertoires.

The bill requires performing rights societies doing business in the State to file annually with the Secretary of State a current list of nondramatic musical works for which they collect royalties on behalf of copyright owners. The list may be used by the proprietor of a business in making an informed decision before entering into a contract with a performing rights society to use music in his place of business and the list shall be binding between the parties for the period of the contract with the proprietor. The required list must be provided at a reasonable cost to anyone requesting it. A performing rights society must also establish and maintain a toll free telephone number through which inquiries regarding specific nondramatic musical works may be made.

The bill provides that, at least 72 hours prior to the execution of a contract for the payment of royalties on a nondramatic musical work, the performing rights society must provide, in writing, to the proprietor of the business: (1) a schedule of the rates and terms of royalties under the contract; (2) a schedule of the rates and terms of royalties under the agreements between the performing rights society and proprietors of comparable businesses in the area (a circular geographical region having a 25-mile radius surrounding the business location); (3) notice of its most recent filing with the Secretary of

State; (4) the toll free telephone number of the performing rights society required to be established by this bill; (5) the amount and terms of any discount offered to proprietors in the area; and (6) notice that a proprietor is entitled to the information under this bill and that the failure of the performing rights society to provide that information is a violation of the bill and may render the contract unenforceable.

The bill also requires that every contract for the payment of royalties executed or renewed in this State on or after the effective date of this bill be in writing; be signed by the parties; and include the proprietor's name and address of each business location, the name and business address of the performing rights society, the duration of the contract and the schedule of rates and terms of royalties, including any sliding scale, discount or schedule for any increase or decrease of those rates during the contract. The bill also requires a performing rights society to offer a proprietor a one year contract for the payment of royalties, but the parties may agree to a contract for a term other than one year.

The bill prohibits a performing rights society from: entering onto the premises of a proprietor's business for the purpose of discussing a contract for the payment of royalties without first identifying himself to the proprietor or his employees and why he is there; with respect to contracts executed on or after the effective date of this bill, collecting royalty payments except as provided in a contract executed pursuant to this bill; and using coercive practices to persuade a proprietor to negotiate or enter into a contract for the payment of royalties, such as disrupting the proprietor's business or threatening to commence legal proceedings in connection with an alleged copyright violation.

The bill provides penalties of not more than \$2,500 for a first violation and not more than \$10,000 for a second and each subsequent violation and permits a proprietor to bring an action or assert a counterclaim against a performing rights society to enjoin any violation of the bill and to recover any damages sustained by the proprietor as a result of a violation. The prevailing party in an action brought under this bill is to be awarded reasonable attorney's fees and costs of suit.

The provisions of the bill do not apply to the owner of a copyright in a motion picture or audiovisual work or a part thereof. The committee amended the bill to provide that the provisions of the bill do not apply to contracts between performing rights societies and broadcasters licensed by the Federal Communications Commission or to any enforcement conduct pursuant to the "New Jersey Anti-Piracy Act." The provisions of the bill take effect immediately.