

DIGITAL AUDIO RECORDING

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND
COMPETITIVENESS

OF THE

COMMITTEE ON
ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED SECOND CONGRESS

SECOND SESSION

ON

H.R. 4567

A BILL TO IMPLEMENT A ROYALTY PAYMENT SYSTEM AND A SERIAL
COPY MANAGEMENT SYSTEM FOR DIGITAL AUDIO RECORDING, AND
TO PROHIBIT CERTAIN COPYRIGHT INFRINGEMENT ACTIONS

MARCH 31, 1992

Serial No. 102-139

Printed for the use of the Committee on Energy and Commerce



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1992

59-346-1

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-039243-8

H367-116

COMMITTEE ON ENERGY AND COMMERCE

JOHN D. DINGELL, Michigan, *Chairman*

JAMES H. SCHEUER, New York
HENRY A. WAXMAN, California
PHILIP R. SHARP, Indiana
EDWARD J. MARKEY, Massachusetts
AL SWIFT, Washington
CARDISS COLLINS, Illinois
MIKE SYNAR, Oklahoma
W.J. "BILLY" TAUZIN, Louisiana
RON WYDEN, Oregon
RALPH M. HALL, Texas
DENNIS E. ECKART, Ohio
BILL RICHARDSON, New Mexico
JIM SLATTERY, Kansas
GERRY SIKORSKI, Minnesota
JOHN BRYANT, Texas
RICK BOUCHER, Virginia
JIM COOPER, Tennessee
TERRY L. BRUCE, Illinois
J. ROY ROWLAND, Georgia
THOMAS J. MANTON, New York
EDOLPHUS TOWNS, New York
C. THOMAS McMILLEN, Maryland
GERRY E. STUDDS, Massachusetts
PETER H. KOSTMAYER, Pennsylvania
RICHARD H. LEHMAN, California
CLAUDE HARRIS, Alabama

JOHN S. ORLANDO, *Chief of Staff*

ALAN J. ROTH, *Chief Counsel*

MARGARET A. DURBIN, *Minority Chief Counsel/Staff Director*

SUBCOMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND COMPETITIVENESS

CARDISS COLLINS, Illinois, *Chairwoman*

PETER H. KOSTMAYER, Pennsylvania
HENRY A. WAXMAN, California
RICK BOUCHER, Virginia
JIM COOPER, Tennessee
TERRY L. BRUCE, Illinois
J. ROY ROWLAND, Georgia
THOMAS J. MANTON, New York
EDOLPHUS TOWNS, New York
C. THOMAS McMILLEN, Maryland
JOHN D. DINGELL, Michigan
(Ex Officio)

ALEX McMILLAN, North Carolina
MICHAEL G. OXLEY, Ohio
MICHAEL BILIRAKIS, Florida
JOE BARTON, Texas
FRED UPTON, Michigan
NORMAN F. LENT, New York
(Ex Officio)

DAVID SCHOOLER, *Staff Director/Chief Counsel*

ANGELA JACKSON, *Counsel*

DOUGLAS F. BENNETT, *Minority Counsel*

(ii)

CONTENTS

	Page
Text of H.R. 4567.....	4
Testimony of:	
Beacham, Frank, journalist and producer of audio programming.....	96
Berman, Jason S., president, Recording Industry Association of America, Inc.....	86
Hebner, Robert, Deputy Director, Electronics and Electrical Engineering Laboratory, National Institute of Standards and Technology.....	66
Keplinger, Michael S., Office of Legislation and International Affairs, Department of Commerce.....	66
Kirk, Michael K., Assistant Commissioner, Patent and Trademark Office, Department of Commerce.....	66
Murphy, Edward P., president, National Music Publishers Association, on behalf of Copyright Coalition.....	91
Roach, John V., chairman, Tandy Corp.....	79
Shapiro, Gary J., vice president, Electronic Industries Association, on behalf of Home Recording Rights Coalition.....	82
Warwick, Dionne, BMI songwriter and Arista recording artist.....	75
Material submitted for the record by:	
Motown Record Company, L.P.: Letter dated March 26, 1992 from Jherly Busby, president, to Chairwoman Collins.....	108
Responses to subcommittee questions received by:	
Home Recording Rights Coalition, dated March 27, 1992.....	116
National Institute of Standards and Technology, Department of Commerce, dated March 31, 1992, and statement of John W. Lyons, Director.....	129
National Music Publishers Association, Inc., dated March 26, 1992.....	133
Patent and Trademark Office, Department of Commerce, dated March 30, 1992.....	125
Recording Industry Association of America, dated March 27, 1992 and letter dated March 30, 1992.....	110
Tandy Corporation, dated March 27, 1992.....	120

(iii)

DIGITAL AUDIO RECORDING

TUESDAY, MARCH 31, 1992

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON COMMERCE, CONSUMER PROTECTION,
AND COMPETITIVENESS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2322, Rayburn House Office Building; Hon. Cardiss Collins (chairwoman) presiding.

Mrs. COLLINS. This hearing of the Energy and Commerce Subcommittee on Commerce, Consumer Protection, and Competitiveness will come to order. Today's hearing will address the commerce, consumer protection and competitiveness issues regarding the "Audio Home Record Act of 1992."

Digital audio recording technology marks a revolution in the recording and electronics fields. Unlike the common analog recorders, digital audio recorders make virtually perfect copies of source music. With analog records, the sound quality eventually deteriorates, but with digital audio recorders, multi-generational copies, from the first generation to the 100th generation, sound as good as the original.

To date, American consumers have not had wide access to this revolutionary technology due to litigation and disagreements between the electronics industry, the recording industry, music publishers and songwriters. This dispute stems from the music industry's fear that the technology will lead to reduced sales and royalties.

To their credit, the concerned parties have spent years attempting to resolve this issue. Fortunately, on July 11, 1991, a compromise was reached. This compromise is embodied in the legislation before us. The legislation is designed to end the stalemate and facilitate the wide scale introduction of digital audio recording technology to the American consumer.

There are three basic provisions of the legislation: First, it prohibits the bringing of any copyright infringement suit based on the manufacture, importation or distribution of a digital or analog audio recorder or medium, or the use of the recorder or medium to make copies.

Second, it requires all manufacturers and importers to pay a small royalty fee for every digital audio recorder and digital audio recording medium made available to American consumers. This money is eventually distributed to copyright holders via the U.S. Copyright Tribunal.

(1)

Third, it requires all digital audio recorders and interface devices imported, manufactured or distributed in the United States to incorporate the Serial Copy Management System, which permits unlimited recording of original material but can prevent recording of copied material.

I commend the various industries for reaching this compromise. When previous bills proved to be too contentious, Congress urged the parties to go back to the drawing board and reach a true compromise. That is what the parties did.

While in many respects this legislation is a model compromise, there are still some issues that need to be and will be addressed at this hearing. They are as follows: First, in the area of consumer protection, do the benefits to consumers of the legislation—release from liability regarding home copying and eventual access to digital recording technology—outweigh the burdens having to indirectly pay royalties and having limits on taping through technological fixes?

Second, to what extent do the technical and other requirements of the legislation represent a burden or a benefit to American and smaller consumer electronics manufacturers?

Third, 16 nations impose fees on recording media. Six of those nations also impose fees on recording equipment. Australia, Finland and Iceland have already enacted home recording legislation which contains reciprocity provisions. It appears that since the United States does not have a similar royalty provision Americans are not allowed to benefit from these royalty funds. The question is, will the legislation achieve a desired reciprocal effect?

Those are the kinds of things we are going to be asking about in our hearing today and expect to get answers to those concerns.

Mr. McMillan for an opening statement.

Mr. McMILLAN. Thank you, Madam Chairwoman. I commend you for convening today's hearing on the Audio Home Recording Act and welcome our witnesses to the subcommittee.

It is both pleasing and unusual that after years of negotiation between artists, electronic equipment manufacturers, music publishers and consumers an agreement has been reached. This agreement is now before us in the legislation that we address today.

This legislation contains a modest royalty provision for the protection of artists and publishers. It allows consumers to make copies of audio works for their own enjoyment and mandates the inclusion of the Serial Copy Management System in digital audio recorders to reduce piracy.

The bill reflects a commitment to the protection of intellectual property. Studies have indicated that American consumers copy about a billion musical pieces each year. Under the proposed legislation artists will receive compensation without compromising the rights of consumers.

Finally, the legislation will allow an important technology to enter the marketplace. With digital audio technology music lovers will enjoy precise studio quality recordings.

Madam Chairwoman, I have heard today's proposed legislation characterized as a win-win-win proposition. I look forward to the testimony of today's witnesses to see if they concur. It's rare up here to produce something that so many agree on. I commend the

Chair for her work on this important issue and yield back the balance of my time.

Mrs. COLLINS. Thank you.

[Testimony resumes on p. 65.]

[The text of H.R. 4567 follows:]

102D CONGRESS
2D SESSION

H. R. 4567

To amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1992

Ms. COLLINS of Illinois introduced the following bill; which was referred jointly to the Committees on the Judiciary, Energy and Commerce and Ways and Means

A BILL

To amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Audio Home Recording
5 Act of 1992".

1 SEC. 2. IMPORTATION, MANUFACTURE, AND DISTRIBUTION 2 OF DIGITAL AUDIO RECORDING DEVICES 3 AND MEDIA.

4 Title 17, United States Code, is amended by adding
5 at the end the following:

6 "CHAPTER 10—DIGITAL AUDIO RECORDING 7 DEVICES AND MEDIA

"SUBCHAPTER A—DEFINITIONS, PROHIBITION OF CERTAIN INFRINGEMENT ACTIONS, AND RULES OF CONSTRUCTION

"Sec.

"1001. Definitions.

"1002. Prohibition on certain infringement actions.

"1003. Effect on other rights and remedies with respect to private home copy-
ing or otherwise.

"SUBCHAPTER B—ROYALTY PAYMENTS

"1011. Obligation to make royalty payments.

"1012. Royalty payments.

"1013. Deposit of royalty payments and deduction of expenses.

"1014. Entitlement to royalty payments.

"1015. Procedures for distributing royalty payments.

"1016. Negotiated collection and distribution arrangements.

"SUBCHAPTER C—THE SERIAL COPY MANAGEMENT SYSTEM

"1021. Incorporation of the serial copy management system.

"1022. Implementing the serial copy management system.

"SUBCHAPTER D—REMEDIES

"1031. Civil remedies.

"1032. Binding arbitration.

8 "SUBCHAPTER A—DEFINITIONS, PROHIBITION 9 OF CERTAIN INFRINGEMENT ACTIONS, AND 10 RULES OF CONSTRUCTION

11 "§ 1001. Definitions

12 "As used in this chapter, the following terms and
13 their variant forms mean the following:

Mrs. COLLINS. I understand that Mr. Morton Gould, the president of ASCAP, is present in the audience today. I would like to recognize him, for two reasons. The first is he is one of the country's most distinguished composers, and the second is because ASCAP is now a constituent of mine through their Chicago membership office located in the Kensbury Center. I look forward to visiting that office sometime in the near future, Mr. Gould. We are glad you are here today.

Our first panel is going to be Mr. Michael Kirk, who is the Assistant Commissioner for External Affairs for the U.S. Patent and Trademark Office. He is here because Mr. Manbeck, who we expected to have here, has had a problem in his family and he has to be at the hospital this morning. We are also going to have Dr. Robert Hebner, who is the Deputy Director of the Electronics and Electrical Engineering Laboratory, National Institute of Standards and Technology, with the Department of Commerce.

Let me say to all of the witnesses that we operate under the 5-minute rule in the House of Representatives, as you very well know, Mr. Kirk, and so do others who are here. Which means that you are entitled to have 5 minutes to summarize your statement with the full knowledge that your entire statement will be made a part of the record.

We have been joined by Mr. Towns. Would you like to make an opening statement at this time?

Mr. TOWNS. Madam Chair, I will just include it in the record.

Mrs. COLLINS. Without objection, so ordered.

OPENING STATEMENT OF HON. EDOLPHUS TOWNS

Madam Chairwoman, members of this committee, ladies and gentlemen, I am pleased to join in these proceedings and to see the productivity which comes when divergent interests bring collective resolve to solve problems.

We stand on the threshold of exploding technological advancements, and this bill embodies clear examples of both subtle and glaring questions of equity and fairness in contrast to the mere fiscal bottom line. Global competitiveness demands that we learn from this experience, so that the American marketplace, this industry and its artists do not fall victim to the politics of free enterprise. I hope this measure will find broad support and quick dispatch in this subcommittee and at the full committee level.

However, as important as this legislation is, and the implementation of its attendant protection, I come here today to join you in another quest for equity and fair play. The panels and individuals appearing here today, effectively and purposefully reflect the full range of perspectives on digital audio recorders; Serial Copy Management Systems, and an array of complex legal and technical issues. Male and female, Black and White—each an expert in their own right. This is America and this is the way it should be.

Madam Chair, I bring my voice and advocacy to your efforts to have this industry, reflect this same diversity at every level—not only in front of the microphone or as expert technicians, but in their legal departments, advertising, marketing and management divisions. There must be respect for consumer activity in the marketplace—reflected by the absence of niche placements or glass ceilings for women and minority industry executives.

I know the commitment of the leadership of RIAA to this issue and I applaud you. I can only hope that the total industry and related manufacturers of hardware and software make this goal a priority for the 1990's.

Mrs. COLLINS. You may begin now, Mr. Kirk.

STATEMENTS OF MICHAEL K. KIRK, ASSISTANT COMMISSIONER, PATENT AND TRADEMARK OFFICE, DEPARTMENT OF COMMERCE, ACCOMPANIED BY ROBERT HEBNER, DEPUTY DIRECTOR, ELECTRONICS AND ELECTRICAL ENGINEERING LABORATORY, NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY; AND MICHAEL S. KEPLINGER, OFFICE OF LEGISLATION AND INTERNATIONAL AFFAIRS

Mr. KIRK. Thank you, Madam Chairwoman and members of the subcommittee, Mr. Manbeck asked that I convey his sincere apology for his inability to be here this morning, but as the chairwoman has said, he was unfortunately called to a hospital this morning and was not able to be here.

I am pleased to present the administration's views on the pending digital audio recorder legislation, the Audio Home Recording Act of 1992. For nearly a decade the recording industry, songwriters, music publishers, performers, recorder and media manufacturers have debated the effects of personal copying, first in the analog world and now in the digital world.

Because digital audio recorders permit the making of perfect copies, the parties have now recognized, as pointed out by the chairwoman, that this poses a real threat to the continued vitality of our world-class music and recording industries. In response, they have developed a balanced, comprehensive solution to the problem of personal copying. The solution is supported by consumer groups as well.

The administration agrees that digital audio recorders should be required to include circuitry that implements the Serial Copy Management System, SCMS, as specified in the technical reference document that is part of this legislation.

We are also persuaded that because SCMS permits first generation digital copying, placing a reasonable royalty on digital audio recording media is necessary. We believe that requiring use of SCMS and a royalty system as provided in the Audio Home Record Act is the right way to go. Its adoption will preserve consumer choice, encourage the development and dissemination of technology, and protect the legitimate interests of copyright owners and beneficiaries.

The United States has led the world in adapting intellectual property laws and policies to meet many of the challenges posed by new technologies. Congress has led the way by confirming in our copyright law that computer programs are properly protected as literary works. Recognizing that the rental of some works leads to their copying, Congress has provided rental rights for copyright owners of sound recordings and computer programs. Our trading partners enjoy the benefits of this protection in the United States on the basis of national treatment.

However, we have not taken the lead in private copying legislation. Until now, disagreement among the affected parties and deficiencies in earlier proposals have blocked the path to legislative action.

How private copying royalties are collected and distributed is becoming a matter of international significance. In an effort to ensure fairness for U.S. creators and rights owners whose works

