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SENATE JOINT MEMORIAL 8002

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State of Washington

54th Legislature

1995 Regular Session

By Senator Sutherland

Read first time 01/12/95. Referred to Committee on Energy,  
Telecommunications & Utilities.

1 TO THE HONORABLE BILL CLINTON, PRESIDENT OF THE UNITED STATES, AND  
2 TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF  
3 REPRESENTATIVES, AND TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE  
4 UNITED STATES, IN CONGRESS ASSEMBLED, AND TO THE HOUSE OF  
5 REPRESENTATIVES SUBCOMMITTEE ON INTELLECTUAL PROPERTY AND  
6 ADMINISTRATION OF JUSTICE, AND TO THE SENATE SUBCOMMITTEE ON PATENTS,  
7 COPYRIGHTS AND TRADEMARKS:

8 We, your Memorialists, the Senate and House of Representatives of  
9 the State of Washington, in legislative session assembled, respectfully  
10 represent and petition as follows:

11 WHEREAS, Under the United States Copyright Law, performances of  
12 copyrighted music must be licensed; and

13 WHEREAS, This copyright protection includes music played over  
14 television; and

15 WHEREAS, In the 1976 Copyright Act, Congress exempted noncommercial  
16 "performances" of copyrighted music if there were no direct or  
17 nondirect commercial purpose; and

18 WHEREAS, Congress attempted to provide an exemption to businesses  
19 whose proprietors merely bring a television set onto their premises for  
20 their customer's enjoyment if the television was "of the kind commonly  
21 used in private homes"; and

1       WHEREAS, There is considerable confusion over what kind of  
2 television is "of a kind commonly used in private homes"; and

3       WHEREAS, The licensing organization, the American Society of  
4 Composers, Authors and Publishers (ASCAP), has construed any television  
5 over thirty-six inches, including big screen televisions, to be other  
6 than "of a kind commonly used in private homes"; and

7       WHEREAS, ASCAP has therefore threatened a Washington state small  
8 pizza parlor with a copyright lawsuit because it has a standard forty  
9 inch television set at its establishment tuned solely to a sports  
10 channel; and

11       WHEREAS, Numerous businesses throughout Washington and the country  
12 such as restaurants, taverns, hotels and motels, retailers, beauty  
13 parlors, haircutting salons, and airports are at risk of expensive  
14 licensing fees or litigation for doing nothing more than making  
15 commercial television viewing available to customers; and

16       WHEREAS, It is necessary for Congressional intent to reflect the  
17 technological and commercial realities of our time;

18       NOW, THEREFORE, Your Memorialists respectfully pray that the  
19 President and Congress conduct a complete review of the Copyright Act  
20 to determine whether it reflects the realities of technology and its  
21 goals and policies are in need of revision.

22       BE IT RESOLVED, That the Copyright Act be amended to exempt from  
23 licensing requirements any noncommercial performance of copyrighted  
24 music over television if the performance has only an indirect benefit  
25 to the person who permits the performance; and

26       BE IT FURTHER RESOLVED, That Congress designate a federal agency to  
27 adopt rules to implement the provisions of the Copyright Act; and

28       BE IT FURTHER RESOLVED, That copies of this Memorial be immediately  
29 transmitted to the President of the United States, the President of the  
30 United States Senate, the Speaker of the House of Representatives, each  
31 member of Congress from the State of Washington, the House of  
32 Representatives Subcommittee on Intellectual Property and  
33 Administration of Justice, and the Senate Subcommittee on Patents,  
34 Copyrights and Trademarks.

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