INTERNATIONAL COPYRIGHT: DOMESTIC BARRIERS TO UNITED STATES PARTICIPATION IN THE ROME CONVENTION ON NEIGHBORING RIGHTS*

I. INTRODUCTION

The majority of the world’s non-socialist countries recognize a performer’s right to receive royalties from radio and television broadcasts of the performer’s sound recordings. This performers’ right, also called a “neighboring right” because it involves phonograms, performances, and broadcasts of copyrighted works, is extended in those countries to protect featured performers, accompanying orchestral musicians, and producers. Performers’ rights are not recognized in the United States. Instead, the United States grants royalty rights only to the owner of the copyright, which precludes a non-owning performer from sharing in broadcast revenues.

The United States position on neighboring rights has prevented its participation in the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organiza-

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5 The “copyright owner” is to receive royalties for phonorecords made and distributed after being identified in the registration or other public records of the United States Copyright Office. 17 U.S.C. § 115(c)(1) (Supp. V 1981).
zations (Rome Convention), under which artists of member countries receive royalties from broadcasts of their works in other member countries. The absence of United States membership deprives the world’s recording artists of a great amount of potential revenue in the United States, as well as domestic artists’ potential income from foreign airplay. The current recession in the music industry has adversely affected the performers’ revenues from record sales worldwide; though broadcasts of those records continue in the United States, the vast majority of performing artists receive nothing from the enjoyment they bring to the American public through this airplay.

This Note deals with the issue of neighboring rights in the United States and the impact that the resolution of that issue will have on international copyright status in the United States. The Note focuses on section 114(d) of title 17 of the United States Code (hereinafter Copyright Act), which, when revised in 1976, mandated a resolution of the performers’ rights issue by 1978.


7 See Rome Convention, supra note 6, art. 12.

8 It has been estimated that American performers could receive over $13 million in annual foreign income in addition to an equal amount in revenue from United States airplay. See Performance Rights Amendment of 1977: Hearings Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary, 95th Cong., 2d Sess. 180 (1978) [hereinafter cited as 1978 Danielson Amendment Hearings].


11 See infra note 13.


13 The current United States Copyright Act does not resolve the performers’ rights issue. Instead, it defers the resolution of the issue until January 3, 1978. At present, the statute reads:
The prospects of Rome Convention membership for the United States, when the long-overdue resolution is completed, will be examined in light of post-1976 domestic proposals and models from foreign countries. Finally, possible solutions will be proposed which would meet the minimum requirements of the Rome Convention and yet possibly satisfy the factions in the United States which oppose the recognition of neighboring rights.

II. INTERNATIONAL COPYRIGHT: AN HISTORICAL OVERVIEW OF UNITED STATES NON-CONFORMITY

The foundation for all European copyright law was the English Statute of Anne, which, in 1710, gave the author of a literary work the exclusive right to make copies of that work for a twenty-one year period. The statute, which was premised upon formalities of notice and deposit, was the first copyright legislation, and was used as a model for European legislation in Denmark (1741) and France (1793).

The United States also used the Statute of Anne as a copyright

On January 3, 1978, the Register of Copyrights, after consulting with representatives of owners of copyrighted materials, representatives of the broadcasting, recording, motion picture, entertainment industries, and arts organizations, representatives of organized labor and performers of copyrighted materials, shall submit to the Congress a report setting forth recommendations as to whether this section should be amended to provide for performers and copyright owners of copyrighted material any performance rights in such material. The report should describe the status of such rights in foreign countries, the views of major interested parties, and specific legislative or other recommendations, if any.

Id. Though the report was submitted, no action has been taken to resolve the performers' rights issue.

14 Statute of Anne, 8 Anne c. 19 (1710).
15 Id. Works already in existence at the time of the passage of the statute were given protection for 14 years.
16 Protection was conditioned upon the author affixing a notice to the work indicating that the work was his creation, and the deposit of the work into certain British libraries. See A. Latman, The Copyright Law, Howell's Copyright Law Revised and the 1976 Act 3 (5th ed. 1979).
17 E. Ploman & L. Hamilton, Copyright 12 (1980), citing P. Recht, Le droit d'auteur: une nouvelle forme de propriété 22 (1969). Prior to this time there was limited judicial recognition of international protection of authors' rights in other European countries. Protection was granted in France as early as 1579, but only if the foreigner's work was published within that country. In Germany, A Decree of the Electors of Saxony, dated February 28, 1686, gave foreign publications protection equivalent to national publications. 1 S. Ladas, The International Protection of Literary and Artistic Property § 6, at 16 (1938).
18 1 S. Ladas, supra note 17, § 7, at 18-19.
law model. The United States Constitution authorized Congress to “promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” Early United States enactments granted protection solely to United States citizens, and were premised on copyright being a limited economic monopoly granted to authors and composers followed by a free use of the composition by the general public.

European nations, which viewed copyright as an author’s right or moral right rather than an economic property right, began to grant international protection through bilateral agreements during the early nineteenth century. These agreements were premised upon national treatment, under which holders of copyright were to be treated in a member country as if they were nationals of that country. The United States was unable to participate in these reciprocity arrangements because the United States copyright laws only protected United States citizens.

In 1896, nine European nations joined in the first international copyright convention, the Berne Convention, which established the Berne Union. The Berne Convention was premised upon the idea of national treatment and abolished the formalities of notice
and deposit, except for formalities required by the author's country of origin. By this time the United States had granted protection to non-citizens; however, it was precluded from Berne Convention membership because of rigid United States formalities of entry of title, notice, deposit, and United States manufacture.

In 1908, the Berne Union met at Berlin to revise the earlier text. The revised text included a provision granting musical composers the right to authorize the mechanical adaptation and public execution of their works. Thus, the Berlin revision recognized a composer's right in sound recordings, and foreshadowed the emergence of "mechanical adaptation" as an important element deserving copyright protection.

The United States Copyright Act of 1909 fell short of meeting the requirements for Berne Convention membership because of continued United States insistence on traditional statutory formalities. Despite legislative attempts to conform United States copyright laws to the Berne Convention during the early twentieth century, the United States was unable to join the Berne Union. United States membership was further precluded by the 1928 Rome Conference, in which the Berne Union granted a "moral

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**Footnotes:**

28 See Ladas, supra note 17, § 40, at 83-84.
30 A. Latman, supra note 16, at 7. The manufacturing clause linked United States copyright protection to the "manufacture" of copies in the United States; this prohibited general importation of foreign-manufactured copies. Id. at 266.
31 Id.
32 Id.
33 Id.
36 Revisions during this period included the easing of the requirements of the deposit of works by foreign authors published abroad (Copyright Act of 1914, ch. 47, 38 Stat. 311), and a partial elimination of the manufacturing clause (Copyright Act of 1926, ch. 743, 44 Stat. 818).
37 Citizens of the United States still were able to take advantage of the Berne Convention's provisions in an indirect way. Under article 6(1) of the Berne Convention, authors who were not nationals could obtain Berne protection if their works were first published in a member country. This led United States publishers to publish works simultaneously in both the United States and Canada (a former Berne Union Member), and thus, obtain the benefits of Berne Convention protection without Berne Convention obligations. A. Hanson, Omnibus Copyright Revision 11 (1973).
right" to authors and gave musical composers the exclusive right to authorize public radio broadcasts of their works.

After World War II, the United States led a new movement toward a second multilateral international copyright convention based upon a conciliation of the principles of the Berne Convention and United States copyright law. This approach resulted in the Universal Copyright Convention, which offered less protection to the artist than the Berne Convention. The United States ratification of the Universal Copyright Convention ended a long history of non-participation in international copyright conventions; however, the United States denial of moral rights to authors and performers was to serve as a barrier to its further international cooperation in the area of neighboring rights.

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88 Berne Convention, supra note 27, art. 6. This "moral right," which sharply contrasted with the philosophy in the United States of copyright being an economic monopoly, gave the author the "right to claim authorship of the work and to object to any distortion, mutilation, or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation." For a thorough treatment of the "moral right" concept, see Strauss, The Moral Right of the Author, 4 Am. J. Comp. L. 506 (1955); Katz, The Doctrine of Moral Right and American Copyright Law—A Proposal, 24 So. Cal. L. Rev. 375 (1951); and Roeder, The Doctrine of Moral Right: A Study in the Law of Artists, Authors, and Creators, 53 Harv. L. Rev. 554 (1940). One writer has suggested that the non-recognition of moral rights by the United States is not necessarily a bar to Berne Convention accession. See Gabay, The United States Copyright System and the Berne Convention, 26 Bull. Copyright Soc'y 202, 216 (1978).

4 Berne Convention, supra note 27, art. 6.


4 Compare Universal Copyright Convention, supra note 41, art. IV(2)(a), 25 U.S.T. at 1347 (minimum duration of protection is life of author plus 25 years) with Berne Convention, supra note 27, art. 7 (minimum duration of protection is life of author plus 50 years); compare Universal Copyright Convention, art. III(1), 25 U.S.T. at 1345-46 (notice is necessary for protection) with Berne Convention, art. 18 (notice and deposit are not necessary for protection); compare Universal Copyright Convention (no provisions on moral rights) with Berne Convention, art. 6 (moral rights expressly recognized). See generally Note, Abandon Restrictions, All Ye Who Enter Here!: The New United States Copyright Law and the Berne Convention, 9 N.Y.U. J. Int'l. L. & Pol. 455, 460 (1977); McConnell, The Effect of the Universal Copyright Convention on other International Conventions and Arrangements, 9 Copyright L. Symp. (ASCAP) 32, 61 (1958).

4 See generally Katz, Legislative History of Performance Rights in Sound Recordings, reprinted in COMMITTEE PRINT, supra note 3, at 28-58.
III. NEIGHBORING RIGHTS IN SOUND RECORDINGS

A. The Rome Convention of 1961

In the decade following the Berne Convention's recognition of moral rights for authors, many European countries granted protection to performers by multilateral agreements.44 The group initiating a movement towards a multilateral convention was the International Institute for Unification of Private Law, which attempted to draft initial proposals on performers' rights at a meeting in Samaden, Switzerland in 1939.46 World War II interrupted the work of the Institute, but a new meeting was called in Brussels in 1948.41 The Brussels Conference sparked the proposals of the 1951 Rome Draft, a product of European experts,47 which lay dormant from 1951 until 1960.

In 1960, representatives from UNESCO, the Berne Union, and the International Labor Organization produced the Hague Draft, which was to form the basis for the Rome Convention of 1961.48 Both the Hague Draft and the Rome Convention adopted a system based on national treatment of performers, producers, and broadcast organizations.49 Minimum rights were given to these protected parties, with a single equitable remuneration to be paid to performers.50 The Rome Convention was linked to the two major international copyright conventions, the Berne Convention51 and the Universal Copyright Convention,52 with membership in either being a prerequisite to joining the Rome Agreement.53 This was done to promote further cooperation in the field of international copyright and to ensure that countries hoping to benefit from the Rome Convention also would undertake the obligations included in the

44 See E. PLOMAN & L. HAMILTON, supra note 17, at 20.
41 Id.
47 Id.
49 Id. at 92-93. During the period 1951-1960 these three factions were divided into opposing camps; the International Labor Organization preferred a clear distinction between copyright and neighboring rights, while the Berne Union and UNESCO wanted neighboring rights to be an extension of copyright. E. PLOMAN & L. HAMILTON, supra note 17, at 88.
50 See Rome Convention, supra note 6, art. 2(1).
51 Id. art. 12.
52 Berne Convention, supra note 27.
53 Universal Copyright Convention, supra note 41.
54 Rome Convention, supra note 6, art. 24(2).
agreement.\footnote{Ulmer II, supra note 2, at 168.}

This Convention, sometimes called the "Neighboring Rights" Convention, provides that copyright owners will not be affected by the recognition of performers' rights.\footnote{Rome Convention, supra note 6, art. 1. For a summary of the protection granted under the Rome Convention, see Dittrich, The Practical Application of the Rome Convention, 26 BULL. COPYRIGHT Soc'v 287 (1979).} Protected parties include performers,\footnote{Id. note 6, art. 7.} producers,\footnote{Id. art. 10 (producers have the right to authorize reproductions of the work they produce).} and broadcast organizations.\footnote{Id. art. 13 (broadcast organizations have the right to rebroadcast their broadcasts, the right to fixate those works, and the right to reproduce those works).} The Convention, while providing a single remuneration, takes no position on whether that remuneration is to be distributed to the performers individually or to a group which will in turn disburse proceeds to performers.\footnote{Id. art. 12.} This determination is to be made in accordance with the domestic laws of the member country.\footnote{Id.}

The performer is given minimum rights of performance\footnote{Id.} and is protected against unconsented broadcasts of his performances.\footnote{Id. art. 13.} In addition, the performer is protected from unauthorized fixation\footnote{Id. art. 7(2)(1).} of his performances,\footnote{Id. art. 7(2)(2).} thereby preventing the taping of his works from a live performance and then sold without permission. Domestic law controls areas of broadcasts to which the performer has consented\footnote{Id. art. 8.} and governs the use of fixations by broadcasting organizations.\footnote{Id. art. 12.} Domestic law also regulates the disbursement of remuneration among performers if several performers participate in the same performance.\footnote{Id.}

The membership of the Rome Convention has grown steadily during the past two decades, but still does not include the United States.\footnote{Id. art. 7(1).}
There have been some difficulties in arrangements of remuneration, but these problems are administrative and do not reflect a major flaw in the Convention's provisions. The Convention is expected to grow in membership, especially in light of the large number of countries recognizing similar rights for performers.

B. The Battle in the United States Over Neighboring Rights in the 1976 Copyright Enactment

The position of the United States on neighboring rights has been one of caution and non-conformity, highly reminiscent of its overall international copyright history. The United States Constitution extends copyright protection only to "authors." Narrow interpretations by Congress and the judiciary on the meaning of the term "authors" have excluded musical performers and have helped prevent United States membership in the Rome Convention.

The non-participation of the United States in the Rome Convention is not the result of a lack of effort by the legislature. The first efforts to protect performers were various bills introduced in Congress during the 1930's. These bills, like further legislation proposed during the next two decades, remained in committee.
and did not reach the floor for a vote. The judiciary attempted to deal with performers' rights by applying the common law of unfair competition, but the decisions did not resolve the performers' rights issue.

In the early 1960's the United States Congress began to formulate a copyright revision to replace the Copyright Act of 1909. This revision gave parties interested in performers' rights, those knowledgeable of prior judicial and legislative attempts as well as the experience of the American Delegation at the Rome Convention, the opportunity to incorporate performers' rights into


Supra note 76, at 77.

In 1937, the Pennsylvania Supreme Court, deciding Waring v. WDAS Broadcasting Station, Inc., 327 Pa. 433, 441, 194 A. 631, 635 (1937), recognized a performer's interpretation as an artistic creation in which he had a property right:

A musical composition in itself is an incomplete work; the written page evidences only one of the creative arts which are necessary for its enjoyment; it is the performer who must consummate the work by transforming it into sound. If, in so doing, he contributes by his interpretation something of novel intellectual or artistic value, he has undoubtedly participated in the creation of a product in which he is entitled to a right of property, which in no way overlaps or duplicates that of the author in a musical composition...

The Court granted the plaintiff injunctive relief to prevent unauthorized broadcasts of music when the label on the records read "Not Licensed for Radio Broadcasts." A federal district court in North Carolina supported that position in Waring v. Dunlea, 26 F. Supp. 388 (E.D.N.C. 1939), a case involving the same plaintiff under similar facts. In 1940, however, the Second Circuit rejected the Waring decisions in R.C.A. Mfg. Co. v. Whiteman, 114 F.2d 86 (2d Cir. 1940), cert. denied, 311 U.S. 712 (1940). The court refused to recognize a property right in the performer's creation, reasoning that any protection had been lost with publication. Id. at 88-89. The contrasting positions of the Waring and Whiteman decisions prevented any judicial predictability in this area for the next thirty years. See Lang, supra note 76, at 82.

Perhaps the most thorough treatment by the judiciary of the performers' rights issue was Judge Learned Hand's dissent in Capitol Records v. Mercury Records Corp., 221 F.2d 657, 664 (2d Cir. 1955). Although he recognized that a performer's rendition could be copyrighted as an original arrangement or adaptation of a musical score, he feared that judicial recognition of a performer's right based on common law principles of unfair competition might extend those rights beyond the limited protection of the United States Constitution. The majority in the Capitol Records case ruled that, under New York law, the sale of records did not forfeit the performer's right in his recorded performance; however, the majority opinion did not address the fears of Judge Hand concerning perpetual monopoly. The courts in the United States have not addressed the performers' rights issue since the Capitol Records decision.

A. LATMAN, supra note 16, at 11-12.

The United States had been involved as a non-signatory party during the Rome Convention of 1961; thus, the performers' rights issue was familiar to many copyright authorities in the United States. The United States delegation at Rome "greatly promoted the work of the Conference by its sagacious and temperate attitude." Ulmer I, supra note 45, at 99. For example, article 2 of the Rome Convention, defining "national treatment," was a
United States copyright law. A 1965 proposal for a comprehensive revision\textsuperscript{83} was strongly opposed by the American Federation of Musicians (AFM), the largest musicians' union, on the sole ground that the proposal did not include provisions recognizing performers' rights.\textsuperscript{84} The AFM noted that recognition of a performers' right in sound recordings would allow performers to economically benefit from the performances they had made popular,\textsuperscript{85} and that composers, who receive royalties from airplay, were dependent upon performers' renditions of their songs.\textsuperscript{86} The relationship between composers and performers was seen as a musical partnership, with each group making a distinct and equal contribution toward the final product.\textsuperscript{87} The 1965 proposal did not come to the floor for a vote; however, the House Judiciary Committee went on record as supporting constitutional recognition of performers' sound recordings as "writings of an author."\textsuperscript{88}

Debate continued on the performers' rights issue when comprehensive revision bills were proposed in 1967,\textsuperscript{89} 1969,\textsuperscript{90} 1971,\textsuperscript{91} and 1973.\textsuperscript{92} The performers' rights movement was strongly opposed by

\textsuperscript{83} H.R. 4347, 89th Cong., 1st Sess. (1965).


\textsuperscript{85} Id. The AFM's position seemed to incorporate a concept developed in the American law of unfair competition; that one should not "reap where one has not sown." See generally Int'l News Serv. v. Associated Press, 248 U.S. 215 (1918). In the case of recorded music, a composer or copyright owner in the United States reaps all broadcast royalty benefits; however, the recording is the result of a collaborative effort between the composer and the performer. Since the United States copyright laws granted royalties only to the composer, that partner was essentially reaping from the efforts of the performers. For a recent treatment of this idea of unjust enrichment, see D'Onofrio, In Support of Performance Rights in Sound Recordings, 29 U.C.L.A. L. Rev. 168, 175-76 (1981).


\textsuperscript{87} Id.


\textsuperscript{89} H.R. 2512, 90th Cong., 1st Sess. (1967).


\textsuperscript{91} S. 644, 92d Cong., 1st Sess. (1971).

\textsuperscript{92} S. 1361, 93d Cong., 1st Sess. (1973); see also H.R. 8186, 93d Cong., 1st Sess. (1974). Prior to the introduction of this proposed legislation, the Sound Recording Amendment of 1971, Pub. L. No. 92-140, 85 Stat. 391 (Oct. 15, 1971), was enacted. This amendment extended federal statutory protection to sound recordings fixed between February 15, 1972 and January 1, 1975, and for the first time, a sound recording was officially recognized as a "writing" under the Constitution. The recognition of a copyright in a sound recording did not, however, include a recognition of performers' rights in those recordings. The constitutionality of the Sound Recording Amendment was upheld in Shaab v. Kleindienst, 345 F. Supp. 589 (D.C. Cir. 1972).
Senator Sam Ervin, who introduced an amendment to the 1973 revision bill which would have eliminated any performers' rights. That amendment was passed in an effort to prevent the performers' rights issue from endangering the entire copyright revision, and Congress refused to act upon the revision measure.

A 1975 revision measure, passed in 1976, did not recognize performers' rights, despite strong support for performers' rights by the Register of Copyrights. In Section 114(d) of the Copyright Act, a compromise between broadcasters and performers, the Register of Copyrights was directed to submit a report to Congress on January 3, 1978. That report and its accompanying proposed legislation, along with the so-called "Danielson Amendment," have yet to be acted upon by Congress.

C. The Pending Proposals and the Renewed Interest in the Rome Convention

Pursuant to section 114(d) of the Copyright Act of 1976, the Register of Copyrights submitted her report to Congress in January 1978. The report concluded that a performers' sound recordings were "writings" under the Constitution and, therefore, were protectable authorship. The Register advocated the enactment of a federal copyright provision, noting that the language of the 1976 general revision preempted any state protection under com-

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95 See S. Rep. No. 94-1058, 94th Cong., 2d Sess. (1976). The performers' strongest opposition came from broadcasting stations, which felt that payments of royalties to both performers and composers would cause them tremendous economic hardship. A. Hanson, supra note 93, at 73. In contrast, performers and authors were the two major opposing factions in the Rome Convention negotiations. Ulmer I, supra note 45, at 95.
100 See supra note 13.
103 See supra note 13.
104 Ringer, Summary of the Report, reprinted in Committee Print, supra note 3, at 3.
mon law.\textsuperscript{105} Protected parties would include both performers and producers, with royalty rates to be set by the Copyright Royalty Tribunal.\textsuperscript{106} Section 114(c)(14) of the Register's proposal would give performers and producers at least fifty percent of all royalties from broadcasts of sound recordings, with composers to receive the remainder.\textsuperscript{107} Performers would in turn divide their share on a per capita basis, regardless of the extent of the individual's involvement in the recording session.\textsuperscript{108} This proposal troubled one of the major composer's cooperatives, which did not wish to sacrifice any of its members' current revenues,\textsuperscript{109} and also one of the major performers' unions, which did not give decisive support to per capita distribution.\textsuperscript{110} Broadcasters continued to strongly oppose a per-

\textsuperscript{105} The United States Supreme Court, in Goldstein v. California, 412 U.S. 546 (1973), held that congressional silence on this issue did not totally preempt state protection. Congress had addressed this issue in the 1976 revision, which theoretically would preclude state protection; however, not all writers accept that position. See Brown, \textit{Unification: A Cheerful Requiem for Common Law Copyright}, 24 U.C.L.A. L. Rev. 1070, 1089-1106 (1977).


\textsuperscript{108} Id.

\textsuperscript{109} BMI [Broadcast Music, Inc.] believes that performers should be fairly rewarded for their efforts. Our concern, however, is that there be no erosion of funds already set aside for distribution to those whom we represent. Thus, while prepared to support legislation that will properly compensate the performer, we can do so only if we are assured that the position of BMI writers and publishers will not be adversely affected . . .

\textit{COMMITTEE PRINT, supra note 3, at 452 (statement of Edward M. Cramer, Broadcast Music, Inc.). BMI is a performing rights society which serves as a clearinghouse for performance. It obtains from composers exclusive performing rights in a sound recording and collects royalties from radio airplay. The royalty pool is then distributed to the composers who transfer licenses to the performing rights society. J. TAUBMAN, IN TUNE WITH THE MUSIC BUSINESS 232-33 (1980). The other major performing rights societies, the American Society of Composers, Authors, and Publishers, (ASCAP), and the Society of European Stage Authors and Composers, Inc., (SESAC), did not comment publicly on the performers' rights issue.

\textsuperscript{110} See \textit{COMMITTEE PRINT, supra note 3, at 819 (statement of Sandford Wolff, American Federation of Television and Radio Artists): Let's say there were fifteen musicians (in addition to seven singers). That would make twenty-two. The fifteen musicians would get 15/22's, and the seven singers would get 7/22 in contributions. \textit{As to how it would be divided, that remains to be seen. And I don't think that should be an obstacle in the way of adopting the legislation . . . (emphasis added). But see COMMITTEE PRINT, supra note 3, at 505 (statement of Hal Davis, American Federation of Musicians) ("Each musician and/or singer on each record should receive an equal share of the royalties allocated to performers . . . ." (emphasis added)).}
formers' rights amendment on economic hardship grounds and also because the broadcasters felt they already generated benefits to performers and producers through radio airplay. At least one major record company advocated that it, too, should share in any royalties given to performers and producers because of the company's involvement in "record conception, production, design, manufacturing, distribution, marketing and promotion." As a result of these differences, the Register's draft bill has not been formally submitted to Congress.

The only other attempts to amend section 114(d) have been made by Representative George Danielson, who introduced a "Performers' Rights Amendment" in 1977, 1979, and 1981. The Danielson proposal differs from the Register's draft bill in that the Danielson Amendment provides for a mandatory 50-50 division between composers and performers, while under the Register's draft bill the performer was entitled to at least fifty percent.

The 1978 hearings on the Danielson Amendment gave a great deal of attention to possible United States participation in the Rome Convention. During the period between 1976 and 1979, the number of signatories to that Convention had increased from six-

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111 See generally COMMITTEE PRINT, supra note 3, at 496-588.


113 COMMITTEE PRINT, supra note 3, at 570 (statement of Jerry Moss, Chairman of A. & M. Records). Mr. Moss was also Chairman of the Board of the Recording Industry Association of America, which came out in favor of such an arrangement. Id. at 459-69.

114 The attitudes of these two groups reflect a long-standing disagreement over performers' rights. The 1930's and 1940's marked the beginning of a dispute over the performers' rights issue as a tangential matter to the greater concern of mechanized music replacing live musicians. For a history of the early disputes between performing rights societies (representing composers), musicians' unions, and broadcasters, see Countryman, The Organized Musicians: I, 16 U. Chi. L. Rev. 239 (1948).


118 Id. at 14-15 (proposed text of 17 U.S.C. § 114(c)(14)).

119 Register's draft bill, reprinted in 43 Fed. Reg. 12,763, 12,767 (1978) (proposed text of 17 U.S.C. § 114(c)(14)). Representative Danielson testified that he was not "bound" by a 50-50 split; this would allow the possibility of composers receiving a greater share than performers. See 1978 Danielson Amendment Hearings, supra note 8, at 143.

120 1978 Danielson Amendment Hearings, supra note 8, at 1-196.
teen to twenty-three\textsuperscript{121} and the number of countries recognizing performers' rights by legislation had increased to fifty-four.\textsuperscript{122} These countries had collected broadcast royalties for United States performers, but, because of the United States lack of reciprocity, those funds were never distributed to those performers.\textsuperscript{123} Had there been reciprocity arrangements, performers in the United States would have received over $13 million in 1976 alone,\textsuperscript{124} and foreign artists would have received revenues from the lucrative United States market.\textsuperscript{125} On the other hand, composers in the United States, because of the United States acceptance of composers' rights, are given reciprocal treatment in foreign countries and receive royalties from foreign airplay.\textsuperscript{126}

Despite the 1979 proposal's failure to receive congressional approval, Representative Danielson reintroduced his amendment in 1981.\textsuperscript{127} Strong opposition from broadcasters\textsuperscript{128} persuaded members of the House subcommittee to question whether statutory protection was necessary.\textsuperscript{129} The Danielson Amendment remained in committee and was not voted upon in the Ninety-seventh Congress.

IV. THE ECONOMICS OF COMPROMISE: INTERNATIONAL COOPERATION THROUGH INTERNAL RESOLUTION

The resolution of the performers' rights issue in the United States can take two basic courses. First, the system can remain as it is, and section 114(d) could be drafted to prevent performers from receiving broadcast royalties unless they are composers of the recorded work. This would essentially grant performers the status they had under the 1909 act and preclude United States participation in the Rome Convention. The second alternative would be to

\textsuperscript{121} 1-3 UNESCO, \textit{supra} note 1.
\textsuperscript{122} \textit{Id.}
\textsuperscript{123} 1978 Danielson Amendment Hearings, \textit{supra} note 8, at 183 (statement of Louise Weiner, Special Assistant to the Secretary of Commerce for Cultural Resources).
\textsuperscript{124} \textit{Id.} at 180.
\textsuperscript{125} \textit{Id.} No amount was given for United States broadcasters' potential payments to foreign artists.
\textsuperscript{127} See \textit{supra} note 117.
\textsuperscript{128} \textit{Radio Broadcasters and Jukebox Operators are "Unalterably Opposed" to Performance Rights}, \textit{PAT., TRADEMARKS, & COPYRIGHT J. (B.N.A.)} No. 534, at A-13, A-14 (June 18, 1981).
\textsuperscript{129} \textit{Id.}
draft the statute in a way which gives performers an economic interest in their work. A performer’s right could take three forms: 1) the amendment could allow performers to negotiate their broadcast royalties in the same way they negotiate for royalties from record sales;\textsuperscript{130} 2) the amendment could follow the Register of Copyright’s philosophy and give performers a “baseline” royalty percentage above which the performer could negotiate;\textsuperscript{131} and 3) the Danielson Amendment position could be taken so that the performer is given only a fixed percentage.\textsuperscript{132}

Each of these alternatives should satisfy United States composers, performers, and broadcasters, and, at the same time, open the door for United States participation in the Rome Convention. The issue in the United States is one of economics; however, economic interests have influenced other countries in their resolution of neighboring rights.\textsuperscript{133} By analyzing the concerns of domestic interests, and comparing domestic proposals to current foreign systems, certain models emerge which, if followed, could allow the United States to join the Rome Convention.

A. Maintaining the Current System

Under the current copyright system in the United States, the composer is compensated for radio broadcasts, but record companies and performers are not paid.\textsuperscript{134} To maintain the current system, section 114(d) would be drafted either to explicitly reject a performers’ right in a sound recording or retain its present form.\textsuperscript{135} If either of these alternatives is adopted, the status of performers will remain as it was under the Copyright Act of 1909\textsuperscript{136} and composers will continue to receive all broadcast royalties.\textsuperscript{137}

Composers’ royalties are generally distributed through performing rights societies such as the American Society of Composers,
Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC (formerly the Society of European Stage Authors and Composers, Inc.), which act as clearinghouses for composers and lyricists. The societies obtain rights in the work from the songwriters and collect royalties from broadcasting stations, which are monitored by the society to ensure proper payment.

Performing artists usually do not receive royalty payments from sales of their recorded performances. Even those who can negotiate for sales royalties are faced with industry insistence on terms which defer royalties until all production costs of the sound recording are recouped by the record company; such an arrangement is usually a prerequisite to a sales royalty agreement. Though the recording artist does not share in the risk of loss with the record company, the artist does bear the risk of receiving no royalty income until the company has recouped the costs of all of the artist's commercial failures within a single accounting period. For those performers who receive royalties after recoupment, their income is very small. Most earn less than one percent of their gross income in this manner.

The Register of Copyright's 1978 report enumerated two reasons for the lack of performer income from the sales of recordings. First, most performers do not have the bargaining power to command a percentage of sales. Instead, their contributions are compensated in the form of union-scale wages, which constitute the only payment they receive for their recorded works. Second, the contractual arrangements between producers and performers are such that the recoupment cost is high, which forces those performers who possess bargaining power to subsidize some costly productions.

138 J. Taubman, supra note 109, at 232.
139 Id. at 234.
140 See Note, supra note 126, at 780. Only 23% of performers participating in sound recordings receive royalties from sales, and three-fourths of that 23% depends on those royalties for less than five percent of their yearly income. Werner, An Economic Impact Analysis of a Proposed Change in the Copyright Law, reprinted in Committee Print, supra note 3, at 59.
141 Werner, supra note 140, at 59.
142 Note, supra note 126, at 780. For example, if an artist releases three non-profiting records and then releases a fourth which is a hit, no royalties will be paid for the fourth until the losses from the first three are recouped.
143 Werner, supra note 140, at 62.
144 See Committee Print, supra note 3, at 1-424.
145 Werner, supra note 140, at 117.
146 Id.
As a result of the current United States system, record companies profit from their marketed product, composers receive broadcast royalties for airplay through federal copyright laws and sales royalties through contracts, broadcasters make profits from advertising revenues based on listener audience, which is in turn linked to the popularity of the station's format in playing a particular style of sound recordings, and over one-half of the musicians in the United States earn less than $13,000 per year. The bargaining power of musicians' unions is not sufficient to protect performers since the Lea Act makes it unlawful to "coerce, compel, or constrain . . . a licensee . . . to accede to or impose any restriction upon . . . production, preparation, manufacture, sale, purchase, rental, operation, use, or maintenance . . . of a program or programs for broadcasting." This prevents the musicians' unions from striking, eliminating their ability to use the threat of a work stoppage to negotiate for better terms.

Maintaining the current system is beneficial to record companies, composers, and broadcasters, but it does little for unknown performers. Popular performers, realizing that no profits are to be made from airplay, have taken advantage of the current system to increase their contractual demands when signing a recording contract. These expenditures have been passed on from the record companies to the consumer, causing record prices to increase dramatically; therefore, the current system is not beneficial for record buyers in the United States.

The current copyright law also precludes the United States from joining the Rome Convention. Under the Convention, a participating country must grant a minimum amount of protection to per-

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147 See Standard and Poor's Industry Surveys, supra note 9, at L-32.
148 For standard royalty provisions in the songwriter's agreement, see J. Taubman, supra note 109, at 34-35.
149 Werner, supra note 140, at 99.
150 Id. at 117.
152 Id. § 506(b)(2), 60 Stat. at 90.
155 Present retail list price for a phonorecord is $8.98. In 1977, the retail list price was $6.98. See Billboard, Aug. 1, 1981, at 71.
Absent such a recognition of these rights in the United States, the Rome Convention would be denied the much desired participation of the United States.\textsuperscript{157}

B. The Economics of Compromise

1. Performers' Rights by Contractual Negotiation

One possible resolution of the performers' rights issue would be to draft section 114(d) so that performers could negotiate broadcast royalties in the same manner as they presently negotiate for sales royalties. The new section would expressly recognize a performers' right in sound recordings, but would leave the determination of the scope of the performers' protection and the amount of remuneration to the bargaining process. It would be expected that performers would make individual agreements for broadcast royalties with composers in exchange for the performers' renditions of the composers' work. This would cause no economic hardship to broadcasters nor to record companies, and would give recording artists some benefits from the performance of their works.

The drawbacks to this arrangement are two-fold. First, it does not give all performers a guaranteed percentage for their work. Under article 3(a) of the Rome Convention, the term "performers" includes anyone who participates in the literary or artistic work.\textsuperscript{158} The article does not contemplate a distinction between performers in the amount of protection they receive. Article 26 mandates that participating countries are to adopt the measures necessary to ensure the application of the Rome Convention;\textsuperscript{159} without statutory protection for all performers, the United States could not satisfy this requirement. Also, a system of contractual negotiation would probably be unsatisfactory to domestic factions because many of the same difficulties in the current system would recur; for instance, popular performers would be able to bargain for economic gain, leaving little for the other participants. A second drawback to a system of contractual negotiation is that there would seem to be

\textsuperscript{156} Rome Convention, supra note 6, art. 7.

\textsuperscript{157} In preparing her 1978 report, the Register of Copyrights consulted with experts from various countries on the issue of neighboring rights. Representatives from Denmark, Austria, and West Germany all enthusiastically approved of the United States participation in the Rome Convention. Oler, \textit{Performance Rights in Foreign Countries}, reprinted in \textit{Committee Print}, supra note 3, at 178, 185, 188, 199.

\textsuperscript{158} Rome Convention, supra note 6, art. 3(a).

\textsuperscript{159} Id. art. 26.
no incentive for composers to relinquish the four cents per play they now enjoy\textsuperscript{160} to little-known performers who are a greater risk in the marketplace. Therefore, the only performers who would benefit from this arrangement are those who really do not need broadcast royalties.

The rights of composers in the United States are protected by federal statute rather than the free marketplace.\textsuperscript{161} This is done to give composers control over copies of their work and to prevent others from reaping the fruits of the composer's labors. Given the great amount of broadcast facilities worldwide, a composer could not possibly monitor the radio airwaves to prevent unauthorized versions of his composition from being played.\textsuperscript{162} This has led to the emergence of performing rights societies such as ASCAP and BMI, which provide those services to the composer.\textsuperscript{163} Only by such a cooperative effort can broadcasting, a "public good,"\textsuperscript{164} be monitored.

The Lea Act and the absence of bargaining power through the threat of strike\textsuperscript{165} makes the performer's situation much like that of the composer. Performers in the United States do not have the strength, either individually or collectively through labor unions, to bargain for objectives to protect their economic status.\textsuperscript{166} Composers, being in the noncompetitive market of musical performance rights, need public regulation to establish a satisfactory price for those rights.\textsuperscript{167} Since the performer is a vital part of the creative process which produces a sound recording, there is no reason why the performer should, unlike the composer, be subject to the free


\textsuperscript{159} See H. Henn, Copyright Primer 204-06 (1979).

\textsuperscript{160} J. Taubman, supra note 109, at 232.

\textsuperscript{161} The broadcast licensing mechanisms of ASCAP and BMI were upheld in a recent antitrust suit. Broadcast Music, Inc. v. Columbia Broadcasting Sys., Inc., 441 U.S. 1 (1979).

\textsuperscript{162} A "public good" is a class of goods "[w]herein the amount of use of the good or service by one person does not reduce the amount available to others if the good has been produced. Classic examples are melodies, poems, ideas, and theories. Anyone can use them without in any way reducing someone else's supply." A. Alchian & W. Allen, Exchange and Production Theory in Use 251 (1969), reprinted in E. Kitch & H. Perlman, Legal Regulation of the Competitive Process 48 (1979).

\textsuperscript{163} See supra notes 151-53 and accompanying text.

\textsuperscript{164} See Gorman, The Recording Musician and Union Power: A Case Study of the American Federation of Musicians, reprinted in COMMITTEE PRINT, supra note 3, at 1085.

\textsuperscript{165} Cirace, C.B.S. v. ASCAP: An Economic Analysis of a Political Problem, 47 Fordham L. Rev. 277, 277 (1978).
market.

2. A "Minimum Rights" Statute

Section 114(d) could be drafted to assure the performer of a minimum broadcast royalty percentage over which he could negotiate for additional compensation. This "minimum rights" statute would be similar to the Register's proposal, which guaranteed performers at least 50% of broadcast royalties, but would not necessarily have to adopt that percentage as a minimum remuneration. Though this arrangement might persuade popular performers to reduce their demands on sales royalties and, consequently, reduce costs to consumers, there would be substantial administrative costs in maintaining files on all performers and composers of all sound recordings who individually have negotiated different percentages for different songs.

A collective mechanism is as necessary for performers as it is for composers. If radio stations were to contract with individual composers there would be enormous transaction costs. Similar problems would develop with performers under a minimum rights statute regarding the number of transactions and the varying terms of those individual contracts. Administrative costs would be significant for a performers' rights society because of the large number of royalty recipients and the costs of monitoring a large number of broadcast facilities; an increased amount of administrative time devoted to individual calculations and disbursements would drive those costs past the point of maximum efficiency.

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168 See supra note 107 and accompanying text.
169 There has been concern that the increased amount of calculations brought about by performers' rights will cause increased transaction costs for both composers and performers. See Hearings Before the Subcomm. on Patents, Trademarks and Copyrights of the Senate Comm. on the Judiciary, 90th Cong., 2d Sess. 506 (1967) (statement of Sidney A. Diamond).
170 Cirace, supra note 167, at 293.
171 See supra note 169.
172 The economic section of the 1978 Report of the Register of Copyrights put forth three administrative systems to handle disbursements to performers. Under the "parallel system" the performers' and record companies' disbursement group would duplicate the functions of composers' groups such as ASCAP and BMI. Considering that the 1976 combined expenditures of ASCAP and BMI totalled over $24 million, and the total amount that would have been generated for performers in that year was $15.4 million, this system is not cost-justified. The report pointed out that ASCAP and BMI negotiated with artists for the societies' fees, while the performers' rights society would have a fixed fee; therefore, the new society would not have negotiation costs. However, under a minimum rights proposal, there would be enough added costs in maintaining records and disbursements to possibly nullify the advantage of a fixed fee.
A minimum rights statute, however, would satisfy the requirements of the Rome Convention. Performers would have the protection required by article 7\textsuperscript{173} and, more importantly, any arrangements for negotiation beyond the minimum amount would seem to be permissible under article 8.\textsuperscript{174} Nevertheless, no country which recognizes neighboring rights seems to have such a system.\textsuperscript{175}

Though Rome Convention participation might be facilitated with the passage of a minimum rights statute, the administrative costs of such a system make it doubtful that American composers, performers, and broadcasters would agree to such an arrangement. For example, the high costs of maintaining information on a large orchestra would possibly deplete the royalties set aside for that group. Though negotiation for royalties above a fixed amount would allow featured performers to get a larger share in recognition of their contribution to the work, it is doubtful that many others would receive more than the set royalty rate. Under this system, the rich probably would get richer, but those who are not in a position to bargain for large revenues would have at least a statutory guarantee of some royalty payments. The system would work in theory; but as a practical matter, the high administrative costs would tend to diminish any return to performers.

\textsuperscript{173} See supra note 61.

\textsuperscript{174} Domestic law may specify the manner in which performers are represented in connection with the exercise of their rights. Rome Convention, supra note 6, art. 8.

\textsuperscript{175} See generally Oler, supra note 3, at 331-67.
3. A "Fixed Rights" Statute

Section 114(d) could be drafted to give composers and performers a set royalty percentage, with the performers' share to be divided on a per capita basis. Such a "fixed rights" statute has been proposed in the Danielson Amendment. Under that proposal, the administrative costs of the "minimum rights" statute would be avoided, and superstars would not be able to use their bargaining power in broadcast royalties as they have in sales royalties. A parallel system, under which an independent performing rights society would be created to represent performers only, could be economically feasible in the absence of negotiation costs and the administrative costs of recordkeeping. Both costs would be eliminated under a fixed right/parallel system arrangement since the percentage rate would be fixed.

The per capita division proposal in the Danielson Amendment is not necessary for United States participation in the Rome Convention. One of the Convention's participants, Denmark, calculates royalties on the basis of "points" which are accumulated according to the amount of participation of each performer. A soloist, for example, receives ten points for his contribution in a sound recording, while lesser points are given to the soloist when there is an accompanist. The Danish model includes point variations for orchestras, ensembles and choirs in various combinations. A performer's total payment is then calculated by multiplying his points by a uniform point value. Royalties are collected from broadcasting organizations by GRAMEX, the Danish performing rights society, and distributed to the individual performers. GRAMEX operates in conjunction with KODA, the Danish counterpart of ASCAP and BMI, to collect data on broadcasts. This cooperation has eliminated high costs of administration; the costs of administering the GRAMEX fund in 1975 did not exceed nine percent of the total fees collected.

In Austria, similar calculations of performers' royalties are made by the Wahrnehmung von Leistungsschutzrechten Gesellschaft,
m.b.H. (LSG), which bases its payments to performers on air
time.\textsuperscript{180} Like most Rome Convention countries,\textsuperscript{181} Austrian produc-
ers and performers share equally in royalty payments.\textsuperscript{182} LSG, like
the Danish system, has very low administrative costs.\textsuperscript{183}

The Federal Republic of Germany does not calculate royalties on
a point system, but instead on the basis of each individual's re-
cording-related earnings from the previous year.\textsuperscript{184} Gesellschaft zur
Verwertung von Leistungsschutzrechten m.g.H. (GVL), the Ger-
man performing rights society, administers a fund into which per-
formers pay a percentage of their earnings. Unlike other Western
countries, the performers are granted sixty-four percent of the net
distributable revenue, while producers are given a subsidiary right
to thirty-six percent.\textsuperscript{185}

Perhaps the most interesting system of Rome Convention coun-
tries is Brazil's, which has undergone a dramatic change in its sys-
tem's administration during the last decade.\textsuperscript{186} Prior to 1973, the
Sociedad Brasilierna de Interpretres e Produtores Fonograficas
(SOCINPRO) acted as a performing rights society and distributed
funds to performers and producers. Two-thirds of the performers’
share was to go to the featured performer, and the remaining one-
third was to be divided per capita among the remaining perform-
ers.\textsuperscript{187} Administrative costs as high as fifty to sixty percent caused

\textsuperscript{180} Id. at 187.

\textsuperscript{181} See id. at 331-67.

\textsuperscript{182} Federal Act on Copyright in Works of Literature and Art and on Related Rights (Copy-
right Act), § 76, 1936 Bundesgesetzblatt [BGBl] 131 (Aus.) (amended 1949, 1953, 1972, and
1980) (Permanent Delegation of Aus. for UNESCO transl. 1980), reprinted in 1 UNESCO,
supra note 177.

\textsuperscript{183} LSG collects a lump sum payment from Oesterreichische Rundfunk Gesellschaft
m.b.H. (ORF), which is Austria's only broadcasting corporation. Administrative costs from
this collection are around 10% of collected fees. Oler, supra note 3, at 178, 186-87.

\textsuperscript{184} An Act dealing with Copyright and Related Rights, art. 7, 1965 Bundesgesetzblatt
West German Copyright Statute, reprinted in 2 UNESCO, COPYRIGHT LAWS AND TREATIES
OF THE WORLD (Supp. 1978); see also Oler, supra note 3, at 178, 197 (scale of fees set by the
German Orchestra Association). The collecting society is to determine fees in regard to “re-
ligious, cultural, and social interest of the persons liable to pay remuneration, including
youth welfare interests.” West German Copyright Statute, supra, art. 13, reprinted in 2
UNESCO, supra. The West German Copyright Law is said to have “tackle[d] the modern
realities brought about by technological advancement.” E. PLOMAN & L. HAMILTON, supra
note 17, at 113.

\textsuperscript{185} See Oler, supra note 3, at 178, 197.

\textsuperscript{186} Id. at 222-25.

\textsuperscript{187} Id. at 223, citing Leduc, National Applications of the Rome Convention on Neighbor-
ing Rights, 8 COPYRIGHT 232 (1972).
the Brazilian National Copyright Council to suspend SOCINPRO's collection activities and to replace it with the Escritorio Central de Arrecadacao e Distribuicao (ECAD), a government agency which cannot, under Brazilian law, deduct more than twenty percent of the total fund for administrative costs.\textsuperscript{188}

The Danish, Austrian, West German, and Brazilian systems give the United States four models upon which to structure an alternative to the pure per capita distribution scheme proposed in the Danielson Amendment. The administrative costs of these systems have been reduced in great part by a cooperative effort between those countries' collecting societies. To enjoy the same success, ASCAP and BMI must work closely with a performing rights society in the United States.

Once it is established that this system is cost-justified for performers, the next step of analysis must be the impact that such an arrangement will have on United States broadcasters. The Register's report in 1978 concluded that the economic fears of radio broadcasters were unjustified since those broadcasters would be able to pass on the costs of their operations to advertising sponsors.\textsuperscript{189} The report noted that the broadcast industry in the United States does not function like a "competitive, profit-maximizing, cost-minimizing market";\textsuperscript{190} instead, the income of owners is generated in ways other than dividends from profits.\textsuperscript{191} Those stations which suffer "losses" have high expenses, including salaries to owners and managers,\textsuperscript{192} which help divert station profits into personal profits.\textsuperscript{193} Many stations which reported losses over long periods of time remained in the industry,\textsuperscript{194} which does not coincide with the usual fate of businesses operating at a deficit.

An increase in royalty rates as a result of a performers' right would be passed on primarily by stations to advertisers without a significant loss of advertising revenues.\textsuperscript{195} The Register's report

\textsuperscript{188} See Oler, supra note 3, at 178, 224, citing Chaves, News from Brazil, 93 REVUE INTERNATIONALE DU DROIT D'AUTEUR 58, 66 (1977). Escritorio Central de Arrecadacao e Distribuicao (ECAD), was promulgated by a major revision in the Brazilian copyright laws in 1973 which dealt with the administration of the country's copyright system. See DIARIO OFICIAL [D.O.] art. 117(vi) (Braz. 1973), reprinted in 1 UNESCO, supra note 177.

\textsuperscript{190} Id. at 97.

\textsuperscript{191} Id.

\textsuperscript{192} Id. at 91.

\textsuperscript{193} Id.

\textsuperscript{194} Id. at 88.

\textsuperscript{195} Id. at 100.
concluded that the demand for radio advertising is relatively insensitive to price fluctuations, and, therefore, the broadcasters would not suffer economically. The broadcasting industry seems to be composed of members who are able to withstand losses without going off the air; certainly the expenses of performers' royalties could be absorbed without dire consequences.

The effect of a fixed royalty statute for performers may be beneficial to record buyers. The Consumer Federation of America favors the grant of a performers' right in sound recordings because the price of a record includes costs for the creation and production of sound recordings, and these costs should be absorbed by broadcasters. In light of the large contracts which major artists now command, record prices may decline. Record companies would no longer be the sole royalty supporter of the artist, and broadcasters would merely pass on their increased costs to advertisers. The fixed rights statute therefore would do the most good with the least possible damage to any of the interested parties. Most importantly, it would facilitate participation of the United States in the Rome Convention.

V. CONCLUSION

The United States history in the field of international copyright has been one of non-cooperation and non-participation with foreign countries. After rejecting the Berne Convention for over half a century, the United States finally entered into a major multilateral copyright convention, the Universal Copyright Convention, in the 1950's.

This international cooperation by the United States has not extended to the area of neighboring rights in sound recordings. During the 1960's, a major international convention dealing with neighboring rights entered into force. This agreement, the Rome Convention, includes twenty-four countries; the United States, however, is not a member. This is largely due to the United States treatment of copyright as the sole property of the initial creator and not the property of the performer, resulting in a dichotomy between the United States position and the positions of the major-

196 Id.
197 COMMITTEE PRINT, supra note 3, at 599 (comment letter of Kathleen F. O'Reilly, Executive Director, Consumer Federation of America).
198 See supra note 154.
199 See supra note 23.
ity of the world's non-socialist countries. The history of the United States prior to its accession to the Universal Copyright Convention might be repeated as it continues to reject a major multilateral international copyright convention.

To join the Rome Convention, the United States must seek a compromise between domestic broadcasters, composers, and performers, whose actions threaten continued non-participation. The compromise must recognize performers' rights in sound recordings, a prerequisite to Rome Convention membership, and yet satisfy these domestic factions. The resolution of this issue continues to be beyond the reach of the United States Congress; therefore, significant financial benefits remain beyond the reach of deserving foreign and domestic performers.

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