

Testimony of

Roger Berlind

April 28, 2004

Testimony of Roger S. Berlind

on behalf of the League of American Theatres and Producers, Inc.

on S. 2349 The Playwrights Licensing Antitrust Initiative Act of 2004

before the Committee on the Judiciary

in the Senate of the United States

April 28, 2004

Mr. Chairman and members of the committee:

My name is Roger Berlind and I am a Broadway producer. My theatrical producing career began in 1976. Since then, I have produced or co-produced over 40 plays and musicals on Broadway and many off-Broadway and regional productions as well. The Broadway productions have won a total of 62 Tony Awards, including 12 for Best Production. Some of these are Amadeus, Nine, Long Day's Journey into Night, Ain't Misbehavin', Guys and Dolls, Hamlet, Passion (by my friend, Stephen Sondheim), A Funny Thing Happened on the Way to the Forum, also by Steve, Copenhagen, Kiss Me Kate and Proof. This season, I co-produced the Pulitzer Prize-winning Anna in the Tropics and the revival of Wonderful Town.

Before I began producing, I was in the investment banking business. My early partners included Arthur Carter, Sandy Weill, Marshall Cogan, Arthur Levitt and Frank Zarb. Through a series of acquisitions, we became a relatively large company. I am still an outside director of one of our acquisitions, Lehman Brothers Holdings.

As I understand the proposed legislation, the playwrights seek to be free from the restraints of the antitrust laws, to which the rest of us must adhere. I don't believe that would be a good idea - not good for competition, not good for the theatre - and ultimately not good for playwrights, particularly young playwrights without a proven track record.

The essence of theatrical production is risk. There is probably no more speculative venture, and having been involved for much of my life in Wall Street, I know about investment risk. The risk/reward ratio in theatrical production is not enticing. Producers have a fiduciary obligation to their investors to construct a budget that offers them a hope of recouping their investments and making a profit. The process begins with the initial agreement to license the rights to produce.

I am told that the proposed legislation is designed to permit playwrights and producers to get together, in a committee of sorts, to negotiate a standard form of license agreement for licensing plays and musicals. While I know that sounds reasonable, in practice it just won't work. The proposal assumes that there are two positions - a producer position and a playwright position - that can be stated for all time. It's just not the case. There are way too many variables, and at

least from the perspective of the producers - we don't all agree on structure, price or terms. Every show is different, and we want the flexibility to negotiate those things in each and every different context we face.

It's just a fact that one might not structure the same arrangement for a brand-new never-before produced play by an

unknown author as for one of the distinguished playwrights sitting here. That's not unfair; it's what allows the unknown author to become known. If the proposal were enacted, instead of a free market, we would have a closed market with The Dramatists' Guild somehow becoming a gatekeeper for adherence to "pre-agreed" terms. That is what we cannot accept, and that is why there are so many productions of plays by non-members of that organization than by members.

Thank you for this opportunity to testify. I would be pleased to answer any questions that you may have.