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104TH CONGRESS
1ST SESSION

H. R. 1861

To make technical corrections in the Satellite Home Viewer Act of 1994 and other provisions of title 17, United States Code.

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 1995

Mr. MOORHEAD introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To make technical corrections in the Satellite Home Viewer Act of 1994 and other provisions of title 17, United States Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SATELLITE HOME VIEWER ACT.

The Satellite Home Viewer Act of 1994 (Public Law 103–369) is amended as follows:

(1) Section 2(3)(A) is amended to read as follows:

"(A) in clause (i) by striking '12 cents' and inserting '17.5 cents per subscriber in the case of superstations that as retransmitted by

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the satellite carrier include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations that are syndex-proof as defined in section 258.2 of title 37, Code of Federal Regulations; and' ''.

(2) Section 2(4) is amended to read as follows:

''(4) Subsection (c) is amended—

''(A) in paragraph (1)—

''(i) by striking 'until December 31, 1992,';

''(ii) by striking '(2), (3) or (4)' and inserting '(2) or (3)'; and

''(iii) by striking the second sentence;

''(B) in paragraph (2)—

''(i) in subparagraph (A) by striking 'July 1, 1991' and inserting 'July 1, 1996'; and

''(ii) in subparagraph (D) by striking 'December 31, 1994' and inserting 'December 31, 1999, or in accordance with the terms of the agreement, whichever is later'; and

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"(C) in paragraph (3)—

"(i) in subparagraph (A) by striking 'December 31, 1991' and inserting 'January 1, 1997';

"(ii) by amending subparagraph (B) to read as follows:

'(B) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this paragraph, the copyright arbitration royalty panel appointed under chapter 8 shall establish fees for the retransmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions. In determining the fair market value, the panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

'(i) the competitive environment in which such programming is distributed, the cost of similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

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'(ii) the economic impact of such fees on copyright owners and satellite carriers; and

'(iii) the impact on the continued availability of secondary transmissions to the public.'; and

''(iii) in subparagraph (C), by inserting 'or July 1, 1997, whichever is later' after 'section 802(g)'.''.

(3) Section 2(5)(A) is amended to read as follows:

''(A) in paragraph (5)(C) by striking 'the date of the enactment of the Satellite Home Viewer Act of 1988' and inserting 'November 16, 1988'.''.

SEC. 2. DUPLICATIVE PUBLICATION IN FEDERAL REGISTER.

Section 104A(e)(1)(B)(ii) of title 17, United States Code, is amended by striking the last sentence.

SEC. 3. NEGOTIATED LICENSE FOR JUKEBOXES.

Section 116 of title 17, United States Code, is amended—

(1) by amending subsection (b)(2) to read as follows:

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"(2) ARBITRATION.—Parties not subject to such a negotiation may determine the result of the negotiation by arbitration in accordance with the provisions of chapter 8."; and

(2) by adding at the end the following new subsection:

"(d) DEFINITIONS.—As used in this section, the following terms mean the following:

"(1) A 'coin-operated phonorecord player' is a machine or device that—

"(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by the insertion of coins, currency, tokens, or other monetary units or their equivalent;

"(B) is located in an establishment making no direct or indirect charge for admission;

"(C) is accompanied by a list which is comprised of the titles of all the musical works available for performance on it, and is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

"(D) affords a choice of works available for performance and permits the choice to be

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made by the patrons of the establishment in which it is located.

"(2) An 'operator' is any person who, alone or jointly with others—

"(A) owns a coin-operated phonorecord player;

"(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

"(C) has the power to exercise primary control over the selection of the musical works made available for public performance on a coin-operated phonorecord player.".

SEC. 4. PUBLIC BROADCASTING COMPULSORY LICENSE.

Section 118 of title 17, United States Code, is amended as follows:

(1) Subsection (b) is amended by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(2) Subsection (b)(2) (as redesignated by paragraph (1) of this section) is amended by striking "(2)" each place it appears and inserting "(1)".

(3) Subsection (e) is amended to read as follows:

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"(e)(1) Except as expressly provided in this subsection, this section shall not apply to works other than those specified in subsection (b).

"(2) Owners of copyright in nondramatic literary works and public broadcasting entities may, during the course of voluntary negotiations, agree among themselves, respectively, as to the terms and rates of royalty payments without liability under the antitrust laws. Any such terms and rates of royalty payments shall be effective upon being filed in the Copyright Office, in accordance with regulations that the Register of Copyrights shall prescribe.".

SEC. 5. REGISTRATION AND INFRINGEMENT ACTIONS.

Section 411(b)(1) of title 17, United States Code, is amended to read as follows:

"(1) serves notice upon the infringer, not less than 48 hours before such fixation, identifying the work and the specific time and source of its first transmission, and declaring an intention to secure copyright in the work; and".

SEC. 6. COPYRIGHT OFFICE FEES.

Section 708(b) of title 17, United States Code, is amended to read as follows:

"(b)(1) Subject to paragraph (2), in calender year 1996 and in any subsequent calendar year, the Register of Copyrights, by regulation, may increase the fees speci-

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fied in subsection (a) by the percent change in the Consumer Price Index published by the Bureau of Labor Statistics, calculated from the month before the last fee became effective to the month before the new fee is published, rounded off to the nearest dollar, or for a fee less than $12, rounded off to the nearest 50 cents. In the case of a change calculated from 1990, the Consumer Price Index for the month of June 1990 shall be used.

"(2) The Register may not increase fees under paragraph (1) at intervals of less than 5 years.".

SEC. 7. COPYRIGHT ARBITRATION ROYALTY PANELS.

(a) ESTABLISHMENT AND PURPOSE.—Section 801 of title 17, United States Code, is amended—

(1) in subsection (b)(1) by striking "and 116" in the first sentence and inserting ", 116, and 119";

(2) in subsection (c) by inserting after "panel" at the end of the sentence the following:

", including—

"(1) authorizing the distribution of those royalty fees collected under sections 111, 119, and 1005 that the Librarian has found are not subject to controversy; and

"(2) accepting or rejecting royalty claims filed under sections 111, 119, and 1007 on the basis of

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timeliness or the failure to establish the basis for a claim''; and

(3) by amending subsection (d) to read as follows:

''(d) SUPPORT AND REIMBURSEMENT OF ARBITRATION PANELS.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, shall provide the copyright arbitration royalty panels with the necessary administrative services related to proceedings under this chapter, and shall reimburse the arbitrators at such intervals and in such manner as the Librarian shall provide by regulation. Each such arbitrator is an independent contractor acting on behalf of the United States, and shall be paid pursuant to a signed agreement between the Library of Congress and the arbitrator. Subject to the provisions of section 802(c), payments to the arbitrators shall be considered costs incurred by the Library of Congress and the Copyright Office for purposes of section 802(h)(1).''.

(b) PROCEEDINGS.—Section 802(h)(1) of title 17, United States Code, is amended—

(1) by amending the heading to read ''DEDUCTION OF COSTS OF LIBRARY OF CONGRESS AND COPYRIGHT OFFICE FROM ROYALTY FEES.—''; and

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(2) by inserting before the period at the end of the third sentence the following: ", by assessing 50 percent of the costs to the parties who would receive royalties from the royalty rate adopted in the proceeding and 50 percent of the costs to the parties who would pay the royalty rate so adopted".

SEC. 8. DIGITAL AUDIO RECORDING DEVICES AND MEDIA.

Section 1007(b) of title 17, United States Code, is amended by striking "Within 30 days after" in the first sentence and inserting "After".

SEC. 9. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) SATELLITE HOME VIEWER ACT.—The amendments made by section 1 shall be effective as if enacted as part of the Satellite Home Viewer Act of 1994 (Public Law 103-369).

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