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ACTION

Passed under suspension of the rules.

as amended.

days in which to extend their remarks on the subject of the bill just passed (H.R. 8817).

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

PROHIBITING PIRACY OF SOUND RECORDINGS

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (S. 646) to amend title 17 of the United States Code to provide for the creation of a limited copyright in sound recordings for the purpose of protecting against unauthorized duplication and piracy of sound recording, and for other purposes, as amended.

The Clerk read as follows:

S. 646

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 17 of the United States Code is amended in the following respects:

(a) In section 1, title 17, of the United States Code, add a subsection (f) to read:

"To reproduce and distribute to the public by sale or other transfer of ownership, or by rental, lease, or lending, reproductions of the copyrighted work if it be a sound recording: *Provided,* That the exclusive right of the owner of a copyright in a sound recording to reproduce it is limited to the right to duplicate the sound recording in a tangible form that directly or indirectly recaptures the actual sounds fixed in the recording: *Provided further,* That this right does not extend to the making or duplication of another sound recording that is an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording; or to reproductions made by transmitting organizations exclusively for their own use."

(b) In section 5, title 17, of the United States Code, add a subsection (n) to read:

"Sound recordings."

(c) In section 19, title 17, of the United States Code, add the following at the end of this section: "In the case of reproductions of works specified in subsection (n) of section 5 of this title, the notice shall consist of the symbol Ⓟ (the letter P in a circle), the year of first publication of the sound recording, and the name of the owner of copyright in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner: *Provided,* That if the producer of the sound recording is named on the labels or containers of the reproduction, and if no other name appears in conjunction with the notice, his name shall be considered a part of the notice."

(d) In section 20, title 17, of the United States Code, amend the first sentence to read: "The notice of copyright shall be applied, in the case of a book or other printed publication, upon its title page or the page immediately following, or if a periodical either upon the title page or upon the first page of text of each separate number or under the title heading, or if a musical work either upon its title page or the first page of music, or if a sound recording on the surface of reproductions thereof or on the label or container in such manner and location as to give reasonable notice of the claim of copyright."

(e) In section 26, title 17, of the United States Code, add the following at the end of the section: "For the purposes of this section and sections 10, 11, 13, 14, 21, 101, 106, 109, 209, 215, but not for any other purpose, a reproduction of a work described in subsection 5(n) shall be considered to be a copy thereof. 'Sound recordings' are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture. 'Reproductions of sound recordings' are material objects in which sounds other than those accompanying a motion picture are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device, and include the 'parts of instruments serving to reproduce mechanically the musical work', 'mechanical reproductions', and 'interchangeable parts, such as discs or tapes for use in mechanical music-producing machines' referred to in sections 1(e) and 101(e) of this title."

SEC. 2. That title 17 of the United States Code is further amended in the following respect:

In section 101, title 17 of the United States Code, delete subsection (e) in its entirety and substitute the following:

"(e) INTERCHANGEABLE PARTS FOR USE IN MECHANICAL MUSIC-PRODUCING MACHINES.—Interchangeable parts, such as discs or tapes for use in mechanical music-producing machines adapted to reproduce copyrighted musical works, shall be considered copies of the copyrighted musical works which they serve to reproduce mechanically for the purposes of this section 101 and sections 106 and 109 of this title, and the unauthorized manufacture, use, or sale of such interchangeable parts shall constitute an infringement of the copyrighted work rendering the infringer liable in accordance with all provisions of this title dealing with infringements of copyright and, in a case of willful infringement for profit, to criminal prosecution pursuant to section 104 of this title. Whenever any person, in the absence of a license agreement, intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce mechanically the musical work, relying upon the compulsory license provision of this title, he shall serve notice of such intention, by registered mail, upon the copyright proprietor at his last address disclosed by the records of the copyright office, sending to the copyright office a duplicate of such notice."

SEC. 3. This Act shall take effect four months after its enactment except that section 2 of this Act shall take effect immediately upon its enactment. The provisions of title 17, United States Code, as amended by section 1 of this Act, shall apply only to sound recordings fixed, published, and copyrighted on and after the effective date of this Act and before January 1, 1975, and nothing in title 17, United States Code, as amended by section 1 of this Act, shall be applied retroactively or be construed as affecting in any way any rights with respect to sound recordings fixed before the effective date of this Act.

The SPEAKER. Is a second demanded?

Mr. RAILSBACK. Mr. Speaker, I demand a second.

The SPEAKER. Without objection, a second will be considered as ordered.

There was no objection.

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, existing Federal copyright law protects owners of copyright in musical works, but there is no Federal protection of sound recordings, as such:

Sound recordings are works that result from the fixation of a series of musical, spoken, or other sounds . . ." p. 3, line 17.

As a result, record pirates, if they satisfy the claims of the owners of the musical copyrights, can and do engage in widespread unauthorized reproduction of phonograph records and tapes without violating Federal copyright law. It is also true that the statutory protection being given the owners of copyright in musical works with respect to recordings of their work is special and limited.

The purpose of S. 646, which passed the Senate last April, is twofold:

First, section 1 creates a limited copyright in sound recordings, as such, making unlawful the unauthorized reproduction and sale of copyright sound recordings. The right is "limited" in that it does not include protection with respect to performances. By committee amendment this newly to-be-created right applies only to sound recordings that are fixed, published, and copyrighted on and after the effective date of the legislation and before January 1, 1975.

Second, section 2 of the bill provides that persons engaging in the unauthorized reproduction of copyrighted musical works, for example, by failing to pay the royalty prescribed by law, shall be subject to all the provisions of title 17 dealing with infringement of copyrights, including, in the case of willful infringement for profit, criminal prosecution pursuant to section 104. The committee knows of no objection to the provisions of section 2.

I stress the fact that these proposals are not new. The provisions of both sections 1 and 2 of the bill found their way into copyright law revision legislation (H.R. 2512, 90th Congress) reported by this committee and passed by the House in 1967.

REASONS FOR THE LEGISLATION

The attention of the commitee has been directed to the widespread unauthorized reproduction and sale of phonograph records and tapes. Modern technology makes possible the off-the-air taping of sound recordings at fractional costs, enabling profitable low-cost distribution. It has been estimated that the annual volume of such piracy is now in excess of $100 million.

If the unauthorized producers pay the statutory mechanical royalty for the use of copyrighted music, there is no Federal remedy to combat the unauthorized reproduction of recordings. State remedies * are largely nonexistent and are uncertain at best. The creation of a limited copyright in sound recordings as is done by S. 646 offers a rational solution. It is a solution that is supported by the U.S. Copyright Office and by the Departments of State, Justice, and Commerce. The committee similarly believes that the interest of the producers of sound recordings in freeing their product of piracy—defining piracy as the unauthorized commercial duplication and sale of a reproduction of a sound recording—warrants legislative effectuation and support.

THE GENERAL REVISION

The committee regrets that action on the bill for general revision of the copyright law has been delayed and that the problems of record piracy have not been

*[State laws on piracy exist in Arkansas, Arizona, California, Florida, New York, Tennessee, Texas, and Washington.]

dealt with as part of a broad reform of the Federal copyright statute, but we are persuaded that prompt action to prohibit piracy is in the public interest. Our action is not to be interpreted as precedent for the enactment of separate legislation on other matters involved in copyright law revision.

COMPULSORY LICENSE NO PRESENT SOLUTION

In the other body, as well as at the hearing before a judiciary subcommittee certain representatives of so-called pirates abandoned the effort to justify the appropriation of sound recordings through uncompensated and unauthorized reproduction. They urged instead that the reproduction of sound recordings be made subject to a compulsory license and the payment of a statutory royalty.

The Senate rejected this proposal (S. Rept. 92–72, p. 6) and the committee agrees. We believe that a strong case has been made for protection against the current practices of the so-called pirates, and that a case for a compulsory license has not been established. Any such compulsory license would require establishment of a complicated procedural machinery. What is more, any such compulsory license would necessarily extend to all record producers and any of their recordings. It would have drastic consequences even if some way could be found to establish a fair rate and insure a fair division of receipts. A pirate could select those recordings that became hits, thus invading the producer's market for his profitable recordings, while leaving the producer to suffer the losses from his unsuccessful ones. The committee can further examine this issue in connection with the general revision.

REASON FOR AMENDMENT

Although the committee recommends the prohibition of the unauthorized reproduction and distribution of recorded performances and although we believe that it would be impracticable and unfair at this time to attempt to fashion a compulsory license system to cope with the piracy problem, the committee has offered an amendment to the Senate bill that would restrict the application of the sound recordings provisions to recordings fixed, published, and copyrighted on and after the effective date of the legislation but before January 1, 1975.

The purpose of this terminal provision is to provide a period for further consideration of alternatives for solving the piracy problem before resorting to permanent legislation. By January 1, 1975, moreover, the protection of sound recordings will, it is hoped, be a definitive part of a copyright law revision.

COST TO THE UNITED STATES

After the hearinges before the subcommittee, the Assistant Register of Copyrights testified that administration of copyright in sound recordings could be accomplished for approximately $100,000 a year, and could be accomplished better for $125,000. This estimate was based on the assumption that there would be approximately 15,000 registrations a year. The assistant register added that if the registration fee continued at $6 as at present, there would automatically return to the Copyright Office approxmiately $90,000 in fees. The committee accepts and adopts these estimates.

I urge favorable action on S. 646 and I yield back the balance of my time.

Mr. KAZEN. Mr. Speaker, will the gentleman yield?

Mr. KASTENMEIER. I yield to my friend from Texas.

Mr. KAZEN. Am I correct in assuming that the bill protects copyrighted material that is duplicated for commercial purposes only?

Mr. KASTENMEIER. Yes.

Mr. KAZEN. In other words, if your child were to record off of a program which comes through the air on the radio or television, and then used it for her own personal pleasure, for listening pleasure, this use would not be included under the penalties of this bill?

Mr. KASTENMEIER. This is not inincluded in the bill. I am glad the gentleman raises the point.

On page 7 of the report, under "Home Recordings," Members will note that under the bill the same practice which prevails today is called for; namely, this is considered both presently and under the proposed law to be fair use. The child does not do this for commercial purposes. This is made clear in the report.

I might also add, Mr. Speaker, so far as cost of the legislation is concerned, that we are advised by the copyright office that to administer this would cost about $100,000. Anticipating 15,000 registrations a year, it could cost as much as $125,000 depending on what scheme is used, but we are also advised that the present fee schedule of $6 for registration would recoup approximately $90,000 of that amount. So there is almost an offset in terms of cost to the Government of enforcing the legislation here today.

Mr. SEIBERLING. Will the gentleman yield for a question?

Mr. KASTENMEIER. I yield to my friend from Ohio.

Mr. SEIBERLING. After this legislation was reported out of the Committee on the Judiciary I received communications from some of my constituents who were in the record and tape recording retail business. They stated that there this legislation would deprive them of their commercial rights as dealers in tapes and recordings and would tend to promote a monopoly on the part of the large recording corporations. I must say that I saw nothing in the legislation that would so indicate, but I wonder if you would care to address yourself to that question.

Mr. KASTENMEIER. I thank the gentleman for raising that point.

The fact of the matter is that present practice undercuts the producers of tapes and records. This is not truly competitive, as is pointed up by the Justice Department's report on the measure. The report says, and I would like to quote:

> The competition provided by the pirate record industry does not promote any of the traditional benefits of competition. Although the pirate record companies may greatly undercut the prices charged by the creative industry, their ability to do so results in large part from the fact that they do not compensate the creative writers and artists involved. Such practices discourage the investment of money and talents in new performances and has the potential to gravely injure creative recording.

So we are not talking about something which is truly competitive. Stores will have records, wholly authorized records, to sell to patrons, and in the long run they will not be injured.

Mr. SEIBERLING. In other words, this is an effort to insure that the artists who made the recordings as well as those who produced the compositions will be properly compensated through the licensing arrangements they enter into with the recording companies, who will be in a much better position to protect them than they are under the present state of the law. Is that correct?

Mr. KASTENMEIER. Yes. What the gentleman from Ohio says is true. Not only are the record companies that actually produce the records adversely affected by piracy, but all recording artists who contract their services to produce the records are also undercut, inasmuch as the pirates do not pay them. Some pirates may pay the statutory royalty to the owners of copyright, in musical compositions but they do not in the fact pay for the production of or the talent that goes into the sound recording, because the latter is not protected by copyright.

The problem exists also in the foreign field. We will have a delegation going to Geneva later this month. Our delegation will seek a treaty in concert with other nations affecting phonograms, which are in fact sound recordings. To make our own laws consistent with those of other nations the passage of this legislation is badly needed.

Mr. SEIBERLING. I thank the gentleman for his excellent explanation.

Mr. CELLER. Mr. Speaker, will the gentleman yield?

Mr. KASTENMEIER. I yield to my distinguished chairman, the gentleman from New York (Mr. CELLER).

Mr. CELLER. In essence the bill seeks to prevent thievery and piracy. Is that not the real essence of the bill?

Mr. KASTENMEIER. Yes. As usual, my chairman is terse and to the point. It does that.

I reserve the balance of my time.

Mr. RAILSBACK. Mr. Speaker, I yield myself such time as I may consume.

(Mr. RAILSBACK asked and was given permission to revise and extend his remarks.)

Mr. RAILSBACK. Mr. Speaker, I join my good friend and colleague, the distinguished gentleman from Wisconsin (Mr. KASTENMEIER), in urging enactment today of S. 646, a bill designed to accomplish two urgently needed revisions of the copyright law:

First, this bill would create a Federal copyright in sound recordings. It would, therefore, for the first time provide legitimate producers of phonograph records and tapes with effective legal remedies against the so-called pirates who have been reproducing their products without authority, and selling them in competition with the original producers themselves.

This piracy has become so widespread

in recent years that it has been reliably estimated that the practice is currently costing legitimate manufacturers of sound recordings approximately $2 to $3 million per week, and well over $100 million per year.

I agree with the Librarian of Congress, who wrote to the chairman of the Committee on the Judiciary, the Honorable EMANUEL CELLER, on May 25, 1971:

> The national and international problem of record piracy is too urgent to await comprehensive action on copyright law revision, and that the amendments proposed in S. 646 are badly needed now.

The Departments of State, Justice, and Commerce have likewise expressed their strong support of this measure. Indeed, the Department of State concurs with the committee's sense of urgency in seeking prompt passage of the bill, because the United States has played an active role in the development of an international antipiracy treaty which is expected to be adopted at a diplomatic conference which will be held in Geneva this very month.

The unauthorized reproduction and commercial duplication of sound recordings cannot be defended on grounds of equity or public economic interest, so far as could be determined from the evidence adduced in the hearings which Subcommittee No. 3 held on this bill and its House counterpart.

There is no less justification for granting copyright protection to those who invest their time, talent, and financial resources in the process of bringing together composers, performers, sound technicians, and editors to create a final marketable product—the sound recording—than there is for granting such protection to the producers of motion pictures, as current Federal law provides.

Likewise, I have heard no convincing argument to support the contention of the pirates that they should be granted a compulsory license to duplicate and sell the sound recordings produced by the talents, resources, labors, and risks of others. I regard the motion picture analogy here, too, as apt as persuasive that the equities lie against, rather than with, the pirates.

The second, and related, purpose of S. 646 is to confer upon the holders of copyrights in the musical compositions which are the subject of recorded performances the full panoply of remedies for copyright infringement which are accorded to such copyrightholders for other forms of infringement. This would include the imposition of criminal penalties for any wilful infringement for profit.

This latter provision of the bill would take effect immediately upon the act's signing into law by the President, whereas the provisions dealing with the creation of a copyright in sound recordings themselves would not become operative until 4 months after enactment.

The committee's amendment to section 3 of the bill is intended to prevent the new rights created by section 1 of the bill from vesting in any party after December 31, 1974. Any copyright obtained on or before this expiration date, however, will be a full-term copyright, fully renewable.

It is hoped that the committee's amendment will serve two functions: First, to provide an additional incentive for both Houses of Congress to effect general copyright law revision at an early date. Second, to create an experimental period, pending such general revision, during which Congress can monitor and study the economic effects of S. 646, with an eye toward incorporating into a general revision bill whatever modifications of the approach employed in the current bill might appear warranted by our experience thereunder.

In 1967 the House passed a general copyright law revision bill containing the essential provisions of S. 646, but the other body did not act upon it. The passage today of this bill will serve, therefore, to accomplish purposes which we have already recognized as both legitimate and pressing, and I urge my colleagues to lend their enthusiastic support to that effort.

Mr. FULTON of Tennessee. Mr. Speaker, for years, the term "pirate" has conjured up thoughts of bluebeards and Captain Kidds plying their "trade" on the open seas, beneath a fluttering skull and crossbones. As we have been led to believe by old Errol Flynn movies, theirs was a heroic, gallant life—almost.

I would commend the action of my colleagues, however, as they moved today to halt a different form of "piracy", a modern form in which no "Jolly Roger's" are unfurled, no open seas are charted, no gallantry or heroism even remotely demonstrated. I am referring to the "piratic" practice of stealing the lyric and music possessions of legitimate recording firms and artists, people paying or receiving royalties for the right to present their work to the public.

Perhaps few peopde outside the recording industry realize that for every song that makes its way to the pop charts and scurries up the "hit parade," nine are discarded as rejects, to be counted as a financial, if not artistic, loss. Perhaps few recognize that for companies and artists to stay in business, these losses must be covered by the financial success of those few recording which do "click."

Under an enterprise system in which the legitimate owners could claim full financial benefits from the songs they produce and record, companies and artists in a highly competitive and admittedly speculative field would stand at least a fair chance for success. However, the presence of those who may purchase the original recording, re-record, and distribute with no regard for copyrights, royalties, or other legal safeguards, make just survival for many firms a difficult task. No industry—even in a strong economy—can year after year lose as much as $100 million and be counted on to thrive.

As the representative from Nashville, "Music City, U.S.A." famous for its "Nashville Sound," I applaud the positive step taken by my colleagues in passing legislation extending Federal limited copyright protection to those firms and artists operating in the legitimate recording field. Hopefully, from this point, the music you hear will remain artistically pleasing; assuredly, it will be honestly paid for, distributed and produced.

The SPEAKER. The question is on the motion of the gentleman from Wisconsin that the House suspend the rules and pass the bill, S. 646, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.