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HON. MIKE SYNAR

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 12, 1985

● Mr. SYNAR. Mr. Speaker, today Representative PATRICIA SCHROEDER and I introduced the Copyright Royalty Tribunal Sunset Act of 1985. The bill eliminates the disastrous Copyright Royalty Tribunal and freezes copyright rates until Congress establishes a more workable ratemaking scheme. The bill requires the congressional action before January 1, 1988.

As Representative ROBERT KASTENMEIER has said, the CRT is a "broken agency." It was a good experiment in Government but has proved to be nothing more than a dumping ground for startlingly inept political appointees. It has failed in its mission to develop the expertise necessary to administer the copyright compulsory licenses. Since its creation in 1976, the CRT has not generated less work for Congress and the courts, but more.

We introduce this measure because the public interest demands the CRT's elimination. We hope to begin a debate that will result in a better copyright ratemaking system. At a minimum, we should enact this measure to end the wasteful and unnecessary expense of an agency whose $70,000-a-year Commissioners only randomly show up for work.

Those affected by the CRT have no confidence in it. Several court challenges to its ratemaking decisions and procedures have shown how embarrassingly little thought goes into CRT actions. Recently, copyright users and owners subject to two of the compulsory licenses under the CRT's jurisdiction—public broadcasting and juke-

box—have privately negotiated rates rather than risk the capricious ineptitude of the CRT.

Among its duties, the CRT is responsible for distributing cable copyright royalties. The 1979 fees have not yet been distributed despite the decision of the U.S. Court of Appeals for the D.C. Circuit in *Christian Broadcasting Network, Inc.* v. *CRT* 720 F.2d 1295 (1983) which had substantially—although not without criticism—affirmed the CRT's distribution decisions.

The three items remanded to the CRT in that decision were decided by the CRT again. These are the subject of yet another pending court appeal. Indeed, all cable distributions for the years 1979 through 1982 were the subject of appeals pending in the D.C. circuit as of April 1985.

In Christian Broadcasting, the court was troubled by the near inability of the CRT to explain its distributional decisionmaking. This was the court's second admonition to the CRT along these lines, the first having been in *National Cable Television Association* v. *CRT* 689 F. 2d 1077 (1982).

The revelation that former CRT chairperson Marianne Hall was the author/editor of a racist book is only the most recent problem. Many of us were also disturbed by the most recent nomination by President Reagan: A personal aid of his former political director who has no experience in copyright whatsoever.

The two remaining Commissioners have little or no experience in copyright. Both have been active politically in Republican organizations. During oversight hearings this year, it was disclosed that these $70,000-per-year public employees do not regularly show up at work.

The Copyright Royalty Tribunal Sunset Act eliminates the CRT on the date of enactment. Further, it provides that any action taken by the CRT from today forward shall have no effect. I recognize that this is unusual action but it is not unprecedented and, in my opinion, it is necessary.

The CRT in its present form is incapable of giving adequate consideration to the complex issues involved in ratemaking. The two sitting commissioners on the five-member CRT may not represent a quorum and there is by no means a clear answer to whether or not the CRT can function at all even if this legislation were not enacted.

I do not believe the cable copyright rates in place today are fair. In the past, I have introduced legislation to correct an urban/rural bias in the rates and I have supported related legislation to correct this and several other rate inequities. Nevertheless, freezing these rates for 2 years is the best alternative, given the need for efficient Government and the irreparable condition of the CRT.

Under current law, an owner or user of a work subject to the cable copyright compulsory license can initiate a rate proceeding anytime during 1985. As I mentioned, only one proceeding has been initiated so far this year and it is on an extremely narrow question.

This does not mean that cable operators or copyright owners are happy with the status quo. Rather, they are afraid of the CRT because it is irreparably broken and incapable of rendering a sensible decision.

I want to stress that this is only a temporary measure. I strongly support the compulsory license for cable retransmission of copyright materials and I oppose the current rates. But the system is such a mess, this is a necessary first step toward finding a solution. I ask the cable industry to live with the current rates for the time being.

The bill would not affect the recent compromise reached between the performing rights organizations and jukebox operators which was engineered by Representative KASTENMEIER. And present challenges in court regarding interpretations of the cable rate collections would likewise not be affected.

Copyright owners will be affected by this legislation only if Congress fails to act by January 1, 1988. In that circumstance, no distribution system will be in place to distribute the copyright royalties and no distributions will occur.

It is my hope that with the passage of this legislation we can then expeditiously address the substantive issue of correcting the basic inequities which have been identified in the copyright law. We must develop a sensible mechanism for the distribution and collection of royalties well in advance of the sunset date.●