I

99TH CONGRESS
1ST SESSION

H. R. 2784

To amend title 17, United States Code, to create a Copyright Royalty Court, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 1985

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

---

A BILL

To amend title 17, United States Code, to create a Copyright Royalty Court, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Copyright Dispute Resolution and Royalty Court Act of 1985".

SEC. 2. ESTABLISHMENT OF COPYRIGHT ROYALTY COURT.

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

(1) by amending the section heading and subsection (a) to read as follows:

"§ 801. Copyright Royalty Court: Establishment and purpose

"(a) There is hereby created a court of the United States to be known as the Copyright Royalty Court.";

(2) in subsection (b)—

(A) by striking out "Tribunal" each time it appears and inserting in lieu thereof "court",

(B) in the second sentence of paragraph (2)(B) by striking out "In" and all that follows through "users:" and inserting in lieu thereof the following: "In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, and any subsequent adjustment to those rates under section 804(b), the court shall consider the objectives set forth in clause (1) of this subsection, and shall also consider, among other factors, the extent to which television broadcast stations compensate copyright owners for the secondary transmission of their signals by cable systems located outside their respective local service areas, the extent to which the value to cable systems of additional distant signals decreases or increases as such signals are carried, the impact of the rates on cable subscribers both as to the availability and cost of receiving copyrighted materials,

and the impact of the rates on competition with television broadcast stations:",

(C) in paragraph (2)(C) by adding at the end the following new sentence: "In determining the reasonableness of such rates, and any subsequent adjustment to those rates under section 804(b), the court shall consider the objectives set forth in clause (1) of this subsection and the factors set forth in subclause (B) of this clause.", and

(D) by striking out paragraph (3) and inserting in lieu thereof the following:

"(3) to determine, in cases where controversy exists, the distribution of royalty fees deposited with the Register of Copyrights under sections 111 and 116."; and

(3) by striking out subsection (c).

(b) DESIGNATION OF JUDGES.—Section 802 of such title is amended to read as follows:

"§ 802. Designation of Judges.

"(a) The court shall consist of three judges, who shall be designated by the Chief Justice of the United States from judges of the United States district courts and circuit courts of appeals who are judges in regular active service or who are senior judges. No more than two of the judges may be senior judges.

"(b) Each judge designated under this section shall serve for a term of six years and shall not be eligible for redesignation, except that the judges first designated shall be designated for terms of two, four, and six years.

"(c) The Chief Justice of the United States shall designate one of the judges as the chief judge of the Copyright Royalty Court. The chief judge shall serve as chief judge for a term of two years.

"(d) Any vacancy in the court shall not affect its powers and shall be filled, for the unexpired term of the designation, in the same manner as the original designation was made.".

(c) PROCEDURES OF THE COURT.—Section 803 of such title is amended to read as follows:

"§ 803. Procedures of the Court

"(a) The court shall adopt rules governing its procedures and methods of operation. The court shall have a seal and shall hold sessions at such places as it may specify.

"(b) Every final judgment of the court shall be published. Such judgment shall state in detail the criteria that the court determined to be applicable to the particular proceeding, the various facts that it found relevant to its judgment in that proceeding, and the specific reasons for its judgment.".

(d) INSTITUTION AND CONCLUSION OF PROCEEDINGS.—Section 804 of such title is amended—

(1) in subsection (a) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) the chief judge of the court cause to be published in the Federal Register, or in such other publication that the court considers to be an effective means of notice, notice of commencement of proceedings under this chapter; and";

(2) in subsections (a)(2) and (d) by striking out "in the Federal Register";

(3) in subsection (a)(2) and each subsection that follows by striking out "Tribunal" each time it appears and inserting in lieu thereof "court", and by striking out "Chairman" each time it appears and inserting in lieu thereof "chief judge"; and

(4) in subsection (e) by striking out "decision" and inserting in lieu thereof "judgment".

(e) STAFF OF THE COURT.—Section 805 of such title is amended to read as follows:

"§ 805. Staff of the Court

"(a) The court may hire and prescribe functions and duties of such personnel, including a chief staff attorney, as it considers necessary or proper to carry out the provisions of this chapter.

"(b) The court may procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5.".

(f) ADMINISTRATIVE SUPPORT OF THE COURT.—Section 806 of such title is amended to read as follows:

"§ 806. Administrative support of the Court

"The Administrative Office of the United States Courts shall provide the court with necessary administrative services, including those related to budgeting, accounting, financial reporting, travel, personnel, and procurement.".

(g) SECTION ON DEDUCTION OF COSTS REPEALED.—Section 807 of such title is repealed.

(h) REPORTS OF THE COURT.—Section 808 of such title is amended to read as follows:

"§ 807. Reports

"In addition to its publication of the reports of all final judgments under section 803(b), the court shall make an annual report to the President and the Congress concerning the court's work during the preceding fiscal year, including a detailed fiscal statement of account. This report may be included as part of the annual report submitted to the Congress and the Attorney General by the Director of the Administrative Office of the United States Courts under section 604 of title 28.".

(i) EFFECTIVE DATE OF FINAL JUDGMENTS.—Section 809 of such title is amended to read as follows:

"§ 808. Effective date of final judgments.

"Any final judgment by the court under this chapter shall become effective 30 days following its publication as provided in section 803(b), unless before the end of that 30-day period an appeal has been filed under section 809 to vacate, modify, or correct such judgment, and notice of such appeal has been served on all parties who appeared before the court in the proceeding in question. Where the proceeding involves the distribution of royalty fees under section 111 or 116, the court shall, upon the expiration of such 30-day period, distribute any royalty fees not subject to an appeal filed under section 809.".

(j) JUDICIAL REVIEW.—Section 810 of such title is amended to read as follows:

"§ 809. Judicial review

"Any final judgment of the court in a proceeding under section 801(b) may be appealed by an aggrieved party to the United States Court of Appeals for the District of Columbia within 30 days after its publication. No court shall have jurisdiction to review a final decision of the Copyright Royalty Court except as provided in this section.".

(k) DISPUTE RESOLUTION.—Chapter 8 of such title is further amended by adding at the end the following new section:

"§ 810. Dispute resolution.

"(a) After commencement of a proceeding under this chapter, the court shall provide the parties to the proceeding with an opportunity to decide, within a reasonable time as determined by the court, on a dispute resolution procedure through mediation, negotiation, arbitration, appointment of a special master, or otherwise. If the parties agree on such a procedure, the court shall enter an order setting forth that procedure.

"(b) If the parties to a proceeding are unable to agree on a dispute resolution procedure under subsection (a), the court may enter an order providing for such a procedure.

"(c) Any proceeding conducted pursuant to a procedure under subsection (a) or (b) shall be completed not later than 6 months after the commencement of the proceeding.".

(l) AUTHORIZATION OF APPROPRIATIONS.—Chapter 8 of such title is further amended by adding at the end the following new section:

"§ 811. Authorization of Appropriations

"There are authorized to be appropriated for fiscal years beginning after September 30, 1985, such sums as may be necessary to carry out the purposes of this chapter.".

(l) TABLE OF SECTIONS CONFORMING AMENDMENT.—The table of sections for chapter 8 of such title is amended to read as follows:

"CHAPTER 8—COPYRIGHT ROYALTY COURT

"Sec.
"801. Copyright Royalty Court: Establishment and purpose.
"802. Designation of Judges.
"803. Procedures of the Court.
"804. Institution and conclusion of proceedings.
"805. Staff of the Court.
"806. Administrative support of the Court.
"807. Reports.
"808. Effective date of final judgments.
"809. Judicial review.
"810. Arbitration.
"811. Authorization of appropriations.".

SEC. 3. CONFORMING AMENDMENTS RELATING TO FUNCTIONS OF THE COPYRIGHT ROYALTY COURT AND THE COPYRIGHT OFFICE.

(a) SECONDARY TRANSMISSIONS.—Section 111 of title 17, United States Code, is amended—

(1) in subsection (d) by striking out ", after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted)" each place it appears in paragraphs (1) and (2);

(2) in subsection (d)(3)—

(A) in the second sentence by striking out "Royalty Tribunal" and inserting in lieu thereof "Office", and

(B) in the third sentence by striking out "Tribunal" and inserting in lieu thereof "Court"; and

(3) in subsection (d)(5)—

(A) by striking out "Royalty Tribunal" each place in appears and inserting in lieu thereof "Office" and by striking out "Tribunal" each place it appears and inserting in lieu thereof "Office", and

(B) by striking out the last sentence of subparagraph (B) and inserting in lieu thereof "If the Office determines that such a controversy exists, the Office shall petition the Copyright Royalty Court to conduct a proceeding under chapter 8 of this title to determine the distribution of royalty fees.".

(b) PHONORECORD PLAYERS.—Section 116 of title 17, United States Code, is amended—

(1) in subsection (b)(1)(A) by striking out ", after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted),";

(2) in subsection (c)(1)—

(A) in the second sentence by striking out "Royalty Tribunal" and inserting in lieu thereof "Office", and

(B) in the third sentence by striking out "Tribunal" and inserting in lieu thereof "Court";

(3) in subsection (c)(2)—

(A) in the first sentence by striking out "Royalty Tribunal" and inserting in lieu thereof "Office" and by striking out "Tribunal" and inserting in lieu thereof "Office", and

(B) in the second sentence by striking out "810" and inserting in lieu thereof "809" and by striking out "Tribunal" and inserting in lieu thereof "Court";

(4) in subsection (c)(3)—

(A) in the first sentence by striking out "Royalty Tribunal" and inserting in lieu thereof "Office",

(B) in the second sentence by striking out "Tribunal" and inserting in lieu thereof "Office", and

(C) by striking out the last sentence and inserting in lieu thereof "If the Office determines that such a controversy exists, the Office shall petition the Copyright Royalty Court to conduct a proceeding under chapter 8 of this title to determine the distribution of royalty fees. During any such proceeding, the court shall allow adequate

opportunity to the parties involved in the controversy to present factual evidence to the court.";

(5) in subsection (c)(4)(C), by striking out "Tribunal" and inserting in lieu thereof "Court"; and

(6) in subsection (c)(5)—

(A) by striking out "Royalty Tribunal" both places it appears and inserting in lieu thereof "Office", and

(B) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Copyright Royalty Court".

(c) NONCOMMERCIAL BROADCASTING.—Section 118 of title 17, United States Code, is amended—

(1) in subsection (b)—

(A) by amending the first two sentences of subsection (b) to read as follows:

"(b) The chief judge of the Copyright Royalty Court shall publish in the Federal Register, or in such other publication that the court considers to be an effective means of notice, notice of the initiation of proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified in subsection (d) with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works. Copyright owners and public broadcasting entities shall negotiate in good faith

and cooperate fully with the court in an effort to reach reasonable and expeditious results.",

(B) by striking out "Tribunal" each place it appears and inserting in lieu thereof "Court",

(C) in paragraph (3) by striking out "in the Federal Register", and

(D) by striking out paragraph (4);

(2) by amending subsection (c) to read as follows:

"(c) The procedure specified in subsection (b) shall be repeated at 5-year intervals in accordance with rules prescribed by the Copyright Royalty Court."; and

(3) in subsection (d)—

(A) by striking out "the transitional provisions of subsection (b)(4), and to", and

(B) by striking out "Tribunal" and inserting in lieu thereof "Court".

SEC. 4. EFFECTIVE DATE.

This Act shall take effect 60 days after the enactment of this Act.

SEC. 5. EFFECT ON PENDING CASES.

Any petition pending before the Copyright Royalty Tribunal on the date of the enactment of this Act shall be transferred to the Copyright Royalty Court. The reversal or remand for further proceedings of any matter relating to the Copyright Royalty Tribunal pending before any Federal

court on the date of the enactment of this Act shall be forwarded to the Copyright Royalty Court for appropriate action.

○