Calendar No. 241

103D CONGRESS
1ST SESSION

H. R. 2840

IN THE SENATE OF THE UNITED STATES

OCTOBER 13, 1993
Received

OCTOBER 20 (legislative day, OCTOBER 13), 1993
Read twice and ordered placed on the calendar

AN ACT

To amend title 17, United States Code, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, 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 Royalty Tribunal Reform Act of 1993".

SEC. 2. COPYRIGHT ARBITRATION ROYALTY PANELS.

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

(1) The section designation and heading are amended to read as follows:

"§ 801. Copyright arbitration royalty panels: establishment and purpose".

(2) Subsection (a) is amended to read as follows:

"(a) ESTABLISHMENT.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, is authorized to appoint and convene copyright arbitration royalty panels.".

(3) Subsection (b) is amended—

(A) by inserting "PURPOSES.—" after "(b)";

(B) in the matter preceding paragraph (1), by striking "Tribunal" and inserting "copyright arbitration royalty panels";

(C) in paragraph (2)—

(i) in subparagraph (A), by striking "Commission" and inserting "copyright arbitration royalty panels"; and

(ii) in subparagraph (B), by striking "Copyright Royalty Tribunal" and inserting "copyright arbitration royalty panels";

(D) in paragraph (3), by striking "In determining" and all that follows through the end of the paragraph; and

(E) in paragraph (4) by striking "to determine" and all that follows through "chapter 10" and inserting "and to determine the distribution of such payments.".

(4) By amending subsection (c) to read as follows:

"(c) RULINGS.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, may, before a copyright arbitration royalty panel is convened, make any necessary procedural or evidentiary rulings that would apply to the proceedings conducted by such panel.".

(b) MEMBERSHIP AND PROCEEDINGS.—Section 802 of title 17, United States Code, is amended to read as follows:

"§ 802. Membership and proceedings of copyright arbitration royalty panels

"(a) COMPOSITION OF COPYRIGHT ARBITRATION ROYALTY PANELS.—A copyright arbitration royalty panel shall consist of 3 arbitrators selected by the Librarian of Congress pursuant to subsection (b).

"(b) SELECTION OF ARBITRATION PANEL.—Not later than 10 days after publication of a notice initiating

an arbitration proceeding under section 804, and in accordance with procedures specified by the Register of Copyrights, the Librarian of Congress shall, upon the recommendation of the Register of Copyrights, select 2 arbitrators from lists of arbitrators provided to the Librarian by parties participating in the arbitration and by professional arbitration associations or such similar organizations as the Librarian shall select. The 2 arbitrators so selected shall, within 10 days after their selection, choose a third arbitrator from the same lists, who shall serve as the chairperson of the arbitrators. If such 2 arbitrators fail to agree upon the selection of a third arbitrator, the Librarian of Congress shall promptly select the third arbitrator.

"(c) ARBITRATION PROCEEDINGS.—Copyright arbitration royalty panels shall conduct arbitration proceedings, in accordance with such procedures as they may adopt, for the purpose of making their determinations in carrying out the purposes set forth in section 801. The arbitration panels shall act on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration panel determinations, and rulings by the Librarian of Congress under section 801(c). Any copyright owner who claims to be entitled to royalties under section 111, 116, or 119, or any

interested copyright party who claims to be entitled to royalties under section 1006, may submit relevant information and proposals to the arbitration panels in proceedings applicable to such copyright owner or interested copyright party, and any other person participating in arbitration proceedings may submit such relevant information and proposals to the arbitration panel conducting the proceedings. The parties to the proceedings shall bear the entire cost thereof in such manner and proportion as the arbitration panels shall direct.

"(d) REPORT TO THE LIBRARIAN OF CONGRESS.—Not later than 180 days after publication of the notice initiating an arbitration proceeding, the copyright arbitration royalty panel conducting the proceeding shall report to the Librarian of Congress its determination concerning the royalty fee or distribution of royalty fees, as the case may be. Such report shall be accompanied by the written record, and shall set forth the facts that the arbitration panel found relevant to its determination.

"(e) ACTION BY LIBRARIAN OF CONGRESS.—Within 60 days after receiving the report of a copyright arbitration royalty panel under subsection (d), the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt or reject the determination of the arbitration panel. The Librarian shall adopt the deter-

mination of the arbitration panel unless the Librarian finds that the determination is arbitrary. If the Librarian rejects the determination of the arbitration panel, the Librarian shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order setting the royalty fee or distribution of fees, as the case may be. The Librarian shall cause to be published in the Federal Register the determination of the arbitration panel, and the decision of the Librarian (including an order issued under the preceding sentence). The Librarian shall also publicize such determination and decision in such other manner as the Librarian considers appropriate. The Librarian shall also make the report of the arbitration panel and the accompanying record available for public inspection and copying.

"(f) JUDICIAL REVIEW.—Any decision of the Librarian of Congress under subsection (e) with respect to a determination of an arbitration panel may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register. If no appeal is brought within such 30-day period, the decision of the Librarian is final, and the royalty fee or determination with respect to the distribution of fees, as the case may

be, shall take effect as set forth in the decision. The pendency of an appeal under this paragraph shall not relieve persons obligated to make royalty payments under sections 111, 115, 116, 118, 119, or 1003 who would be affected by the determination on appeal to deposit the statement of account and royalty fees specified in those sections. The court shall have jurisdiction to modify or vacate a decision of the Librarian only if it finds, on the basis of the record before the Librarian, that the Librarian acted in an arbitrary manner. If the court modifies the decision of the Librarian, the court shall have jurisdiction to enter its own determination with respect to the amount or distribution of royalty fees and costs, to order the repayment of any excess fees, and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the decision of the arbitration panel and remand the case for arbitration proceedings in accordance with subsection (c).

"(g) ADMINISTRATIVE MATTERS.—

"(1) DEDUCTION OF COSTS FROM ROYALTY FEES.—The Librarian of Congress and the Register of Copyrights may, to the extent not otherwise provided under this title, deduct from royalty fees deposited or collected under this title the reasonable

costs incurred by the Library of Congress and the Copyright Office under this chapter. Such deduction may be made before the fees are distributed to any copyright claimants.

"(2) POSITIONS REQUIRED FOR ADMINISTRATION OF COMPULSORY LICENSING.—Section 307 of the Legislative Branch Appropriations Act, 1994, shall not apply to employee positions in the Library of Congress that are required to be filled in order to carry out section 111, 115, 116, 118, or 119 or chapter 10.".

(c) ADJUSTMENT OF COMPULSORY LICENSE RATES.—Section 803 of title 17, United States Code, and the item relating to such section in the table of sections at the beginning of chapter 8 of such title, are repealed.

(d) INSTITUTION AND CONCLUSION OF PROCEEDINGS.—Section 804 of title 17, United States Code, is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a)(1) With respect to proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in sections 115 and 116, and with respect to proceedings under subparagraphs (A) and (D) of section 801(b)(2), during the calendar years specified in the

schedule set forth in paragraphs (2), (3), and (4), any owner or user of a copyrighted work whose royalty rates are specified by this title, established by the Copyright Royalty Tribunal before the date of the enactment of the Copyright Royalty Tribunal Reform Act of 1993, or established by a copyright arbitration royalty panel after such date of enactment, may file a petition with the Librarian of Congress declaring that the petitioner requests an adjustment of the rate. The Librarian of Congress shall, upon the recommendation of the Register of Copyrights, make a determination as to whether the petitioner has such a significant interest in the royalty rate in which an adjustment is requested. If the Librarian determines that the petitioner has such a significant interest, the Librarian shall cause notice of this determination, with the reasons therefor, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter.

"(2) In proceedings under section 801(b)(2)(A) and (D), a petition described in paragraph (1) may be filed during 1995 and in each subsequent fifth calendar year.

"(3) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 115, a petition described in paragraph (1) may be filed in 1997 and in each subsequent tenth calendar year.

"(4)(A) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 116, a petition described in paragraph (1) may be filed at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire and are not replaced by subsequent agreements.

"(B) If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another such license agreement which provides permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending March 1, 1989, the Librarian of Congress shall, upon petition filed under paragraph (1) within 1 year after such termination or expiration, convene a copyright arbitration royalty panel. The arbitration panel shall promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of non-dramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such rate or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of proceedings by the arbitration panel, in accordance with section 802, to adjust the royalty rates applicable to such works, or until superseded

by a new negotiated license agreement, as provided in section 116(b).".

(2) Subsection (b) is amended—

(A) by striking "subclause" and inserting "subparagraph";

(B) by striking "Tribunal" the first place it appears and inserting "Copyright Royalty Tribunal or the Librarian of Congress";

(C) by striking "Tribunal" the second and third places it appears and inserting "Librarian";

(D) by striking "Tribunal" the last place it appears and inserting "Copyright Royalty Tribunal or the Librarian of Congress"; and

(E) by striking "(a)(2), above" and inserting "subsection (a) of this section".

(3) Subsection (c) is amended by striking "Tribunal" and inserting "Librarian of Congress".

(4) Subsection (d) is amended—

(A) by striking "Chairman of the Tribunal" and inserting "Librarian of Congress"; and

(B) by striking "determination by the Tribunal" and inserting "a determination".

(5) Section 804 is further amended by striking subsection (e).

(e) REPEAL.—Sections 805 through 810 of title 17, United States Code, and the items relating to such sections in the table of sections at the beginning of chapter 8 of such title, are repealed.

(f) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 8 of title 17, United States Code, is amended by striking the items relating to sections 801 and 802 and inserting the following:

"801. Copyright arbitration royalty panels: establishment and purpose.
"802. Membership and proceedings of copyright arbitration royalty panels.".

SEC. 3. JUKEBOX LICENSES.

(a) REPEAL OF COMPULSORY LICENSE.—Section 116 of title 17, United States Code, and the item relating to section 116 in the table of sections at the beginning of chapter 1 of such title, are repealed.

(b) NEGOTIATED LICENSES.—(1) Section 116A of title 17, United States Code, is amended—

(A) by redesignating such section as section 116;

(B) by striking subsection (b) and redesignating subsections (c) and (d) as subsections (b) and (c), respectively;

(C) in subsection (b)(2) (as so redesignated) by striking "Copyright Royalty Tribunal" each place it appears and inserting "Librarian of Congress";

(D) in subsection (c) (as so redesignated)—

(i) in the subsection caption by striking "ROYALTY TRIBUNAL" and inserting "ARBITRATION ROYALTY PANEL";

(ii) by striking "subsection (c)" and inserting "subsection (b)"; and

(iii) by striking "the Copyright Royalty Tribunal" and inserting "a copyright arbitration royalty panel"; and

(E) by striking subsections (e), (f), and (g).

(2) The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by striking "116A" and inserting "116".

SEC. 4. PUBLIC BROADCASTING COMPULSORY LICENSE.

Section 118 of title 17, United States Code, is amended—

(1) in subsection (b)—

(A) by striking the first 2 sentences;

(B) in the third sentence by striking "works specified by this subsection" and inserting "published nondramatic musical works and

published pictorial, graphic, and sculptural works";

(C) in paragraph (1)—

(i) in the first sentence by striking ", within one hundred and twenty days after publication of the notice specified in this subsection,"; and

(ii) by striking "Copyright Royalty Tribunal" each place it appears and inserting "Librarian of Congress";

(D) in paragraph (2) by striking "Tribunal" and inserting "Librarian of Congress";

(E) in paragraph (3)—

(i) by striking the first sentence and inserting the following: "In the absence of license agreements negotiated under paragraph (2), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright own-

ers have submitted proposals to the Librarian of Congress.";

(ii) in the second sentence—

(I) by striking "Copyright Royalty Tribunal" and inserting "copyright arbitration royalty panel"; and

(II) by striking "clause (2) of this subsection" and inserting "paragraph (2)"; and

(iii) in the last sentence by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(F) by striking paragraph (4);

(2) in subsection (c)—

(A) by striking "1982" and inserting "1997"; and

(B) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress";

(3) in subsection (d)—

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

(B) by striking "the Copyright Royalty Tribunal" and inserting "a copyright arbitration royalty panel"; and

(C) in paragraphs (2) and (3) by striking "clause" each place it appears and inserting "paragraph"; and

(4) in subsection (g) by striking "clause" and inserting "paragraph".

SEC. 5. SECONDARY TRANSMISSIONS BY SUPERSTATIONS AND NETWORK STATIONS FOR PRIVATE VIEWING.

Section 119 of title 17, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1) by striking ", after consultation with the Copyright Royalty Tribunal," each place it appears;

(B) in paragraph (2) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress";

(C) in paragraph (3) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(D) in paragraph (4)—

(i) by striking "Copyright Royalty Tribunal" each place it appears and inserting "Librarian of Congress";

(ii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress"; and

(iii) in subparagraph (B) by striking "conduct a proceeding" in the last sentence and inserting "convene a copyright arbitration royalty panel"; and

(2) in subsection (c)—

(A) in the subsection caption by striking "DETERMINATION" and inserting "ADJUSTMENT";

(B) in paragraph (2) by striking "Copyright Royalty Tribunal" each place it appears and inserting "Librarian of Congress";

(C) in paragraph (3)—

(i) in subparagraph (A)—

(I) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(II) by striking the last sentence and inserting the following: "Such arbitration proceeding shall be conducted under chapter 8.";

(ii) by striking subparagraphs (B) and (C);

(iii) in subparagraph (D)—

(I) by redesignating such subparagraph as subparagraph (B); and

(II) by striking "Arbitration Panel" and inserting "copyright arbitration royalty panel appointed under chapter 8";

(iv) by striking subparagraphs (E) and (F);

(v) by amending subparagraph (G) to read as follows:

"(C) PERIOD DURING WHICH DECISION OF ARBITRATION PANEL OR ORDER OF LIBRARIAN EFFECTIVE.—The obligation to pay the royalty fee established under a determination which—

"(i) is made by a copyright arbitration royalty panel in an arbitration proceeding under this paragraph and is adopted by the Librarian of Congress under section 802(e), or

"(ii) is established by the Librarian of Congress under section 802(e),

shall become effective as provided in section 802(f)."; and

(vi) in subparagraph (H)—

(I) by redesignating such subparagraph as subparagraph (D); and

(II) by striking "adopted or ordered under subparagraph (F)" and inserting "referred to in subparagraph (C)"; and

(D) by striking paragraph (4).

SEC. 6. CONFORMING AMENDMENTS.

(a) CABLE COMPULSORY LICENSE.—Section 111(d) of title 17, United States Code, is amended as follows:

(1) Paragraph (1) is amended by striking ", after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted),".

(2) Paragraph (1)(A) is amended by striking ", after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted),".

(3) Paragraph (2) is amended by striking the second and third sentences and by inserting the following: "All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Librarian of Congress in the event no controversy over distribution exists, or by a copyright

arbitration royalty panel in the event a controversy over such distribution exists.".

(4) Paragraph (4)(A) is amended—

(A) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(B) by striking "Tribunal" and inserting "Librarian of Congress".

(5) Paragraph (4)(B) is amended to read as follows:

"(B) After the first day of August of each year, the Librarian of Congress shall, upon the recommendation of the Register of Copyrights, determine whether there exists a controversy concerning the distribution of royalty fees. If the Librarian determines that no such controversy exists, the Librarian shall, after deducting reasonable administrative costs under this section, distribute such fees to the copyright owners entitled to such fees, or to their designated agents. If the Librarian finds the existence of a controversy, the Librarian shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty fees.".

(6) Paragraph (4)(C) is amended by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress".

(b) AUDIO HOME RECORDING ACT.—

(1) ROYALTY PAYMENTS.—Section 1004(a)(3) of title 17, United States Code, is amended—

(A) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(B) by striking "Tribunal" and inserting "Librarian of Congress".

(2) DEPOSIT OF ROYALTY PAYMENTS.—Section 1005 of title 17, United States Code, is amended by striking the last sentence.

(3) ENTITLEMENT TO ROYALTY PAYMENTS.—Section 1006(c) of title 17, United States Code, is amended by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress shall convene a copyright arbitration royalty panel which".

(4) PROCEDURES FOR DISTRIBUTING ROYALTY PAYMENTS.—Section 1007 of title 17, United States Code, is amended—

(A) in subsection (a)(1)—

(i) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(ii) by striking "Tribunal" and inserting "Librarian of Congress";

(B) in subsection (b)—

(i) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(ii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress"; and

(C) in subsection (c)—

(i) by striking the first sentence and inserting "If the Librarian of Congress finds the existence of a controversy, the Librarian shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty payments.";

(ii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress"; and

(iii) in the last sentence by striking "its reasonable administrative costs" and

inserting "the reasonable administrative costs incurred by the Librarian".

(5) ARBITRATION OF CERTAIN DISPUTES.—Section 1010 of title 17, United States Code, is amended—

(A) in subsection (b)—

(i) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(ii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress";

(B) in subsection (e)—

(i) in the subsection caption by striking "COPYRIGHT ROYALTY TRIBUNAL" and inserting "LIBRARIAN OF CONGRESS"; and

(ii) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress";

(C) in subsection (f)—

(i) in the subsection caption by striking "COPYRIGHT ROYALTY TRIBUNAL" and inserting "LIBRARIAN OF CONGRESS";

(ii) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress";

(iii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress"; and

(iv) in the third sentence by striking "its" and inserting "the Librarian's"; and

(D) in subsection (g)—

(i) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress";

(ii) by striking "Tribunal's decision" and inserting "decision of the Librarian of Congress"; and

(iii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress".

SEC. 7. EFFECTIVE DATE AND TRANSITION PROVISIONS.

(a) IN GENERAL.—This Act and the amendments made by this Act shall take effect on January 1, 1994.

(b) EFFECTIVENESS OF EXISTING RATES AND DISTRIBUTIONS.—All royalty rates and all determinations with respect to the proportionate division of compulsory license fees among copyright claimants, whether made by

the Copyright Royalty Tribunal, or by voluntary agreement, before the effective date set forth in subsection (a) shall remain in effect until modified by voluntary agreement or pursuant to the amendments made by this Act.

(c) TRANSFER OF APPROPRIATIONS.—All unexpended balances of appropriations made to the Copyright Royalty Tribunal, as of the effective date of this Act, are transferred on such effective date to the Copyright Office for use by the Copyright Office for the purposes for which such appropriations were made.

Passed the House of Representatives October 12, 1993.

Attest: DONNALD K. ANDERSON,

Clerk.

Calendar No. 241

103D CONGRESS
1ST SESSION

H. R. 2840

AN ACT

To amend title 17, United States Code, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, and for other purposes.

OCTOBER 20 (legislative day, OCTOBER 13), 1993

Read twice and ordered placed on the calendar