103D CONGRESS
1ST SESSION

S. 373

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 16 (legislative day, JANUARY 5), 1993

Mr. DECONCINI (for himself and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend title 17, United States Code, to modify certain recordation and registration requirements, 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 Reform Act of 1993".

TITLE I—COPYRIGHT OFFICE

SEC. 101. COPYRIGHT RECORDATION PROVISIONS.

Section 301(b) of title 17, United States Code, is amended—

(1) in paragraph (3) by striking "or" after the semicolon;

(2) in paragraph (4) by striking the period and inserting "; or"; and

(3) by adding at the end the following:

"(5) perfecting security interests.".

SEC. 102. COPYRIGHT REGISTRATION PROVISIONS.

(a) REGISTRATION AND INFRINGEMENT ACTIONS.—Section 411 of title 17, United States Code, is amended to read as follows:

"§ 411. Registration and infringement actions

"In the case of a work consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, the copyright owner may, either before or after such fixation takes place, institute an action for infringement under section 501, fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if, in accordance with requirements that the Register of Copyrights shall prescribe by regulation, the copyright owner serves notice upon the infringer, not less than 10 or more than 30 days before such fixa-

tion, identifying the work and the specific time and source of its first transmission.".

(b) REGISTRATION AS PREREQUISITE TO CERTAIN REMEDIES FOR INFRINGEMENT.—Section 412 of title 17, United States Code, and the item relating to section 412 in the table of sections at the beginning of chapter 4 of title 17, United States Code, are repealed.

SEC. 103. THE COPYRIGHT OFFICE: GENERAL RESPONSIBILITIES AND ORGANIZATION.

(a) REGISTER OF COPYRIGHTS.—Section 701(a) of title 17, United States Code, is amended to read as follows:

"(a)(1) The President shall appoint, by and with the advice and consent of the Senate, the Register of Copyrights. The Register of Copyrights shall be paid at the rate of pay in effect for level IV of the Executive Schedule under section 5315 of title 5.".

"(2) All administrative functions and duties under this title, except as otherwise specified, are the responsibility of the Register of Copyrights as director of the Copyright Office of the Library of Congress. The Register of Copyrights shall appoint all other officers and employees of the Copyright Office, who shall act under the Register's general direction and supervision.".

(b) ANNUAL REPORT.—Section 701(c) of title 17, United States Code, is amended to read as follows:

"(c) The Register of Copyrights shall make an annual report to the Congress on the work and accomplishments of the Copyright Office during the previous fiscal year.".

(c) REPEAL.—Section 701(e) of title 17, United States Code, is repealed.

SEC. 104. COPYRIGHT OFFICE REGULATIONS.

Section 702 of title 17, United States Code, is amended by striking the last sentence.

SEC. 105. CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 101 of title 17, United States Code, is amended by striking the definition of the "country of origin" of a Berne Convention work.

(b) RECORDATION OF TRANSFERS AND OTHER DOCUMENTS.—Section 205(c) of title 17, United States Code, is amended by striking "but only if—" and all that follows through the end of paragraph (2) and inserting the following: "but only if the document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work.".

(c) INFRINGEMENT OF COPYRIGHT.—Section 501(b) of title 17, United States Code, is amended in the first

sentence by striking ", subject to the requirements of section 411,".

(d) REMEDIES FOR INFRINGEMENT.—Section 504(a) of title 17, United States Code, is amended by striking "Except as otherwise provided by this title, an" and inserting "An".

TITLE II—COPYRIGHT ROYALTY TRIBUNAL

SEC. 201. COPYRIGHT ARBITRATION ROYALTY PANELS.

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

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

"(a) ESTABLISHMENT.—The Register of Copyrights is authorized to appoint and convene copyright arbitration royalty panels to—

"(1) make determinations concerning the adjustment of the copyright royalty rates as provided in section 803;

"(2) adjust royalty payments under section 1004(a)(3);

"(3) distribute royalty fees deposited with the Register of Copyrights under sections 111 and

119(b) in the event a controversy over such distribution exists; and

"(4) distribute the royalty fees deposited with the Register of Copyrights under section 1005 in the event a controversy over such distribution exists under section 1006(c).".

(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 Register of Copyrights 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 803 or 804, and in accordance with procedures specified by the Register of Copyrights, the Register of Copyrights shall select 2 arbitrators from lists of arbitrators provided to the Register by parties participating in the arbitration. 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 chairperson, the Register of Copyrights shall promptly select the chairperson.

"(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. Any copyright owner who claims to be entitled to royalties under section 111 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. 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 REGISTER OF COPYRIGHTS.—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 Register of Copyrights 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 COPYRIGHT ARBITRATION ROYALTY PANEL.—Within 60 days after receiving the report of a copyright arbitration royalty panel under subsection (d), the Register of Copyrights shall adopt or reject the determination of the arbitration panel. The Register shall adopt the determination of the arbitration panel unless the Register finds that the determination is arbitrary. If the Register rejects the determination of the arbitration panel, the Register 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 Register shall cause to be published in the Federal Register the determination of the arbitration panel, and the decision of the Register (including an order issued under the preceding sentence). The Register shall also publicize such determination and decision in such other manner as the Register considers appropriate. The Register 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 Register of Copyrights 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. The pendency of an appeal under this paragraph shall not relieve persons obligated to make royalty payments under sections 111, 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 Register only if it finds, on the basis of the record before the Register, that the Register acted in an arbitrary manner. If the court modifies the decision of the Register, 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).".

(c) ADJUSTMENT OF COMPULSORY LICENSE RATES.—Section 803 of title 17, United States Code, is amended to read as follows:

"§ 803. Adjustment of compulsory license rates

"(a) PETITIONS.—In accordance with subsection (b), any owner or user of a copyrighted work whose royalty rates are specified by this title, or by a rate established by the Copyright Royalty Tribunal before the date of the enactment of the Copyright Reform Act of 1993, or by a copyright arbitration royalty panel after such date of enactment, may file a petition with the Register of Copyrights declaring that the petitioner requests an adjustment of the rate. The Register of Copyrights shall make a determination as to whether the petitioner has a significant interest in the royalty rate in which an adjustment is requested. If the Register determines that the petitioner has a significant interest, the Register 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. Except as provided in subsection (b)(1), the rates set by a copyright arbitration royalty panel shall attempt to reflect what the fair market value of the use would be in the absence of a compulsory license.

"(b) TYPES OF PROCEEDINGS.—

"(1) CABLE.—In making determinations concerning the adjustment of the copyright royalty rates in section 111, copyright arbitration royalty panels

shall make their determinations only in accordance with the following provisions:

"(A) The rates established by section 111(d)(1)(B) may be adjusted to reflect national monetary inflation or deflation, or changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed on the date of the enactment of the Copyright Reform Act of 1993, except that—

"(i) if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(1)(B) shall be permitted; and

"(ii) no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber.

Copyright arbitration royalty panels may consider all factors relating to the maintenance of

such level of payments including, as an extenuating factor, whether the cable industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

"(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 15, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(1)(B) may be adjusted to ensure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, a copyright arbitration royalty panel shall consider, among other factors, the economic impact on copyright owners and users, except that no adjustment in

royalty rates shall be made under this subparagraph with respect to any distant signal equivalent or fraction thereof represented by—

"(i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal, or

"(ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

"(C) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected

television broadcast signals carried on those systems affected by the change.

"(D) The gross receipts limitations established by section 111(d)(1) (C) and (D) shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section; and the royalty rate specified in such section shall not be subject to adjustment.

"(E) With respect to proceedings under subparagraph (A) or (D), petitions under subsection (a) may be filed during 1995 and in each subsequent fifth calendar year.

"(F) With respect to proceedings under subparagraph (B) or (C), petitions under subsection (a) may be filed within 12 months after an event described in either such subsection. Any change in royalty rates made pursuant to subparagraph (B) or (C) may be reconsidered in 1995 and each fifth calendar year thereafter, in accordance with subparagraph (B) or (C), as the case may be.

"(2) PHONORECORDS.—With respect to proceedings to adjust the copyright royalty rates in section 115, petitions under subsection (a) may be filed in 1997 and in each subsequent tenth calendar year.

"(3) COIN-OPERATED PHONORECORD PLAYERS.—If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another license agreement under such section, the Register of Copyrights shall, upon petition filed under subsection (a) 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 rate 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(c).

SEC. 203. 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 "Register of Copyrights";

(D) in paragraph (2) by striking "Tribunal" and inserting "Register of Copyrights";

(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 Register of Copyrights shall, pursuant to section 803, convene a copy-

right 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 owners have submitted proposals to the Register of Copyrights.";

(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 'Register of Copyrights"; and

(F) by striking paragraph (4);

(2) by striking subsection (c); and

(3) in subsection (d)—

(A) by redesignating such subsection as subsection (c);

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

(C) by striking "Copyright Royalty Tribunal" and inserting "copyright arbitration royalty panel".

SEC. 204. 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 "Register of Copyrights";

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

(D) in paragraph (4)—

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

(ii) by striking "Tribunal" each place it appears and inserting "Register"; and

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

(2) by striking subsection (c) and inserting the following:

"(c) DETERMINATION OF ROYALTIES.—The royalty fee payable under subsection (b)(1)(B) shall be that established by the Copyright Royalty Tribunal on May 1, 1992, as corrected on May 18, 1992.".

SEC. 205. 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 fol-

lowing: "All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution by the Register in the event no controversy over distribution exists, or by a copyright arbitration royalty panel in the event a controversy over such distribution exists. The Register shall compile and publish on a semi-annual basis, a compilation of all statements of account covering the relevant 6-month period provided by paragraph (1) of this subsection.".

(4) Paragraph (4)(A) is amended—

(A) by striking "Copyright Royalty Tribunal" and inserting "Register of Copyrights"; and

(B) by striking "Tribunal" and inserting "Register".

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

"(B) After the first day of August of each year, the Register of Copyrights shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Register determines that no such controversy exists, the Register shall, after deducting the Copyright Office's reasonable administrative costs under

this section, distribute such fees to the copyright owners entitled, or to their designated agents. If the Register finds the existence of a controversy, the Register 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 "Register of Copyrights".

(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 "Register of Copyrights"; and

(B) by striking "Tribunal" and inserting "Register".

(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 "Register of Copyrights 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) by striking "Copyright Royalty Tribunal" and inserting "Register of Copyrights";

(B) in subsection (b)—

(i) by striking "Copyright Royalty Tribunal" and inserting "Register of Copyrights"; and

(ii) by striking "Tribunal" each place it appears and inserting "Register"; and

(C) in subsection (c)—

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

(ii) by striking "Tribunal" each place it appears and inserting "Register".

(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 "Register of Copyrights"; and

(ii) by striking "Tribunal" each place it appears and inserting "Register";

(B) in subsection (e) by striking "Copyright Royalty Tribunal" each place it appears and inserting "Register of Copyrights";

(C) in subsection (f)—

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

(ii) by striking "Tribunal" each place it appears and inserting "Register"; and

(iii) in the third sentence by striking "its" and inserting "the Register's"; and

(D) in subsection (g)—

(i) by striking "Copyright Royalty Tribunal" and inserting "Register of Copyrights"; and

(ii) by striking "Tribunal" each place it appears and inserting "Register".

TITLE III—GENERAL PROVISIONS

SEC. 301. EFFECTIVE DATE.

(a) TITLE I.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by title I take effect on the date of the enactment of this Act.

(2) SECTION 103.—The amendments made by section 103 take effect on January 1, 1994.

(b) TITLE II.—The amendments made by title II take effect on January 1, 1994.

(c) 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 (b) shall remain in effect until modified by voluntary agreement or pursuant to the amendments made by this Act.

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