CONGRESSIONAL RECORD
Proceedings and Debates of the 93d Congress
LD 4a (Rev Jan. 71)

SENATE

BILL	DATE	PAGE(S)
S.1362	March 26, 1973	S5615 - 5616

ACTION Introduced by Mr. McClellan

certain time periods, during which specified actions must be taken by patent and trademark applicants and owners or by their attorneys or agents. Failure to take a required action within the statutory time period generally results in a forfeiture of some or all of the patent or trademark rights involved. There has occurred in the past, and may well occur in the future, disruptions of postal service because of labor disputes or exceptional circumstances, such as floods, riots, and so forth. The purpose of this legislation is to permit the Commissioner of Patents to provide relief from injury sustained by patent and trademark applicants when there is an interruption in regular postal service.

Subsequent to the introduction of S. 4028, I was requested to include in the bill appropriate provisions covering disruption or suspension of postal or other services in copyright cases. Such language has been added to the bill which I am introducing today. This additional language has been approved by the Copyright Office.

Favorable action on this bill would relieve the Congress and the executive branch of the time-consuming process of considering the merits of individual private bills for relief in the event of an interruption of postal service.

By Mr. McCLELLAN:

S. 1361. A bill for the general revision of the copyright law, title 17 of the United States Code, and for other purposes. Referred to the Committee on the Judiciary.

Mr. McCLELLAN. Mr. President, as chairman of the Subcommittee on Patents, Trademarks and Copyrights, I introduce, for appropriate reference, a bill for the general revision of the copyright law, title 17 of the United States Code, and for other purposes. Title I of this legislation provides for the general revision of the copyright law; title II establishes the National Commission on New Technological Uses of Copyrighted Works, and title III provides for the protection of ornamental designs of useful articles.

Other than for necessary technical amendments relating to the effective dates of various provisions, the bill is identical to S. 644 of the 92d Congress. That bill, other than for minor amendments, is identical to the bill reported by the subcommittee in December 1969.

As is by now well known, any significant progress on general revision of the copyright law has been effectively precluded in recent years by the multifaceted cable television issue. A major section of the revision bill relates to the resolution of the copyright status of the cable television industry. Progress on the revision bill had to await the adoption by the Federal Communications Commission of a new cable television regulatory scheme. These rules became effective during 1972.

Section 111 of the legislation approved by the subcommittee contains a comprehensive resolution of the CATV question, including both regulatory and copyright matters. The subcommittee adopted such a comprehensive provision in response to the recommendations of the then Chairman of the Federal Communications Commission. When Mr. Dean Burch became Chairman of the FCC he consulted the subcommittee concerning the development of coordinated procedures by the Congress and the Commission to facilitate a resolution of the CATV issue, and to permit the orderly development of the cable industry. Under the effective leadership of Chairman Burch substantial progress has been achieved in creating a constructive cable television policy for this Nation. The regulations adopted by the Commission are generally consistent with the recommendations made by the subcommittee in section 111 of the copyright bill. It is therefore anticipated that when the subcommittee processes the revision bill, it will eliminate those provisions of a regulatory nature that were the subject of the recent FCC rulemaking proceedings.

The subcommittee determined that the public interest justified, and practical realities required, the granting in certain circumstances of a compulsory license to perform copyrighted works. The subcommittee approved such licenses as part of the cable television, mechanical royalty, jukebox royalty, and performance royalty sections of the revision bill. With respect to each of those issues the subcommittee decided that the Congress would determine the initial royalty rate, and that a Copyright Royalty Tribunal would be established for the purpose of making periodic review and adjustment of the rates.

It has been proposed that special treatment should be accorded the cable television royalty issue. The principal justification for this position is a private agreement developed by Dr. Clay T. Whitehead, Director of the Office of Telecommunications Policy. The Whitehead agreement has been generally interpretated as seeking to eliminate the Congress from any role in determining cable television royalty rates. Even though public law places copyright affairs exclusively in the legislative branch, neither the Copyright Office of the Library of Congress, nor the House or Senate subcommittees having jurisdiction in copyright matters, were represented at Dr. Whitehead's meetings.

Another major issue in the revision legislation that requires brief comment at the present time is the photocopying of copyrighted works. There has recently been an organized letter-writing campaign by presidents of universities and others in support of a substitute photocopying section of the revision bill. Certain of these letters reflect an incomplete and somewhat distorted understanding of the decisions taken by the subcommittee. For example, Dr. Jerome B. Wiesner, president of the Massachusetts Institute of Technology, has written me that the subcommittee position:

> Seems likely to result in the imposition of a fee or a delay whenever a student or scholar wants to copy part of a copyrighted work in order to facilitate his study or research.

This is grossly inaccurate. The bill approved by the subcommittee, together with the draft of the report on that legislation, has made adequate and reasonable provision for the needs of research and scholarship.

Dr. Wiesner says the payment of any copyright fees would "constitute a regressive tax on education and research to give a windfall to publishers." Authors, publishers, librarians, and educators share many common goals. It is still to be hoped that a satisfactory accommodation can be achieved, and that the discussions currently in progress will result in the presentation of recommendations to the subcommittee with the endorsement of both the copyright and academic communities.

Prior to the suspension of action on the revision bill, the subcommittee conducted 17 days of hearings during which there was testimony by 149 witnesses. Subsequent to the hearings a number of public and staff meetings have been held on issues involved in this legislation. The subcommittee has also requested on a number of occasions supplementary written statements on specified issues.

The subcommittee has now received several requests to conduct additional hearings because of events which have transpired since the original action by the subcommittee on this legislation. My personal view is that additional hearings are unlikely to produce any significant new information. There is also the possibility that public hearings would tend to polarize positions on some issues where efforts to secure accommodations are still in progress. Despite these reservations the subcommittee will reopen the hearings to hear supplementary presentations on selected issues where there have been significant developments since the previous action of the subcommittee. The subcommittee will allocate equal time on these issues to the principal spokesmen for the various points of view. These issues include:

First. Library photocopying—sections 107 and 108 of the bill.

Second. The proposed amendment of the ad hoc committee—of educational organizations and institutions—on copyright law revision, relating to a general exemption for education purposes.

Third. The cable television royalty schedule.

Fourth. The application of the compulsory license provisions of the cable television section 111 to the carriage of sporting events by cable television systems.

Fifth. The proposed exemption for the making of copies of tapes of religious broadcasts—section 112(c) of the bill.

Since efforts to achieve a resolution of certain of these issues are continuing, it would not be feasible to conduct hearings at the present time. I shall follow the progress of the current discussions, and review the situation at a later date. When it would serve a constructive purpose, I shall schedule the hearings as soon as my other legislative responsibilities permit.

By Mr. McCLELLAN (for himself and Mr. SCOTT of Pennsylvania):

S. 1362. A bill to amend the act to provide for the registration and protection of trademarks used in commerce, to carry

ut the provisions of certain international conventions, and for other purposes. Referred to the Committee on the Judiciary.

Mr. McCLELLAN. Mr. President, as hairman of the Subcommittee on Patnts, Trademarks, and Copyrights, I introduce, for appropriate reference, on ehalf of myself and Mr. SCOTT of Pennylvania, a bill to amend the act to proide for the registration and protection f trademarks used in commerce, to carry ut the provisions of certain internaional conventions, and for other purposes. This legislation is known as the roposed Unfair Competition Act of 978.

The bill would establish a uniform body f Federal unfair competition law by reating a Federal statutory tort of unair competition affecting interstate ommerce, and by establishing Federal urisdiction over such tort claims within he framework of the Trademark Act of 964. The crux of the bill proposes a new ection 43(a) of the Trademark Act inluding in three subsections those torts enerally acknowledged to give rise to he major part of the law of unfair cometition. In a fourth subsection, provision is made for the Federal courts to eal with other acts which constitute nfair competition because of misrepreentation or misappropriation of goods r services.

The bill provides that all of the remedies set forth in the Trademark Act for nfringement of trademarks would be vailable in respect to acts of unfair ompetition. However, the bill would not ffect remedies which are otherwise vailable or preempt the jurisdiction of ny State in cases of unfair competition.

Most of the provisions in the bill which Senator SCOTT and I are introducing today are identical to S. 647 of the 92d Congress. The bill, however, does incorporate several amendments which have been suggested by the National Coordinating Committee which has been established to seek the passage of this legislation. The purposes of the principal amendments are:

First. To clarify the intent of the legislation to establish a Federal cause of action for unfair competition in meritorious product simulation cases of a type as to which relief has been barred under State law by virtue of certain decisions of the U.S. Supreme Court.

Second. To clarify that the misrepresentation or disparagement of another person's goods, and so forth, which is proscribed by this bill relates to "a false or misleading representation or omission of material information."

Third. To clarify that the legislation is not intended to broaden the presently existing common law in respect to the protection of trade secrets or confidential information.

Fourth. To clarify the discretionary authority of Federal courts to require proof of intent to injure, and so forth, in awarding monetary relief "subject to the principles of equity" under section 35.

By Mr. HUMPHREY:

S. 1363. A bill to transfer the functions of the Passport Office to a new agency of the Department of State to be known as the U.S. Passport Service, to establish a Passport Service Fund to finance the operations of the U.S. Passport Service, and for other purposes. Referred to the Committee on Foreign Relations.

A U.S. PASSPORT SERVICE WITHIN THE STATE DEPARTMENT

Mr. HUMPHREY. Mr. President, I introduce legislation to solve a problem of growing proportions. I am referring to the problem of providing quick, economical, and efficient passport service to the growing number of American travelers.

Americans enjoy a higher standard of living than any other people in the world. This has enabled many of our citizens to take advantage of the opportunity to travel. Moreover, special travel packages, chartered tours, and student fares are making foreign travel available to more people than ever before. Approximately 7 million Americans, by one means or another, traveled outside the United States last year.

Mr. President, the Passport Office is not equipped to handle the increased demand for passports. Every spring the Passport Office faces a huge influx of applications for passports. This service along with the many other significant and important work functions, studies and projects are directly related to the processing and issuance of passports make efficient service difficult, if not impossible.

In fiscal year 1972 the Passport Office issued a total of over 2½ million passports. This volume of passports represents an increase in workload of 12.7 percent over the passports issued the previous year. Personnel utilization increased by 12 percent in fiscal year 1972 from 702 man-years utilized in fiscal year 1971 to 786 man-years utilized in fiscal year 1972.

There have been great increases during the past year in services requiring many man-hours to process. For example, the man-hours required to service locator and status cards in the files rose by 15 percent.

To some of these increasing demands the State Department has expanded a program under which post offices across the country will accept passport applications from Americans intending to travel abroad. At this time over 600 post offices throughout the United States are now processing passport applications.

The State Department began this program in 1970 despite the problems the Postal Service was experiencing. It seems increasingly clear that the Postal Service is unable to provide quick and efficient mail service let alone passport service. The Senate Post Office and Civil Service Committee is now conducting an investigation of the poor quality of postal service.

The State Department has offered other stop-gap solutions to passport problems. Night shifts were established in Boston, Philadelphia, and San Francisco passport agencies. A further solution to the problem offered by the State Department was to propose that in the future passports be issued to persons applying all over the country through three centralized plants located in low-rent areas on a regional basis.

Both of these plans proved to be totally unrealistic. Instead of bringing passport services closer to the people, the State Department solutions worked in the opposite direction. For example, to make their night shift idea work the State Department ordered the Passport Office to shift applications willy-nilly from one agency to another and many times to a third. Such a procedure was bound to produce inordinate delays in the issuance of passports.

Mr. President, it is time that the Congress stepped into this mess and offered a long range, practical solution to this problem. Back in 1956 when I was on the Government Operations Committee, I had a great deal to do with modernizing and updating the operation of the Passport Office. Modern machines and techniques were introduced to provide the kind of service that the American citizen wanted and deserved. It is obvious that this kind of service is no longer possible under the present system.

The bill I am introducing today will, I believe, restore fast and efficient service to the Passport Office. It is not too different from the bill I offered in 1956. The most important provisions are similar to those found in S. 3340 which I introduced then.

Section 1 of the bill creates within the Department of State a "U.S. Passport Service," which would be comparable to the Immigration and Naturalization Service of the Department of Justice. It would be responsible to the Secretary of State. This status is commensurate with the growing importance of the service it performs to the American public.

Another section gives the Director of the Passport Service the authority to establish passport agencies or passport service offices wherever the needs of the public require and whenever they will be self-sustaining. By self-sustaining I mean that the revenue they bring in, in fees, will equal or exceed the cost of their operation. This provides a reasonable check on the proliferation of passport agencies which some people in the State Department and elsewhere seem to fear.

The most important provision of this new bill is almost identical to a similar provision in S. 3340. It would establish for the Passport Service what is called a revolving fund. In simple terms this means that the Service would be permitted to use a portion of the revenue it returns to the Treasury each year to modernize its methods, to establish the new agencies, and generally to provide more and better service to the American public.

This provision would not permit unbridled spending by the Service. The bill provides for elaborate accounting procedures, annual audits by GAO with reports furnished to the President and Congress, and the annual submission of a business-type budget. These procedures offer a very firm system of checks and balances which will provide ample opportunities for scrutiny by both the executive branches of the Government of every penny that is spent by the Service.

And finally, the bill I propose today would increase the execution and passport fees presently set by law to $10 and $15, respectively. It has long been my belief that not only should this service of-