GS&C/OLS Form 2 (Rev. 10/86)

CONGRESSIONAL RECORD
PROCEEDINGS AND DEBATES OF THE 100TH CONGRESS

HOUSE

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S.1626	October 4,1988	H9484

ACTION:

HOUSE PASSED

Mr. WEBER. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. Mr. Speaker, I am happy to yield to the gentleman from Minnesota.

Mr. WEBER. Mr. Speaker, I just wondered if the distinguished majority leader could clarify something for me. I understand and I agree with his sentiment that if we are going to be able to finish up our work by Sunday it is worth working on Sunday. If we make a determination we are going to have to be in session next week, in any event, is it still the majority leader's determination to call a Saturday session as well?

Mr. FOLEY. If it is necessary to complete action on suspensions or other business that seems to advance the adjournment, we will meet on Saturday. If we seem to be able to finish all of our business on Friday, then that would be a consideration, and perhaps by Thursday we will be able to give Members a better idea.

I am reluctant to make any predictions at this time in an absolute way. Many Members rely on those when they are only estimates. I would say the better part of discretion is to assume that there will be a session every day this week, including Saturday.

Mr. MICHEL. Mr. Speaker, I yield back the balance of my time.

INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT OF 1987

Mr. EDWARDS of California. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 1626) to keep secure the rights of intellectual property licensors and licensees which come under the protection of title 11 of the United States Code, the Bankruptcy code, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. FISH. Mr. Speaker, reserving the right to object, I do so for the purpose of asking the gentleman from California to explain whether there are any substantive differences between S. 1626 and H.R. 5348, a bill that we passed earlier this afternoon.

Mr. EDWARDS of California. Mr. Speaker, will the gentleman yield?

Mr. FISH. Mr. Speaker, I am happy to yield to the gentleman from California.

Mr. EDWARDS of California. Mr. Speaker, S. 1626 is—except for some minor technical numbering differences—identical to H.R. 5348, legislation passed by the House earlier today. The legislation relates to the treatment of intellectual property licenses by the bankruptcy laws. The Judiciary Committee report on H.R. 5348 is equally and totally applicable to S. 1626. I would urge my colleagues to pass S. 1626.

Mr. FISH. Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1626

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

SECTION 1. AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended—

(1) in paragraph (50) by striking "and" at the end, and

(2) in paragraph (51) by striking the period at the end and inserting in lieu thereof a semicolon, and

(3) by adding at the end the following:

"(52) 'intellectual property' means—

"(A) trade secret;

"(B) invention, process, design, or plant protected under title 35;

"(C) patent application;

"(D) plant variety;

"(E) work of authorship protected under title 17; or

"(F) mask work protected under chapter 9 of title 17;

to the extent protected by applicable nonbankruptcy law; and

"(53) 'mask work' has the meaning given it in section 901(a)(2) of title 17.".

(b) EXECUTORY CONTRACTS LICENSING RIGHTS TO INTELLECTUAL PROPERTY.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

"(n)(1) If the trustee rejects an executory contract under which the debtor is a licensor of a right to intellectual property, the licensee under such contract may elect—

"(A) to treat such contract as terminated by such rejection if such rejection by the trustee amounts to such a breach as would entitle the licensee to treat such contract as terminated by virtue of its own terms, applicable nonbankruptcy law, or an agreement made by the licensee with another entity; or

"(B) to retain its rights (including a right to enforce any exclusivity provision of such contract, but excluding any other right under applicable nonbankruptcy law to specific performance of such contract) under such contract and under any agreement supplementary to such contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law), as such rights existed immediately before the case commenced, for—

"(i) the duration of such contract; and

"(ii) any period for which such contract may be extended by the licensee as of right under applicable nonbankruptcy law.

"(2) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, under such contract—

"(A) the trustee shall allow the licensee to exercise such rights;

"(B) the licensee shall make all royalty payments due under such contract for the duration of such contract and for any period described in paragraph (1)(B) of this subsection for which the licensee extends such contract; and

"(C) the licensee shall be deemed to waive—

"(i) any right of setoff it may have with respect to such contract under this title or applicable nonbankruptcy law; and

"(ii) any claim allowable under section 503(b) of this title arising from the performance of such contract.

"(3) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, then on the written request of the licensee the trustee shall—

"(A) to the extent provided in such contract, or any agreement supplementary to such contract, provide to the licensee any intellectual property (including such embodiment) held by the trustee; and

"(B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellecual property (including such embodiment) including any right to obtain such intellectual property (or such embodiment from another entity.

"(4) Unless and until the trustee rejects such contract, on the written request of the licensee the trustee shall—

"(A) to the extent provided in such contract or any agreement supplementary to such contract—

"(i) perform such contact; or

"(ii) provide to the licensee such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law) held by the trustee; and

"(B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment), including any right to obtain such intellectual property (or such embodiment) from another entity.".

SEC. 2. EFFECTIVE DATES; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act shall not apply with respect to any case commenced under title 11 of the United States Code before the date of the enactment of this Act.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider as laid on the table.

OFFICE OF GOVERNMENT ETHICS REAUTHORIZATION ACT OF 1988

Mr. SIKORSKI. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service and the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 2344) to provide for the reauthorization of appropriations for the Office of Government Ethics, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The Clerk read the Senate bill, as follows: