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H. R. 1861

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Read twice and referred to the Committee on the Judiciary

AN ACT

To make technical corrections in the Satellite Home Viewer Act of 1994 and other provisions of title 17, United States Code.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Copyright Clarifica-
3 tions Act of 1996”.

4 **SEC. 2. SATELLITE HOME VIEWER ACT.**

5 The Satellite Home Viewer Act of 1994 (Public Law
6 103–369) is amended as follows:

7 (1) Section 2(3)(A) is amended to read as fol-
8 lows:

9 “(A) in clause (i) by striking ‘12 cents’
10 and inserting ‘17.5 cents per subscriber in the
11 case of superstations that as retransmitted by
12 the satellite carrier include any program which,
13 if delivered by any cable system in the United
14 States, would be subject to the syndicated ex-
15 clusivity rules of the Federal Communications
16 Commission, and 14 cents per subscriber in the
17 case of superstations that are syndex-proof as
18 defined in section 258.2 of title 37, Code of
19 Federal Regulations; and’ ”.

20 (2) Section 2(4) is amended to read as follows:

21 “(4) Subsection (c) is amended—

22 “(A) in paragraph (1)—

23 “(i) by striking ‘until December 31,
24 1992,’;

25 “(ii) by striking ‘(2), (3) or (4)’ and
26 inserting ‘(2) or (3)’; and

1 “(iii) by striking the second sentence;

2 “(B) in paragraph (2)—

3 “(i) in subparagraph (A) by striking
4 ‘July 1, 1991’ and inserting ‘July 1,
5 1996’; and

6 “(ii) in subparagraph (D) by striking
7 ‘December 31, 1994’ and inserting ‘De-
8 cember 31, 1999, or in accordance with
9 the terms of the agreement, whichever is
10 later’; and

11 “(C) in paragraph (3)—

12 “(i) in subparagraph (A) by striking
13 ‘December 31, 1991’ and inserting ‘Janu-
14 ary 1, 1997’;

15 “(ii) by amending subparagraph (B)
16 to read as follows:

17 ‘(B) ESTABLISHMENT OF ROYALTY
18 FEES.—In determining royalty fees under this
19 paragraph, the copyright arbitration royalty
20 panel appointed under chapter 8 shall establish
21 fees for the retransmission of network stations
22 and superstations that most clearly represent
23 the fair market value of secondary trans-
24 missions. In determining the fair market value,
25 the panel shall base its decision on economic,

1 competitive, and programming information pre-
2 sented by the parties, including—

3 ‘(i) the competitive environment in
4 which such programming is distributed,
5 the cost of similar signals in similar pri-
6 vate and compulsory license marketplaces,
7 and any special features and conditions of
8 the retransmission marketplace;

9 ‘(ii) the economic impact of such fees
10 on copyright owners and satellite carriers;
11 and

12 ‘(iii) the impact on the continued
13 availability of secondary transmissions to
14 the public.’; and

15 “(iii) in subparagraph (C), by insert-
16 ing ‘or July 1, 1997, whichever is later’
17 after ‘section 802(g)’.”.

18 (3) Section 2(5)(A) is amended to read as fol-
19 lows:

20 “(A) in paragraph (5)(C) by striking ‘the
21 date of the enactment of the Satellite Home
22 Viewer Act of 1988’ and inserting ‘November
23 16, 1988’; and”.

1 **SEC. 3. COPYRIGHT IN RESTORED WORKS.**

2 Section 104A of title 17, United States Code, is
3 amended as follows:

4 (1) Subsection (d)(3)(A) is amended to read as
5 follows:

6 “(3) EXISTING DERIVATIVE WORKS.—(A) In
7 the case of a derivative work that is based upon a
8 restored work and is created—

9 (i) before the date of the enactment of
10 the Uruguay Round Agreements Act, if the
11 source country of the restored work is an eligi-
12 ble country on such date, or

13 (ii) before the date of adherence or proc-
14 lamation, if the source country of the restored
15 work is not an eligible country on such date of
16 enactment, a reliance party may continue to ex-
17 ploit that derivative work for the duration of
18 the restored copyright if the reliance party pays
19 to the owner of the restored copyright reason-
20 able compensation for conduct which would be
21 subject to a remedy for infringement but for
22 the provisions of this paragraph.”.

23 (2) Subsection (e)(1)(B)(ii) is amended by
24 striking the last sentence.

25 (3) Subsection (h)(2) is amended to read as fol-
26 lows:

1 “(2) The ‘date of restoration’ of a restored
2 copyright is the later of—

3 “(A) January 1, 1996, the date on which
4 the Agreement on Trade-Related Aspects of In-
5 tellectual Property referred to in section
6 101(d)(15) of the Uruguay Round Agreements
7 Act enters into force with respect to the United
8 States, if the source country of the restored
9 work is a nation adhering to the Berne Conven-
10 tion or a WTO member country on such date,
11 or

12 “(B) the date of adherence or proclama-
13 tion, in the case of any other source country of
14 the restored work.”.

15 (4) Subsection (h)(3) is amended to read as fol-
16 lows:

17 “(3) The term ‘eligible country’ means a nation,
18 other than the United States, that, after the date of
19 the enactment of the Uruguay Round Agreements
20 Act—

21 “(A) becomes a WTO member,

22 “(B) is or becomes a member of the Berne
23 Convention, or

24 “(C) becomes subject to a proclamation
25 under subsection (g).”.

1 **SEC. 4. LICENSES FOR NONEXEMPT SUBSCRIPTION TRANS-**
2 **MISSIONS.**

3 Section 114(f) of title 17, United States Code, is
4 amended—

5 (1) in paragraph (1), by inserting “, or ending
6 30 days after the Librarian issues and publishes in
7 the Federal Register an order adopting or rejecting
8 the report of the copyright arbitration royalty panel,
9 if such panel is convened” after “December 31,
10 2000”; and

11 (2) in paragraph (2), by striking “and publish
12 in the Federal Register”.

13 **SEC. 5. ROYALTY PAYABLE UNDER COMPULSORY LICENSE.**

14 Section 115(c)(3)(D) of title 17, United States Code,
15 is amended by striking “and publish in the Federal Reg-
16 ister”.

17 **SEC. 6. NEGOTIATED LICENSE FOR JUKEBOXES.**

18 Section 116 of title 17, United States Code, is
19 amended—

20 (1) by amending subsection (b)(2) to read as
21 follows:

22 “(2) **ARBITRATION.**—Parties not subject to
23 such a negotiation may determine the result of the
24 negotiation by arbitration in accordance with the
25 provisions of chapter 8.”; and

1 (2) by adding at the end the following new sub-
2 section:

3 “(d) DEFINITIONS.—As used in this section, the fol-
4 lowing terms mean the following:

5 “(1) A ‘coin-operated phonorecord player’ is a
6 machine or device that—

7 “(A) is employed solely for the perform-
8 ance of nondramatic musical works by means of
9 phonorecords upon being activated by the inser-
10 tion of coins, currency, tokens, or other mone-
11 etary units or their equivalent;

12 “(B) is located in an establishment making
13 no direct or indirect charge for admission;

14 “(C) is accompanied by a list which is
15 comprised of the titles of all the musical works
16 available for performance on it, and is affixed
17 to the phonorecord player or posted in the es-
18 tablishment in a prominent position where it
19 can be readily examined by the public; and

20 “(D) affords a choice of works available
21 for performance and permits the choice to be
22 made by the patrons of the establishment in
23 which it is located.

24 “(2) An ‘operator’ is any person who, alone or
25 jointly with others—

1 “(A) owns a coin-operated phonorecord
2 player;

3 “(B) has the power to make a coin-oper-
4 ated phonorecord player available for placement
5 in an establishment for purposes of public per-
6 formance; or

7 “(C) has the power to exercise primary
8 control over the selection of the musical works
9 made available for public performance on a
10 coin-operated phonorecord player.”.

11 **SEC. 7. LIMITATIONS ON EXCLUSIVE RIGHTS; COMPUTER**
12 **PROGRAMS.**

13 Section 117 of title 17, United States Code, is
14 amended as follows:

15 (1) Strike “Notwithstanding” and insert the follow-
16 ing:

17 “(a) MAKING OF ADDITIONAL COPY OR ADAPTATION
18 BY OWNER OF COPY.—Notwithstanding”.

19 (2) Strike “Any exact” and insert the following:

20 “(b) LEASE, SALE, OR OTHER TRANSFER OF ADDI-
21 TIONAL COPY OR ADAPTATION.—Any exact”.

22 (3) Add at the end the following:

23 “(c) MACHINE MAINTENANCE OR REPAIR.—Notwith-
24 standing the provisions of section 106, it is not an in-
25 fringement for the owner or lessee of a machine to make

1 or authorize the making of a copy of a computer program
2 if such copy is made solely by virtue of the activation of
3 a machine that lawfully contains an authorized copy of
4 the computer program, for purposes only of maintenance
5 or repair of that machine, provided that—

6 “(1) such new copy is used in no other manner
7 and is destroyed immediately after the maintenance
8 or repair is completed, and

9 “(2) with respect to any computer program or
10 part thereof that is not necessary for that machine
11 to be activated, such program or part thereof is not
12 accessed or used other than to make such new copy
13 by virtue of the activation of the machine.

14 “(d) DEFINITIONS.—For purposes of this section—

15 “(1) the term ‘maintenance’ of a machine
16 means servicing the machine in order to make it
17 work in accordance with its original specifications
18 and any changes to those specifications authorized
19 for that machine; and

20 “(2) the term ‘repair’ of a machine means re-
21 storing it to the state of working in accordance with
22 its original specifications and any changes to those
23 specifications authorized for that machine.”.

1 **SEC. 8. PUBLIC BROADCASTING COMPULSORY LICENSE.**

2 Section 118 of title 17, United States Code, is
3 amended as follows:

4 (1) Subsection (b) is amended by striking para-
5 graph (1) and redesignating paragraphs (2) and (3)
6 as paragraphs (1) and (2), respectively.

7 (2) Subsection (b)(2) (as redesignated by para-
8 graph (1) of this section) is amended by striking
9 “(2)” each place it appears and inserting “(1)”.

10 (3) Subsection (e) is amended to read as fol-
11 lows:

12 “(e)(1) Except as expressly provided in this sub-
13 section, this section shall not apply to works other than
14 those specified in subsection (b).

15 “(2) Owners of copyright in nondramatic literary
16 works and public broadcasting entities may, during the
17 course of voluntary negotiations, agree among themselves,
18 respectively, as to the terms and rates of royalty payments
19 without liability under the antitrust laws. Any such terms
20 and rates of royalty payments shall be effective upon being
21 filed in the Copyright Office, in accordance with regula-
22 tions that the Register of Copyrights shall prescribe.”.

23 **SEC. 9. REGISTRATION AND INFRINGEMENT ACTIONS.**

24 Section 411(b)(1) of title 17, United States Code, is
25 amended to read as follows:

1 “(1) serves notice upon the infringer, not less
2 than 48 hours before such fixation, identifying the
3 work and the specific time and source of its first
4 transmission, and declaring an intention to secure
5 copyright in the work; and”.

6 **SEC. 10. COPYRIGHT OFFICE FEES.**

7 (a) **FEE INCREASES.**—Section 708(b) of title 17,
8 United States Code, is amended to read as follows:

9 “(b) In calendar year 1996 and in any subsequent
10 calendar year, the Register of Copyrights, by regulation,
11 may increase the fees specified in subsection (a) in the
12 following manner:

13 “(1) The Register shall conduct a study of the
14 costs incurred by the Copyright Office for the reg-
15 istration of claims, the recordation of documents,
16 and the provision of services. The study shall also
17 consider the timing of any increase in fees and the
18 authority to use such fees consistent with the budg-
19 et.

20 “(2) The Register shall have discretion to in-
21 crease fees up to the reasonable costs incurred by
22 the Copyright Office for the services described in
23 paragraph (1) plus a reasonable inflation adjustment
24 to account for any estimated increase in costs.

1 “(3) Any newly established fee based on para-
2 graph (2) shall be rounded off to the nearest dollar,
3 or for a fee less than \$12, rounded off to the nearest
4 50 cents.

5 “(4) The fees shall be fair and equitable and
6 give due consideration to the objectives of the copy-
7 right system.

8 “(5) If upon completion of the study, the Reg-
9 ister determines that the fees should be increased,
10 the Register shall prepare a proposed fee schedule
11 and submit the schedule with the accompanying eco-
12 nomic analysis to the Congress. The fees proposed
13 by the Register may be instituted after the end of
14 120 days after the schedule is submitted to the Con-
15 gress unless, within that 120-day period, a law is en-
16 acted stating in substance that the Congress does
17 not approve the schedule.”.

18 (b) DEPOSIT OF FEES.—Section 708(d) of such title
19 is amended to read as follows:

20 “(d)(1) Except as provided in paragraph (2), all fees
21 received under this section shall be deposited by the Reg-
22 ister of Copyrights in the Treasury of the United States
23 and shall be credited to the appropriations for necessary
24 expenses of the Copyright Office. Such fees that are col-
25 lected shall remain available until expended. The Register

1 may, in accordance with regulations that he or she shall
2 prescribe, refund any sum paid by mistake or in excess
3 of the fee required by this section.

4 “(2) In the case of fees deposited against future serv-
5 ices, the Register of Copyrights shall request the Secretary
6 of the Treasury to invest in interest-bearing securities in
7 the United States Treasury any portion of the fees that,
8 as determined by the Register, is not required to meet cur-
9 rent deposit account demands. Funds shall be invested in
10 securities that permit funds to be available to the Copy-
11 right Office at all times if they are determined to be nec-
12 essary to meet current deposit account demands. Such in-
13 vestments shall be in public debt securities with maturities
14 suitable to the needs of the fund, as determined by the
15 Register of Copyrights, and bearing interest at rates de-
16 termined by the Secretary of the Treasury, taking into
17 consideration current market yields on outstanding mar-
18 ketable obligations of the United States of comparable ma-
19 turities.

20 “(3) The income on such investments shall be depos-
21 ited in the Treasury of the United States and shall be
22 credited to the appropriations for necessary expenses of
23 the Copyright Office.”.

1 **SEC. 11. COPYRIGHT ARBITRATION ROYALTY PANELS.**

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

4 (1) in subsection (b)(1) by striking “and 116”
5 in the first sentence and inserting “116, and 119”;

6 (2) in subsection (c) by inserting after “panel”
7 at the end of the sentence the following:

8 “, including—

9 “(1) authorizing the distribution of those roy-
10 alty fees collected under sections 111, 119, and
11 1005 that the Librarian has found are not subject
12 to controversy; and

13 “(2) accepting or rejecting royalty claims filed
14 under sections 111, 119, and 1007 on the basis of
15 timeliness or the failure to establish the basis for a
16 claim”; and

17 (3) by amending subsection (d) to read as fol-
18 lows:

19 “(d) SUPPORT AND REIMBURSEMENT OF ARBITRA-
20 TION PANELS.—The Librarian of Congress, upon the rec-
21 ommendation of the Register of Copyrights, shall provide
22 the copyright arbitration royalty panels with the necessary
23 administrative services related to proceedings under this
24 chapter, and shall reimburse the arbitrators at such inter-
25 vals and in such manner as the Librarian shall provide
26 by regulation. Each such arbitrator is an independent con-

1 tractor acting on behalf of the United States, and shall
2 be paid pursuant to a signed agreement between the Li-
3 brary of Congress and the arbitrator. Payments to the ar-
4 bitrators shall be considered costs incurred by the Library
5 of Congress and the Copyright Office for purposes of sec-
6 tion 802(h)(1).”.

7 (b) PROCEEDINGS.—Section 802(h)(1) of title 17,
8 United States Code, is amended—

9 (1) by amending the heading to read “DEDUC-
10 TION OF COSTS OF LIBRARY OF CONGRESS AND
11 COPYRIGHT OFFICE FROM ROYALTY FEES.—”;

12 (2) in the first sentence by inserting “to sup-
13 port distribution proceedings” after “Copyright Of-
14 fice”; and

15 (3) by amending the third sentence to read as
16 follows: “In ratemaking proceedings, the Librarian
17 of Congress and the Copyright Office may assess
18 their reasonable costs directly to the parties to the
19 most recent relevant arbitration proceeding, 50 per-
20 cent of the costs to the parties who would receive
21 royalties from the royalty rate adopted in the pro-
22 ceeding and 50 percent of the costs to the parties
23 who would pay the royalty rate so adopted, subject
24 to the discretion of the arbitrators to assess costs
25 under subsection (c).”.

1 **SEC. 12. DIGITAL AUDIO RECORDING DEVICES AND MEDIA.**

2 Section 1007(b) of title 17, United States Code, is
3 amended by striking “Within 30 days after” in the first
4 sentence and inserting “After”.

5 **SEC. 13. TREATMENT OF PRE-1978 PUBLICATION OF SOUND**
6 **RECORDINGS.**

7 Section 303 of title 17, United States Code, is
8 amended—

9 (1) by striking “Copyright” and inserting “(a)
10 Copyright”; and

11 (2) by adding at the end the following:

12 “(b) The distribution before January 1, 1978, of a
13 phonorecord shall not for any purpose constitute a publi-
14 cation of the musical work embodied therein.”.

15 **SEC. 14. CONFORMING AMENDMENT.**

16 Paragraph (5) of section 4 of the Digital Perform-
17 ance Right in Sound Recordings Act of 1995 is redesign-
18 nated as paragraph (4).

19 **SEC. 15. EFFECTIVE DATES.**

20 (a) IN GENERAL.—Except as provided in subsection
21 (b), the amendments made by this Act shall take effect
22 on the date of the enactment of this Act.

23 (b) SATELLITE HOME VIEWER ACT.—The amend-
24 ments made by section 1 shall be effective as if enacted

1 as part of the Satellite Home Viewer Act of 1994 (Public
2 Law 103-369).

Passed the House of Representatives June 4, 1996.

Attest: ROBIN H. CARLE,
Clerk.