HEINONLINE

Citation: 4 Digital Performance Right in Sound Recordings Act of Pub. L. No. 104-39 109 Stat. 336 15312 1995

Content downloaded/printed from
HeinOnline (http://heinonline.org)
Mon Mar 18 20:10:24 2013

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at http://heinonline.org/HOL/License

-- The search text of this PDF is generated from uncorrected OCR text.

of the central characteristics that identify all Americans in the use of English as a common language. It is one of the ties that bind us all together. Regardless of a person's nation of origin, there is an expectation of adoption of the English language as a part of the assimilation process. Thus, it is particularly disturbing when this Member learned that a Federal judge in Arizona recently ordered a Spanish language ceremony for new U.S. citizens.

Mr. Speaker, a Spanish language ceremony sends precisely the wrong message to our newest citizens. It tells them that they do not have to act to learn English so that they can be integrated into the mainstream of the American society. The facts are simply this: people who don't learn English are placed in a position of economic disadvantage in our country. As a June 28, 1993 editorial entitled "English is National Binding Force" in the Omaha World Herald noted, "the more the English language falls into the position of secondary importance, the more America will encounter [wrenching social] problems." This Member would place this important article in the CONGRESSIONAL RECORD, and I urge my colleagues to heed the warning.

ENGLISH IS NATIONAL BINDING FORCE

A federal judge in Arizona displayed wretchedly poor judgment when he organized a Spanish-language ceremony for new U.S. citizens.

U.S. District Judge Alfredo Marquez will preside over the ceremony in which 75 immigrants will take the oath of citizenship. He will administer the oath in English. But the rest of the proceedings will be in Spanish. The judge said he believes that the ceremony will be more meaningful if conducted in the immigrants' native tongue.

Thus is tradition diluted and symbolism compromised.

The ceremony of citizenship signifies the transfer of allegiance from the old country to the new. To conduct the proceedings in the language of the old country says, in effect, that the transfer can be a halfway thing. Take it or leave it.

Perhaps if such thinking were isolated, the public could look indulgently at what Judge Marquez has done. But it isn't isolated. America is becoming a nation of quarreling enclaves, jealous of their status and eager to be sure no other group gets ahead. In too many instances, they consider themselves members of an ethnic group first Americans second.

For much of the nation's history, such fractiousness was held in check by the English language, the gateway to the Constitution, the courts, the educational system, the economic system and the national culture. Now English is being devalued by officials who should be the first to know better.

Are we saying that immigrants should give up their culture? That they should fail to pass their heritage and language on to their children? Of course not. Multicultural understanding, including the ability to operate in more than one language, is a gift—some would say a necessity—in these times of global consciousness. Part of the advantage of living in a free and open society is the ease with which people can hold on to their individuality, their cultural identity.

But English must not be neglected if newcomers are to have the full benefits of citizenship—and if America is to avoid the wrenching social problems of a Canada, a Belgium or what was once known as Yugoslavia. The more the English language falls into a position of secondary importance among immigrants, the more America will encounter similar problems.

The purpose of the proceedings in Judge Marquez's courtroom should be to validate the decision of the immigrants to become citizens, not to encourage them to think of themselves as hyphenated Americans. Judge Marquez may think he is helping them feel better about themselves. It's a distressing example of how trying to help people sometimes hurts them.

DIGITAL PERFORMANCE RIGHT IN SOUND RECORDINGS ACT OF 1993

HON. WILLIAM J. HUGHES

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 1, 1993

Mr. HUGHES. Mr. Speaker, today along with Mr. BERMAN, I introduce the Digital Performance Right in Sound Recordings Act of 1993 in order to advance the debate on the proper legislative solution for protecting the creative contributions of performances and producers of sound recordings. The advent of commercial digital audio subscription services provides an exciting new way for consumers to hear the latest records with compact disc quality sound. At the same time, these services may end up killing the goose that lays the golden egg: The ability to store and download records in digital form may well significantly displace retail sales.

There is, of course, no stopping technology, and if the market of the future is direct home digital delivery of records, the Copyright law should not be used as a Luddite tool to try and prevent the inevitable. Instead, the Copyright law should be brought up-to-date in order to ensure that performers and producers of sound recording will have sufficient economic incentives to create the works that consumers demand.

Based on a hearing the Subcommittee on Intellectual Property and Judicial Administration, which I chair, held on March 25, I believe the best way to accommodate digital technology and consumer demand with the constitutional objectives of the Copyright law is to provide a narrowly drafted exclusive digital public performance right in sound recordings. The bill I introduce today takes this approach. I believe an exclusive right is preferable to a right of equitable remuneration—a polite term for compulsory licensing—for a number of reasons.

A recording of a popular group contains two different types of copyright interests. First, there is the copyright in the original musical compositions—The songs. The copyrights in the songs are owned, as an initial matter, by the songwriter. Typically, the songwriter will go to a music publisher, who will obtain a transfer of all copyrights from the songwriter in exchange for a percentage of royalties. The music publisher then has the responsibility for licensing the musical composition. Rights of non-dramatic public performance, as on television, radio, and in clubs and restaurants are sublicensed by the music publisher to performing rights socieities—ASCAP, BMI, and SESAC—on a nonexclusive basis. Rights to reproduce the musical composition on records is then licensed to a record company, subject to the mechanical compulsory license in section 115 of title 17, United States Code.

There is another copyright interest in a record, though, that of the producer of the sound recording, typically the record company. This copyright interest is in the creative manner in which the record as a whole is produced and in the performance of the musical compositions. This copyright in the sound recording is separate from the copyright interests in the musical compositions recorded. In some cases, as in a symphony orchestra's performance of "Beethoven's Ninth Symphony," the only copyright interest is in the sound recording.

Under current law, the copyright owners of the recorded musical compositions enjoy an exclusive public performance right. They have the ability—and exercise it—to license radio stations and digital audio subscription services. However, the copyright owners of the sound recordings do not have that right. Radio stations and digital audio subscription services do not have an obligation under the Copyright law to pay the copyright owner of the sound recording for playing the sound recording.

In the past, broadcasting have argued that they should not have to pay record companies because they are providing valuable advertising. Of course, this argument could also be made about the recorded musical compositions for which payment is made. Whatever the merits of past arguments, we have to accept that the digital world has dramatically transformed the marketplace in which copyrighted works are sold. Digital audio subscription services are entirely new and create entirely new issues. Broadcasters have recognized this changed environment in their future plans for digital audio over-the-air broadcasting and in their apparent willingness to accept a public performance right limited to subscription services. The issue then is not whether to have a digital performance right, but what form that right should take.

Music publishers and the performing rights societies have in the past expressed concern about a public performance right in sound recordings. These concerns appear to be based on what has been called the "one-pie" theory. This theory states that broadcasters have a finite amount of money to spend or that they are willing to spend on public performance royalties. Currently, all of this money goes to the performing rights societies and the music publishers (and to songwriters under their contracts with the music publishers and the performing rights societies' allocation). The theory continues that if another group—copyright owners of sound recordings—is permitted to sit at the table, the size of the pie will remain the same but there will be more people sharing it.

This argument is understandably made with some reluctance, and I note that music publishers and the performing rights societies have recently expressed an interest in extending the term of protection from life of the author plus 50 years to life of the author plus 70 years. Opposition to extension of rights to one group of copyright owners—such as copyright owners in sound recordings—while at the same time asking for increased rights for

HeinOnline -- 4 Digital Performance Right in Sound Recordings Act of 1995, Pub. L. No. 104-39, 109 Stat. 336 15312 1995

themselves—would be an interesting strategy, especially where in most cases we are talking about the same product, a record.

Whatever merits the "one-pie" theory had in the past, it cannot hold up in the digital environment and in an environment when more and more composers are also performers. As the market moves toward home delivery of recorded sound, songwriters and music publishers can ill-afford to cling to the old ways of doing business. The pie will be a different pie and we need to develop different ways to ensure that all creators' contributions are respected.

A compulsory license/right of equitable remuneration is not the best solution. Compulsory licensing works best, if it works at all, in situations where the transactional costs are so high that uses which copyright owners would like to license and users avail themselves of would not take place otherwise. This would not be the case with a digital performance right in sound recordings, since the number of copyright owners is relatively small. Even in the case of the current public performance right for musical compositions, the right is exclusive. It is true that the performing rights societies have only a nonexclusive right and must license on a nondiscriminatory basis, but this is the result of antitrust concerns. Songwriters and music publishers are not subject to an antitrust decree and retain their exclusive rights. They could, if they chose, refuse to permit their works to be performed by a radio station or by a subscription service. I fail to see why copyright owners of sound recordings, wishing to license the same product—recorded sound—should not have the same exclusive right that songwriters and music publishers enjoy today.

The issues raised by a digital public performance right in sound recordings are exciting and I look forward to meeting with representatives of the broadcasting and music publishing industries, the performing rights societies, performers, digital subscription services, and others in order to discuss any concerns they may have.

TRIBUTE TO MR. RONALD W. KULOVITS

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 1, 1993

Mr. LIPINSKI. Mr. Speaker, I rise today to share with my colleagues the accomplishments of a remarkable citizen from Chicago who gave 32 years of his life in service to the fine city of Chicago. The dedication he showed to both his community and profession should serve as an inspiration to all of us as public servants. It is my pleasure to share with you some of the accomplishments of this exceptional individual, Mr. Ronald W. Kulovits.

Mr. Kulovits began his career with the Chicago Park District in 1960 as a physical fitness instructor. In 1961, he was promoted to the coordinator of all male activities for the Palmer Park area. He also served as one of the founding fathers of the special recreation programs. In this capacity, he was in charge of the construction and implantation of activities for the mentally handicapped. The success of those programs brought about yet another promotion for Mr. Kulovits. He was assigned to act as the supervisor of playgrounds for three Chicago districts. In 1969, Mr. Kulovits was promoted to supervisor of recreation at Mann Park. He held this position for the next 10 years.

In the latter part of his career, Mr. Kulovits began to move through the elite rankings of the Chicago Park district hierarchy system. He was appointed physical activities supervisor in which he oversaw the running and maintaining of 50 park areas. While holding this office Mr. Kulovits has given the task of being the citywide senior citizens director. As Mr. Kulovits continued to climb the park district ladder, he reached the title of recreation coordinator. He was responsible for the scheduling of all special events on park district property, being responsible for coordinating the concerts of such performers as Smokey Robinson, Bruce Springstein, and Madonna. The next step for Mr. Kulovits was to become assistant director of recreation. His 3 years stint in this position allowed him control of all budgeting and administration of 237 park district locations.

The year 1988 brought about many changes for the park district as well as for Mr. Kulovits. As the park district decentralized, the need for individuals to lead the different areas arose. Mr. Kulovits was an immediate selection for regional park manager for the Burnham/Grant area. His final position held with the park district was that of director of program support, planning, and development which he held until his retirement in 1993.

I hope my colleagues will join me in honoring the outstanding career of this man. The story of Mr. Kulovits career depicts that of the true "American dream"—with dedication and hard work, success can be achieved. For this reason, Mr. Speaker, I am thrilled to share the activities of this model worker. I wish him all the best to come.

ELEMENTARY SCHOOL COUNSELING DEMONSTRATION ACT

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 1, 1993

Mrs. MORELLA. Mr. Speaker, in an effort to address the increasing social, developmental, and educational problems affecting young children, I am joining with my colleague from New Jersey, Congressman DONALD PAYNE, in introducing the Elementary School Counseling Demonstration Act. This legislation would establish professional counseling services at the elementary school level, where they are most needed.

One out of five children entering school last year was living at the poverty level. At least half a million of these incoming children were born to teenage mothers. Many were exposed to drugs and the HIV virus, adding to the already attendant risk affecting the physical and intellectual development of these children.

Child and alcohol abuse, fragmentation of the family, and violence also contribute to the unprecedented challenges that face many of our Nation's youth at the elementary school level. These challenges often lead to emotional disorders, academic underachievement, juvenile delinquency, and even suicide. According to experts, early intervention can be effective and beneficial in affording distressed youths the opportunity to achieve a measure of success in their personal and academic lives.

The Elementary School Counseling Demonstration Act would combine the services of professional counselors, social workers, and school psychologists in addressing the personal and educational well-being of elementary school children. This legislation would provide demonstration grants to local jurisdictions to expand counseling services by increasing the number of counselors, school social workers, and school psychologists at the elementary level. These professionals, then, would implement a team approach to school counseling programs.

The Elementary School Counseling Demonstration Act would provide for a ratio of 1 professional counselor to 250 students, 1 school psychologist to 1,000 students, and 1 social worker per 800 students. The bill would be authorized at a rate of $10 million for fiscal year 1994, and such sums as may be necessary for fiscal years 1995, 1996, 1997, and 1988. Grants would be available for 3 years at a maximum of $400,000 per school per year.

I am pleased to join with Congressman PAYNE in urging our colleagues in the House to support the Elementary School Counseling Demonstration Act. Providing counseling services at the elementary school level will help the classroom teacher, reduce the dropout rate, and raise the standards of educational excellence necessary to meet the challenges of the 21st century.

SISTER CITIES OF YUBA CITY, CA AND FUJISHIRO, JAPAN

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 1, 1993

Mr. FAZIO. Mr. Speaker, I rise today in recognition of the fifth anniversary of the establishment of the sister city relationship between Yuba City, CA, an agricultural community which I represent, and Fujishiro, located in the Ibaraki Prefecture of Japan. At the fifth anniversary celebration in July 1993 in Fujishiro, a Yuba park will be dedicated next to the city hall.

In July 1989, a delegation from Fujishiro came to Yuba City and a declaration of intent to enter a sister city agreement was completed. Other visits ensued, culminating in a signing ceremony in Yuba City in November 1989. In February 1990, a Yuba City delegation traveled to Fujishiro for a similar joint signing. In the ensuing 5 years, there have been several exchange visits. The program has expanded to ties between Yuba City schools and similar schools in Fujishiro.

As president of the Sister Cities Association of Yuba City, Yuba City mayor pro-tem, Dennis Nelson has encouraged the relationship

HeinOnline -- 4 Digital Performance Right in Sound Recordings Act of 1995, Pub. L. No. 104-39, 109 Stat. 336 15313 1995

HeinOnline -- 4 Digital Performance Right in Sound Recordings Act of 1995, Pub. L. No. 104-39, 109 Stat. 336 [xxxv] 1995