GAO

Congressional Record, 102nd Congress, Senate

1. Bill	2. Date	3. Pages
S.1345	Jun 20, 1991 (96)	S8346-49

4. Action:

INTRODUCED BY MR. LEAHY, ET AL.

S. 1345. A bill to amend the National Film Preservation Act of 1988 to modify the composition and procedures of the National Film Preservation Board and the Librarian of Congress on preserving national films, and for other purposes; to the Committee on Rules and Administration.

NATIONAL FILM PRESERVATION ACT

Mr. LEAHY. Mr. President, I am today introducing, for myself, Senator PELL, Senator STEVENS, and Senator DECONCINI, legislation to reauthorize and extend the National Film Preservation Act of 1988.

WHY FILM PRESERVATION MATTERS

Motion pictures are central to the American experience. Most of us in this body grew up looking forward to the next Saturday afternoon matinee. Generations around the world have learned about America and America's dreams from watching Hollywood's creations. Movies are the indigenous American art form.

Think for a moment about some of the films selected under the 1988 act of inclusion in the National Film Registry—movies like "Casablanca," "Citizen Kane," "High Noon," "It's a Wonderful Life," and "Sunset Boulevard"—and it becomes instantly clear why the preservation of our film heritage is so important. It is a heritage admired and envied the world over, a heritage that tells us about who we are and who we were. But it is also a perishable heritage that will not endure unless we take steps to save it.

Because of deterioration or loss, more than half the feature films produced in the United States before 1951 have already been lost, including 80 percent of our silent movies. And many films produced after 1951 are deteriorating rapidly.

The good news is that the need to preserve our films has become increasingly clear in recent years to professionals and filmgoers alike. For the studios, presevation has fortunately become a question of economics. They see now as they did not see 10 or 15 years ago the value of their film libraries. Movies that have gathered dust for years can still have value on cable or home video. For moviegoers the pleasure of seeing a sparkling, restored version of "Lawrence of Arabia" or "Spartacus" is reason enough for the work of preservation.

The legislation we introduce today, with active support of the Librarian of Congress, would reauthorize the National Film Preservation Act of 1988, with certain modifications.

THE 1988 ACT

In essence, the 1988 act:

Created a National Film Preservation Board, with representatives from industry and the academic community, under the leadership of the Librarian of Congress;

Empowered the Board to select 25 "culturally, historically, or esthetically

---

By Mr. LEAHY (for himself, Mr. PELL, Mr. STEVENS, and Mr. DECONCINI):

significant" films each year for inclusion in a new National Film Registry;

Stipulated that films selected for the Registry were entitled to bear a seal indicating such selection;

Required movies selected for the Registry to bear a label if exhibited in a "materially altered" form; and

Directed the Board to establish guidelines for determining whether a film has been materially altered.

THE NEW REAUTHORIZATION BILL—SUMMARY

Our new legislation has shifted away from labeling to an expanded focus on preservation. There are many ongoing film preservation efforts in this country, carried out by the Library of Congress, the National Archives, the Museum of Modern Art, laboratories such as the Eastman House, Turner Broadcasting, the Hollywood studios and others. But there is little coordination. Under the bill, the primary mission of the Librarian and the Board will be to develop and coordinate a National Film Preservation Program beginning with a year-long study to ascertain the current state of film preservation in America.

The Librarian and the Board will also continue to select 25 classic films for inclusion in the National Film Registry, using their best efforts to ensure that there are high quality versions of these films in existence, or, if not, that the necessary preservation and restoration work is done. The range of films that may be selected has been broadened to include short subjects and documentaries.

The new bill also eliminates the labeling provisions of the 1988 act, so that the Librarian and the Board can concentrate on preservation.

When the 1988 law was enacted—as an amendment to an appropriation bill—the labeling provisions were not given the full consideration they deserve, in the proper legislative committees of Congress. Labeling inevitably raises the question of whether persons other than copyright holders—such as film directors or writers—should retain any remedial rights in their works. This is a complex, moral rights issue that ought to be fully considered by the House and Senate Judiciary Committees before being enacted into law.

Moreover, as the Librarian of Congress recognizes, the difficult and contentious determinations required in administering a labeling regime—such as what constitutes a "material alteration," when such an alteration has been made and what kind of label should be applied—are not the sort that the Librarian is qualified to make.

Finally, a broad consensus of the film community agrees that the important contribution this bill can make to film preservation should not be put at risk by linkage to the controversial labeling question.

This legislation redirects and broadens the focus of the National Film Preservation Act to the useful and important business of preservation. We look forward to swift action on this bill so that it can be enacted before the 1988 act sunsets at the end of September.

I ask unanimous consent that the bill together with a section-by-section analysis and a statement of Senator DECONCINI be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1345

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 "National Film Preservation Act of 1991".

SEC. 2. FINDINGS.

The Congress finds that—

(1) motion pictures are an indigenous American art form that has been emulated throughout the world;

(2) certain motion pictures represent an enduring part of our Nation's historical and cultural heritage;

(3) because of deterioration or loss, less than one-half of the feature-length films produced in the United States before 1951, including only 20 percent of the silent films, still exist and many of the films produced after 1951 are deteriorating at an alarming rate; and

(4) it is appropriate and necessary for the Federal Government to—

(A) recognize motion pictures as a significant American art form deserving of protection, including preservation and restoration; and

(B) establish a National Film Registry of films that represent an enduring part of our national, historical, and cultural heritage, which Registry should be established and maintained in the Library of Congress; and

(5) to the extent possible, and with the permission of the copyright owners, films selected for inclusion in the National Film Registry should be made widely available to the American public in their Registry versions.

SEC. 3. NATIONAL FILM REGISTRY OF THE LIBRARY OF CONGRESS.

The Librarian of Congress (hereafter in this Act referred to as the "Librarian") shall establish a National Film Registry under the provisions of this Act, for the purposes of recognizing and preserving films that are culturally, historically, or aesthetically significant.

SEC. 4. DUTIES OF THE LIBRARIAN OF CONGRESS.

(a) DUTIES.—The Librarian shall, after consultation with the Board established under section 5—

(1) after completion of the study required under section 12, establish a comprehensive national film preservation program for films, in conjunction with other major film archives, with the objectives of—

(A) coordinating activities to assure that ongoing efforts of archivists and copyright owners, and others in the public and private sector are effective and complementary;

(B) generating public awareness of and support for those activities;

(C) increasing accessibility of films for educational purposes; and

(D) improving nationwide activities in the preservation of works in other media such as videotape;

(2) establish criteria and procedures pursuant to which films may be included in the National Film Registry, except that no film shall be eligible for inclusion in the National Film Registry until 10 years after such film's first publication;

(3) establish procedures whereby the general public may make recommendations to the Board regarding the inclusion of films in such National Film Registry;

(4) establish procedures for the examination by the Library of Congress of copies of films named for inclusion in the National Film Registry to determine eligibility for the use of the seal of the National Film Registry;

(5) determine which films satisfy the criteria developed under paragraph (2) and qualify to be included in the National Film Registry, except that the Librarian shall not select more than 25 films each year for inclusion in such Registry;

(6) publish in the Federal Register the name of each film that is selected for inclusion in the National Film Registry;

(7) provide a seal to indicate that a film is included in the National Film Registry;

(8) to the extent practicable, ensure, subject to the rights of copyright owners, that there is a Registry version of each film selected for the National Film Registry;

(9) publish in the Federal Register the standards for preservation or restoration that shall qualify films for use of the seal; and

(10) submit an annual report to the appropriate committees of the Congress, listing films included in the National Film Registry and describing the activities of the Board.

(b) SEAL.—A seal provided for a film under subsection (a)(7) may be used on any copy of the Registry version of such film as defined in section 11(6). Before such seal may be used, the Library of Congress shall have examined and approved the print from which the copy was made. In the case of copyrighted works, only the copyright owner or his duly authorized licensee may place or authorize the placement of a seal on a copy of a film selected for inclusion in the National Film Registry. In the case of works no longer protected by copyright, the Library may affix a seal. The person authorized by this subsection to place a seal on a copy of a film selected for inclusion in the National Film Registry may accompany such seal with the following language: "This film is included in the National Film Registry, which is maintained by the Library of Congress, and was preserved under the National Film Preservation Act of 1991.".

SEC. 5. NATIONAL FILM PRESERVATION BOARD.

(a) NUMBER AND APPOINTMENT.—(1) The Librarian shall establish in the Library of Congress a National Film Preservation Board to be comprised of 17 members, selected by the Librarian in accordance with the provisions of this section. Each organization listed in subparagraphs (A) through (P) shall submit a list of not less than three qualified candidates to the Librarian. With the exception of the member listed in subparagraph (Q), the Librarian shall appoint 1 member from each such list submitted by the following organizations, and shall designate from that list an alternate who may attend those meetings to which the individual appointed to the Board cannot attend. Such organizations shall include—

(A) the Academy of Motion Picture Arts and Sciences;

(B) the Directors Guild of America;

(C) the Writers Guild of America East and West, appointed in accordance with paragraph (2);

(D) the National Society of Film Critics;

(E) the Society for Cinema Studies;

(F) the American Film Institute;

(G) the Department of Theatre, Film and Television, College of Fine Arts at the University of California, Los Angeles;

(H) the Department of Film and Television at New York University Tisch School of the Arts;

(I) the University Film and Video Association;

(J) the Motion Picture Association of America;

(K) the National Association of Broadcasters;

(L) the Alliance of Motion Picture and Television Producers;

(M) the Screen Actors Guild of America;

(N) the National Association of Theater Owners;

(O) the American Society of Cinematographers;

(P) the United States Members of the International Federation of Film Archives; and

(Q) a member at large.

(2) Each organization under paragraph (1)(C) shall nominate 3 candidates. The Librarian shall appoint a candidate from 1 organization as a member of the Board, and shall select a candidate from the other organization as an alternate.

(3) The member at large listed in paragraph (1)(Q) shall be chosen by the Librarian from names submitted by organizations in the film industry, creative artists, producers, film critics, film preservation organizations, academic institutions with film study programs, and others with knowledge of copyright law and of the importance, use, and dissemination of films. The Librarian shall also select from the names submitted in this paragraph an alternate member at large who may attend those meetings which the member at large cannot attend.

(b) CHAIRPERSON.—The Librarian shall appoint 1 member to serve as Chairperson.

(c) TERM OF OFFICE.—(1) The term of each member of the Board shall be 3 years. There shall be no limit to the number of terms that any individual member may serve.

(2) A vacancy on the Board shall be filled in the manner prescribed by the Librarian, except that no entity listed in subsection (a) may have more than 1 nominee on the Board at any time.

(d) QUORUM.—Nine members of the Board shall constitute a quorum, but a lesser number may hold hearings.

(e) BASIC PAY.—Members of the Board shall serve without pay. While away from their home or regular places of business in the performance of services for the Board, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5701 of title 5, United States Code.

(f) MEETINGS.—The Board shall meet at least once each calendar year. Meetings shall be at the call of the Librarian.

(g) CONFLICT OF INTEREST.—The Librarian shall establish rules and procedures to address any potential conflict of interest between a member of the Board and responsibilities of the Board.

SEC. 6. POWERS OF THE BOARD.

(a) IN GENERAL.—The Board may, for the purpose of carrying out its duties, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Librarian and Board considers appropriate.

(b) NOMINATION OF FILMS.—The Board shall consider, for inclusion in the National Film Registry, nominations submitted by the general public as well as representatives of the film industry, such as the guilds and societies representing actors, directors, screenwriters, cinematographers and other creative artists, producers, film critics, film preservation organizations and representatives for academic institutions with film study programs.

(c) SELECTION OF FILMS.—The Board shall review nominations of films submitted to it for inclusion in the National Film Registry and consult with the Librarian and make recommendations with respect to the selection of films for the Registry and the preservation of these and other films that are culturally, historically, or aesthetically significant. The Board shall recommend and the Librarian shall select not more than 25 films a year for inclusion in the Registry.

SEC. 7. NATIONAL FILM REGISTRY COLLECTION OF THE LIBRARY OF CONGRESS.

(a) COPY OF FILM.—The Librarian shall endeavor to obtain, by gift from the owner, an archival quality copy of a Registry version of each film included in the National Film Registry. Whenever possible the Librarian shall endeavor to obtain the best surviving materials, including preprint materials.

(b) ADDITIONAL MATERIALS.—In addition, the Librarian shall endeavor to obtain, for educational and research purposes, additional materials related to each film, such as background materials, production reports, shooting scripts (including continuity scripts) and other similar materials. Such materials shall become a part of the collection described in subsection (d).

(c) PROPERTY OF THE UNITED STATES.—All copies of films, and other materials, received by the Librarian shall become the property of the United States Government, except that nothing in this Act shall infringe on the copyright owners' rights under title 17, United States Code.

(d) REGISTRY COLLECTION.—All copies of films received by the Librarian shall be maintained in a special collection in the Library of Congress to be known as the "National Film Registry Collection of the Library of Congress". The Librarian shall, by regulation, subject to the limitations of title 17, United States Code—

(1) provide for reasonable access to films in such collection for scholarly and research purposes; and

(2) to the extent practicable, and with the permission of the copyright owners, endeavor to exhibit or encourage the exhibition of such films to the public.

SEC. 8. SEAL OF THE NATIONAL FILM REGISTRY.

(a) USE OF THE SEAL.—No person shall knowingly distribute or exhibit to the public a copy of a film which bears a seal as described under section 4(a)(7) if such film—

(1) is not included in the National Film Registry; or

(2) is included in the National Film Registry, but the print from which such copy was made was not examined and approved for use of the seal by the Library of Congress pursuant to section 4(b).

(b) EFFECTIVE DATE OF THE SEAL.—The use of the seal as described in this section shall be effective for each film after publication by the Librarian in the Federal Register of the name of that film selected for inclusion in the National Film Registry.

SEC. 9. REMEDIES.

(a) JURISDICTION.—The several district courts of the United States shall have jurisdiction, for cause shown, to prevent and restrain violations of section 8 of this Act upon the application of the Librarian to the Attorney General of the United States acting through the several United States Attorneys in their several districts.

(b) RELIEF.—(1) Except as provided in paragraph (2), relief shall be limited to the prospective removal of the seal of the National Film Registry.

(2) In any case in which the Librarian finds a pattern or practice of the willful violation of this Act, the United States District Courts may order civil fines of not more than $10,000 and appropriate injunctive relief.

(c) EXCLUSIVE REMEDIES.—The remedies provided under this section shall be the exclusive remedies under this Act or any other Federal or State law, regarding the use of the seal as described by section 4(a)(7).

SEC. 10. STAFF OF BOARD; EXPERTS AND CONSULTANTS.

(a) STAFF.—The Librarian may appoint and fix the pay of such personnel as the Librarian considers appropriate.

(b) EXPERTS AND CONSULTANTS.—The Librarian may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum rate of basic pay payable for GS-15 of the General Schedule, and in no case may a Board member be paid as an expert or consultant.

SEC. 11. DEFINITIONS.

For purposes of this Act:

(1) The term "Board" means the National Film Preservation Board.

(2) The term "copy" used in reference to a film means a copy fixed on film stock, not on other media such as videotapes or laser disks.

(3) The term "film" means a motion picture as defined in section 101 of title 17, United States Code, except that such term excludes any works not originally fixed on film stock, such as videotapes or laser disks.

(4) The term "Librarian" means the Librarian of Congress.

(5) The term "publication" means a publication as defined in section 101 of title 17, United States Code.

(6) The term "Registry version" means, with respect to a film, the version of the film first published or as complete a version as bona fide preservation and restoration activities by the Library of Congress or another archive acting pursuant to section 4 can compile.

SEC. 12. STUDY BY THE LIBRARIAN OF CONGRESS.

The Librarian, after consultation with the Board, shall conduct a study on the state of film preservation and restoration, including the activities of the Library of Congress and the other major film archives in the United States. The Librarian shall consult with film archivists, educators and historians, copyright owners, film industry representatives, including those involved in the preservation of film, and others involved in activities related to film preservation. No later than 1 year after the date of enactment of this section, the Librarian shall submit to the Congress a report containing the results of the study conducted under this section.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Library of Congress, such sums as are necessary to carry out the provisions of this Act, but in no fiscal year shall such sum exceed $250,000.

SEC. 14. EFFECTIVE DATE.

The provisions of this Act shall be effective on the date of the enactment of this Act through September 30, 1997. The provisions of this Act shall apply to any copy of any film, including films selected for inclusion in the National Film Registry under the National Film Preservation Act of 1988. Films selected for the National Film Registry under the National Film Preservation Act of 1988 shall be deemed to have been selected under this Act.

SEC. 15. REPEAL.

The National Film Preservation Act of 1988 (2 U.S.C. 178 et seq.) is repealed.

Section-by-Section Analysis of National Film Preservation Act of 1991

Section 1 of the bill sets forth its title, the "National Film Preservation Act of 1991."

Section 2 sets forth Congress's findings that it is appropriate for the federal government to recognize the importance of film preservation and to establish a National Film Registry of films that represent an enduring art of our national, historical and cultural heritage.

Section 3 directs the Librarian of Congress to establish a National Film Registry.

Section 4(a) sets forth the duties of the Librarian of Congress, which include developing a comprehensive national film preservation program; establishing criteria for the selection of films for the Registry; providing a seal to indicate that a film has been selected for the Registry; and ensuring, to the extent practicable, that a properly preserved and restored version exists of each Registry film.

Section 4(b) sets forth the rules for the use of a seal indicating that a film has been selected for the Registry.

Section 5 directs the Liberarian to establish the National Film Preservation Board, describes the composition of the Board and sets forth provisions relating to the Board's functioning, including quorum requirements, meetings and terms of office.

Section 6 sets forth the powers of the Board, pertaining mostly to its role in advising the Librarian of Congress on the selection of films for inclusion in the National Film Registry.

Section 7 directs the Librarian to endeavor to obtain archive quality copies of the films selected for the National Film Registry, together with related background materials.

Section 8 makes clear who may and who may not use the seal.

Section 9 sets forth remedies available against persons who use the seal in contravention of section 8.

Section 10 authorizes the Librarian to appoint such staff as he deems appropriate and to procure the services of experts and consultants.

Section 11 sets forth definitions.

Section 12 directs the Librarian to conduct a study on the state of film preservation and restoraton activities in the United States, to be completed within one year and submitted to Congress.

Section 13 authorizes the appropriation of up to $250,000 per year to the Library of Congress, the same amount as in the 1988 Act.

Section 14 makes the Act effective from the date of enactment through September 30, 1997, and makes clear that films selected under the National Film Preservation Act of 1988 shall be deemed to have been selected under the 1991 Act.

Section 16 repeals the 1988 Act.

Statement of Senator DeConcini

Mr. President, I am pleased to cosponsor the National Film Preservation Act of 1991. Like the 1988 law this bill amends, it advances a worthy purpose, and it has been written to avoid problems that surrounded enactment of the earlier Film Preservation Act. I applaud the efforts of my Judiciary Committee colleague, Senator Leahy, to produce a well-crafted bill in consultation with the Librarian of Congress.

American motion pictures are a significant part of our cultural heritage, and we must promote efforts, both by the government and by private interests, to honor them as an art form and to preserve them. That was the impetus behind the 1988 Film Preservation Act: it established the National Film Preservation Board to select 25 films each year to be included in the National Film Registry. The 75 motion pictures selected so far form an enduring part of our national cultural legacy.

But one of the centerpieces of the present law is a labelling requirement that has been the source of a great deal of controversy and misunderstanding. The law now requires distributors and theater owners to affix a label to selected films if they are "colorized" or otherwise "materially altered." The meaning of these terms was a source of much dispute during the debate on the 1988 Act and continues to cause confusion today.

The 1991 amendments will eliminate the disputes that emerged over the interpretaton of that vague term. Instead of the label, original and complete copies of films (Registry Copies) selected for the Registry may display a seal of the Library of Congress. The bill no longer requires film distributors, theater owners or other private parties to affix a government-mandated label. It will no longer compel the government, through its enforcement of the label requirement, to interfere in an activity that is protected by the First Amendment.

This bill reauthorizes the Board for another six years so it may continue to select American films for the Registry, and refocuses the activities of the Board and the Librarian on more pressing needs: the preservation of American motion pictures. More than half of all American films produced before 1951, including 80 percent of silent films, no longer exist. By authorizing the Librarian and the Board to develop a comprehensive national film preservation program and to coordinate film preservation efforts nationwide, the bill will help ensure that these fragile masterpieces of American culture will be enjoyed by generations to come.