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Introduced by Mr. Hughes

INTRODUCING THE COPYRIGHT ROYALTY TRIBUNAL REFORM ACT OF 1993

HON. WILLIAM J. HUGHES

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, August 3, 1993

Mr. HUGHES. Mr. Speaker, joined by Mr. FRANK, I introduce the Copyright Royalty Tribunal Reform Act of 1993. This bill is a separate bill containing provisions of title II of H.R. 897, the Copyright Reform Act of 1993, but with certain minor amendments, described below.

The genesis of the legislation lies, as I noted in my remarks introducing H.R. 897, in President Clinton's efforts to eliminate wasteful bureaucracy and thereby create a more efficient Government. In the past, both political parties have tended to treat the Copyright Royalty Tribunal as a source of political patronage. This has led to a tribunal staffed by individuals who have, at various times, not met the Congress' expectation that the tribunal's Commissioners would be chosen from individuals having a demonstrated professional competence in the field of copyright policy.

President Clinton has challenged the Congress to "make suggestions, be specific" in reducing the size of Government. I applaud the President and am pleased to aid his efforts. H.R. 897 and the bill we introduce today accept President Clinton's challenge. In my opinion, and in the opinion of the majority of the Copyright Royalty Tribunal itself, abolition of the tribunal and its replacement with ad hoc arbitration panels is a good place to start. Abolishing a full-time agency that has an episodic workload and replacing it with ad hoc arbitration panels makes good sense. The experience we have gained from the section 119 arbitration shows that arbitration panels work. And, by having copyright owners and users bear 100 percent of the Copyright Office's costs of administering of the compulsory licenses and 100 percent of the costs of the arbitration panels established under the legislation, the taxpayers will benefit.

Subsequent to the subcommittee's hearings on March 3 and 4 of this year, the subcommittee has gathered data on the actual workload of the CRT. The data supports my conclusion that the work of the CRT is best handled by ad hoc arbitration panels.

CRT Commissioners enjoy a salary of $111,800 per year. For this salary, it appears that CRT Commissioners perform very little work. The data provided to the subcommittee by the CRT bears this out.

The Copyright Royalty Tribunal performs only two functions: First, rate-setting and second, distribution of royalties. These functions are fulfilled principally by public hearings and by decisions rendered as a result of those hearings. The CRT has no general regulatory authority or duties. Thus, unlike other bodies or agencies, the number of hearings held or proceedings conducted by the CRT is a fair way to gage its workload. At the least, it is a good way to gage how well ad hoc arbitration panels, would handle the workload.

Although the data below are given in the number of days of hearings or meetings, these figures are generous since they count a half-hour hearing as 1 day.

1. SUNSHINE MEETINGS

As requested at the March 3 subcommittee hearing, data on meetings required to be publicly identified by the Sunshine Act were provided by the CRT. The data are for 1987 to 1992. The data include both rate setting and distribution proceedings. 1987: 18 Days; 1988: 8 days; 1989: 18 days; 1990: 11 days; 1991: 36 days; 1992: 5 days; total: 96 days. Average days per year: 13.7 days.

If the jukebox license figures of 13 days are removed from this data since this license is no longer administered by the CRT, the total is 83 days of hearings in 6 years from an average per year of 11.8 days. This reduction might be offset slightly by increased responsibilities under the Audio Home Recording Act of 1992.

2. COMMISSIONER DAUB'S DATA FOR HEARINGS IN 1990–92

Commissioner Daub submitted data regarding the number of days of hearings for 1990-92. According to Commissioner Daub, there were 52 days of such hearings. This results in an average of 17.33 days of such hearings per year.

3. COMMISSIONER DAMICH'S DATA FOR 1978 TO 1992

Commissioner Damich's submitted data for the years 1978 to 1992. Two charts provided by Commissioner Damich, are particularly relevant: First evidentiary hearings and second formal meeting and evidentiary hearings. The second category contains all of the data from the first plus meetings.

HEARINGS

The Damich data reveal to total of 390 days of hearings for the entire 15-year period of 1978 to 1992, for an average of 26 days per year. If jukeboxes are deleted since the license is no longer administered by the CRT, the figure drops to 359 days for an average of 23.9 days per year. Another figure that skews the data upward is the section 115 mechanical license. There has only been 1 year out of 15 in which there was any proceeding under this

license, 1980. In that year, there were 47 days of hearings. If this figure is deleted and jukeboxes are deleted in order to better gauge the future, the total for 15 years is 312 days, or an average of 20.8 days per year. This figure might be revised up slightly in order to take into account possible duties under the Audio Home Recording Act of 1992.

The figures per year are: 1978: 10 days; 1979: 0; 1980: 75; 1981: 48; 1982: 74; 1983: 6; 1984: 16; 1985: 57; 1986: 29; 1987: 13; 1988: 4; 1989: 17; 1990: 6; 1991: 35; 1992: 0; total: 390. These figures clearly demonstrate an episodic workload.

FORMAL MEETINGS AND EVIDENTIARY HEARINGS

The figures include all of the days of hearings given in (A) above, plus meetings. The figures for meetings are overly generous because they count any meeting, no matter how short, as an entire day. 1978: 12; 1979: 2; 1980: 91; 1981: 64; 1982: 87; 1983: 13; 1984: 21; 1985: 69; 1986: 39; 1987: 29; 1988: 12; 1989: 30; 1990: 19; 1991: 44; 1992: 14; total: 546. Average number of days per year: 36.4.

If the jukebox license is deleted from this, the total is 477 days for all 15 years, or an average of 31.8 days per year.

Mr. Speaker, however you cut the data, we do not need three $111,800 Commissioners plus staff to perform the minimal amount of work that comes before the tribunal. I urge my colleagues to join me in abolishing this unneeded agency and replacing it with ad hoc arbitration.

The Copyright Arbitration Panel Act of 1993 is, as is noted above, virtually identical to title II of H.R. 897. A few changes have been made, however, and I would like to note these. First, the Librarian of Congress, acting upon the recommendation of the Register of Copyrights, will be responsible for convening the arbitration panels and reviewing their determinations. The Librarian is also given the authority, before a panel is convened, to make any necessary procedural or evidentiary rulings that would apply to the proceedings conducted by such panel. Second, in reaching its decision, an arbitration panel shall consider not only the written record of the proceeding before it, but also prior decisions of the CRT, prior arbitration panel decisions as well as any procedural or evidentiary rulings by the Librarian of Congress that apply to that panel. This will be of assistance in ensuring greater continuity in decisionmaking.

I also intend to proceed expeditiously with the remaining title I of H.R. 897 following receipt of a report by the Librarian of Congress on September 15 of this year.