CONGRESSIONAL RECORD

103RD CONGRESS

SENATE

Bill	Date	Page(s)
H.R. 2840	Nov. 20, 1993	S16864-65

Action:

Copyright Royalty Tribunal Reform Act: Senate passed H.R. 2840, to amend title 17, United States Code, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, after agreeing to the following amendment proposed thereto:

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Ford (for DeConcini/Stevens) Amendment No. 1230, in the nature of a substitute.

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COPYRIGHT ROYALTY TRIBUNAL REFORM ACT OF 1993

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar 241, H.R. 2840, a bill relating to copyright arbitration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2840) to amend title 17, United States Code, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1230

(Purpose: To amended title 17, United States Code, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, and for other purposes)

Mr. FORD. Mr. President, on behalf of Senators DeConcini and Stevens, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] for Mr. DECONCINI for himself and Mr. STEVENS, proposes and amendment numbered 1230.

Mr. FORD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. DECONCINI. Mr. President, I rise today in support of passage of the Senate amendment to H.R. 2840, the Copyright Royalty Tribunal Reform Act of 1993. The Senate amendment in the nature of a substitute to H.R. 2840 eliminates the Copyright Royalty Tribunal and replaces it with ad hoc arbitration panels that are to be convened by the Librarian of Congress as needed. Extinguishing the often contentious Copyright Royalty Tribunal returns the copyright royalty process to the Copyright Office and the Library of Congress, as was originally envisioned, while maintaining the constitutionally required oversight of an executive function. Consolidation of the process in the Copyright Office and Library, as administered by the arbitration panels, should better serve the modern government mandate of doing more with less.

Hearings were held on the Senate companion bill S. 1346, on October 5, 1993. The bill before the Senate today reflects changes made to incorporate suggestions made during deliberations on the legislation. However, the basic premise of this bill has remained intact throughout the process. Ratemakings and distributions of copyright royalties collected pursuant to the compulsory licenses are to be made by three member ad hoc arbitration panels convened by the Librarian of Congress. The Librarian, after consultation with the Register of Copyrights, selects the first two arbitrators from professional arbitration associations. The two so selected shall, within 10 days of their selection, choose the third arbitrator to serve as chairperson. If the two cannot reach agreement, the Librarian shall select the third.

Great care has been taken to assure the neutrality of the arbitrators, and the bill has been improved in this regard in several areas. First, the selection process has been revised. Originally, the bill directed the Librarian to select arbitrators from lists of persons provided by the participating parties, but it was felt that this would create a pool of arbitrators with bias toward the party or parties submitting their name. Simple selection by the Librarian of members of professional arbitration associations dramatically reduces the changes of any panel member having affiliation with the participating parties.

Second, the bill requires certain qualifications of the arbitrators. Each arbitrator must have "experience in conducting arbitration proceedings and facilitating the resolution and settlement of disputes," along with any additional qualifications that the Librarian may prescribe by regulation. This provision assures that the arbitrators will possess sufficient knowledge and ability not only to conduct arbitration proceedings, but to facilitate settlement among the parties as well.

Third, the bill directs the Librarian to adopt standards of conduct governing the arbitrators and proceedings. This injects the new system with a code of conduct not currently in existence in the Copyright Royalty Tribunal. The rules of conduct will include requirements of full disclosure by the arbitrators to prevent conflicts of interest, control of ex parte communications and avoidance of impropriety. This assures that the proceedings will be conducted in an ethical and professional manner.

Once an arbitration panel is formally convened, the panel is given 180 days to report its findings and conclusions to the Librarian of Congress. This is a deliberate expansion of the 60 day time period of the section 119 satellite carrier arbitration procedure, which many of the participating parties felt was too brief. The bill directs the panel to compile a fully documented written record, and any party to the proceeding may submit relevant information and proposals to the panel. The conduct of the proceeding is governed by the Administrative Procedure Act [APA], and the Librarian is directed to adopt the current rules and regulations of the Copyright Royalty Tribunal. These rules, however, may be supplemented and superseded by new rules adopted by the Librarian, so long as they conform with the APA. The bill also directs the panels to act in accordance with the APA, thereby governing situations and actions not specified by regulations.

Once an arbitration panel has completed its report and delivered it to the Librarian, the Librarian is given 60 days in which to review the decision. The Librarian, upon the recommendation of the Register of Copyrights, is directed to adopt the panel's report unless he/she finds that the determination is "arbitrary or contrary to the applicable provisions" of the Copyright Act. The zone of reasonableness to be accorded the panel's decision is, therefore, quite broad, which comports with federal circuit court precedent governing the Copyright Royalty Tribunal. If the Librarian does find the decision to be arbitrary or contrary to the Copyright Act, then the Librarian must, prior to the expiration of the 60-day review period, issue an order setting the applicable royalty rate or the distribution, whichever the case may be. The Librarian's decision, either to accept or reject the panel report, is to be published in the Federal Register and otherwise made available to the parties and the public, along with the arbitration panel report and the accompanying record of the proceedings.

Parties aggrieved and bound by the Librarian's decision are given 30 days in which to appeal the decision directly to the United States Court of Appeals for the District of Columbia Circuit. The appeals process mirrors that of the successful section 119 satellite carrier ratemaking procedure. The court is permitted to accept, modify, or vacate and remand the Librarian's decision for further arbitration proceedings.

The Copyright Royalty Tribunal Act of 1993 establishes the Library and the Copyright Office as administrative overseers of royalty ratemaking and distribution, thereby filling in the administrative gaps left by the dissolution of the Copyright Royalty Tribunal. On the front end of the arbitration process, the Library will continue to receive and process the royalty claims of copyright owners for fees collected pursuant to the compulsory licenses, as well as any petitions for changes in the royalty rates. The bill vests the Library with the additional authority to make any necessary procedural or evidentiary rulings prior to the convocation of an arbitration panel, which will assist the development and organization of the proceeding. Once the panels are convened, the bill directs the Library and Copyright Office to provide the necessary administrative assist-

ance, such as technical, financial and clerical support. And as discussed above, the Librarian will participate in the tail end of the arbitration process by reviewing the decisions of the panels.

The issue of costs involved in the new system is also addressed. The original bill directed the arbitration panels to assess the costs of each proceeding directly to the participating parties. The Library expressed concerns in the hearing before this subcommittee regarding costs associated with its new responsibility, and the bill was amended to allow the Library to recover its full cost of implementation and execution through deduction of expenditures from the relevant royalty pools. In ratemaking proceedings where no royalty pool exists, the Library is allowed to assess the participating parties for its reasonable expenditures. The remaining appropriation for fiscal year 1994 for the Copyright Royalty Tribunal is transferred to the Library to ease the financial burden of transition. The sum of the amendments is to create a system that is fully funded by the participants, thereby eliminating the cost to the taxpayers for continued operation of the Copyright Royalty Tribunal.

This bill makes technical and conforming amendments within the compulsory licenses, sections 115 through 119 and chapter 10 of the Copyright Act. The most significant of these is repeal of the jukebox compulsory license, section 116, and its replacement with current section 116A, which provides for negotiated licenses. In the event the current negotiated license expires, the Librarian is directed to convene an arbitration panel to continue the expired agreement rates on an interim basis until replaced with new arbitrated rates or new negotiated licenses.

This bill will improve the process, eliminate an unnecessary agency, and insure that the costs of conducting ratemaking and distributions of fees under the copyright compulsory licenses will be fully funded by the parties involved.

Mr. FORD. Mr. President, I ask unanimous consent that the amendment be agreed to and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the amendment (No. 1230) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 2840), as amended, was passed.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. MURKOWSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.