

103D CONGRESS
1ST SESSION

S. 1346

To amend title 17, United States Code, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 3 (legislative day, JUNE 30), 1993

Mr. DECONCINI (for himself and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Copyright Royalty
5 Tribunal Reform Act of 1993".

6 **SEC. 2. COPYRIGHT ARBITRATION ROYALTY PANELS.**

7 (a) ESTABLISHMENT AND PURPOSE.—Section 801 of
8 title 17, United States Code, is amended as follows:

1 (1) The section heading is amended to read as
2 follows:

3 **“§ 801. Copyright arbitration royalty panels: estab-**
4 **lishment and purpose”;**

5 (2) Subsection (a) is amended to read as fol-
6 lows:

7 “(a) ESTABLISHMENT.—The Librarian of Congress,
8 upon the recommendation of the Register of Copyrights,
9 is authorized to appoint and convene copyright arbitration
10 royalty panels.”;

11 (3) Subsection (b) is amended—

12 (A) by inserting “PURPOSES.—” after
13 “(b)”;

14 (B) in the matter preceding paragraph (1),
15 by striking “Tribunal” and inserting “copyright
16 arbitration royalty panels”;

17 (C) in paragraph (2)—

18 (i) in subparagraph (A), by striking
19 “Commission” and inserting “copyright ar-
20 bitration royalty panels”; and

21 (ii) in subparagraph (B), by striking
22 “Copyright Royalty Tribunal” and insert-
23 ing “copyright arbitration royalty panels”;

1 (D) in paragraph (3), by striking “In de-
2 termining” and all that follows through the end
3 of the paragraph; and

4 (4) by amending subsection (c) to read as fol-
5 lows:

6 “(c) RULINGS.—The Librarian of Congress, upon the
7 recommendation of the Register of Copyrights, may, be-
8 fore a copyright arbitration royalty panel is convened,
9 make any necessary procedural or evidentiary rulings that
10 would apply to the proceedings conducted by such panel.”.

11 (b) MEMBERSHIP AND PROCEEDINGS.—Section 802
12 of title 17, United States Code, is amended to read as
13 follows:

14 **“§ 802. Membership and proceedings of copyright ar-
15 bitration royalty panels**

16 “(a) COMPOSITION OF COPYRIGHT ARBITRATION
17 ROYALTY PANELS.—A copyright arbitration royalty panel
18 shall consist of 3 arbitrators selected by the Librarian of
19 Congress pursuant to subsection (b).

20 “(b) SELECTION OF ARBITRATION PANEL.—Not
21 later than 10 days after publication of a notice initiating
22 an arbitration proceeding under section 803 or 804, and
23 in accordance with procedures specified by the Register
24 of Copyrights, the Librarian of Congress shall, upon the
25 recommendation of the Register of Copyrights, select 2 ar-

1 bitrators from lists of arbitrators provided to the Librar-
2 ian by parties participating in the arbitration. The 2 arbi-
3 trators so selected shall, within 10 days after their selec-
4 tion, choose a third arbitrator from the same lists, who
5 shall serve as the chairperson of the arbitrators. If such
6 2 arbitrators fail to agree upon the selection of a chair-
7 person, the Librarian of Congress shall promptly select the
8 chairperson.

9 “(c) ARBITRATION PROCEEDINGS.—Copyright arbi-
10 tration royalty panels shall conduct arbitration proceed-
11 ings, in accordance with such procedures as they may
12 adopt, for the purpose of making their determinations in
13 carrying out the purposes set forth in section 801. The
14 arbitration panels shall act on the basis of a fully docu-
15 mented written record, prior decisions of the Copyright
16 Royalty Tribunal, prior copyright arbitration panel deter-
17 minations, and rulings by the Librarian of Congress under
18 section 801(b). Any copyright owner who claims to be enti-
19 tled to royalties under section 111 or 119 or any inter-
20 ested copyright party who claims to be entitled to royalties
21 under section 1006 may submit relevant information and
22 proposals to the arbitration panels in proceedings applica-
23 ble to such copyright owner or interested copyright party.
24 The parties to the proceedings shall bear the entire cost

1 thereof in such manner and proportion as the arbitration
2 panels shall direct.

3 “(d) REPORT TO THE LIBRARIAN OF CONGRESS.—
4 Not later than 180 days after publication of the notice
5 initiating an arbitration proceeding, the copyright arbitra-
6 tion royalty panel conducting the proceeding shall report
7 to the Librarian of Congress its determination concerning
8 the royalty fee or distribution of royalty fees, as the case
9 may be. Such report shall be accompanied by the written
10 record, and shall set forth the facts that the arbitration
11 panel found relevant to its determination.

12 “(e) ACTION BY LIBRARIAN OF CONGRESS.—Within
13 60 days after receiving the report of a copyright arbitra-
14 tion royalty panel under subsection (d), the Librarian of
15 Congress, upon the recommendation of the Register of
16 Copyrights, shall adopt or reject the determination of the
17 arbitration panel. The Librarian shall adopt the deter-
18 mination of the arbitration panel unless the Librarian
19 finds that the determination is arbitrary. If the Librarian
20 rejects the determination of the arbitration panel, the Li-
21 brarian shall, before the end of that 60-day period, and
22 after full examination of the record created in the arbitra-
23 tion proceeding, issue an order setting the royalty fee or
24 distribution of fees, as the case may be. The Librarian
25 shall cause to be published in the Federal Register the

1 determination of the arbitration panel, and the decision
2 of the Librarian (including an order issued under the pre-
3 ceding sentence). The Librarian shall also publicize such
4 determination and decision in such other manner as the
5 Librarian considers appropriate. The Librarian shall also
6 make the report of the arbitration panel and the accom-
7 panying record available for public inspection and copying.

8 “(f) JUDICIAL REVIEW.—Any decision of the Librar-
9 ian of Congress under subsection (e) with respect to a de-
10 termination of an arbitration panel may be appealed, by
11 any aggrieved party who would be bound by the deter-
12 mination, to the United States Court of Appeals for the
13 District of Columbia Circuit, within 30 days after the pub-
14 lication of the decision in the Federal Register. The pend-
15 ency of an appeal under this paragraph shall not relieve
16 persons obligated to make royalty payments under sec-
17 tions 111, 119, or 1003 who would be affected by the de-
18 termination on appeal to deposit the statement of account
19 and royalty fees specified in those sections. The court shall
20 have jurisdiction to modify or vacate a decision of the Li-
21 brarian only if it finds, on the basis of the record before
22 the Librarian, that the Librarian acted in an arbitrary
23 manner. If the court modifies the decision of the Librar-
24 ian, the court shall have jurisdiction to enter its own deter-
25 mination with respect to the amount or distribution of roy-

1 alty fees and costs, to order the repayment of any excess
 2 fees, and to order the payment of any underpaid fees, and
 3 the interest pertaining respectively thereto, in accordance
 4 with its final judgment. The court may further vacate the
 5 decision of the arbitration panel and remand the case for
 6 arbitration proceedings in accordance with subsection
 7 (c).”.

8 (c) ADJUSTMENT OF COMPULSORY LICENSE
 9 RATES.—Section 803 of title 17, United States Code, and
 10 the item relating to such section in the table of sections
 11 at the beginning of chapter 8 of such title, are repealed.

12 (d) INSTITUTION AND CONCLUSION OF PROCEED-
 13 INGS.—Section 804 of title 17, United States Code, is
 14 amended as follows:

15 (1) Subsection (a) is amended—

16 (A) by repealing paragraph (1); and

17 (B) in paragraph (2)—

18 (i) in the matter preceding subpara-
 19 graph (A) by striking “Tribunal,” and all
 20 that follows through “proceedings under
 21 this chapter.” and inserting “Copyright
 22 Royalty Tribunal before the date of the en-
 23 actment of the Copyright Royalty Tribunal
 24 Reform Act of 1993, or by a copyright ar-
 25 bitration royalty panel after such date of

1 enactment, may file a petition with the Li-
2 brarian of Congress declaring that the pe-
3 titioner requests an adjustment of the rate.
4 The Librarian of Congress shall, upon the
5 recommendation of the Register of Copy-
6 rights, make a determination as to whether
7 the petitioner has such a significant inter-
8 est in the royalty rate in which an adjust-
9 ment is requested. If the Librarian deter-
10 mines that the petitioner has such a sig-
11 nificant interest, the Librarian shall cause
12 notice of this determination, with the rea-
13 sons therefor, to be published in the Fed-
14 eral Register, together with the notice of
15 commencement of proceedings under this
16 chapter.”;

17 (ii) in subparagraph (C)—

18 (I) in clause (i) by striking “in
19 1990 and in each subsequent tenth
20 calendar year, and”, and by striking
21 “116A” and inserting “116”; and

22 (II) by amending clause (ii) to
23 read as follows:

24 “(ii) If a negotiated license authorized by
25 section 116 is terminated or expires and is not

1 replaced by another license agreement under
2 such section, providing permission to use a
3 quantity of musical works not substantially
4 smaller than the quantity of such works per-
5 formed on coin-operated phonorecord players
6 during the 1-year period ending March 1, 1989,
7 the Librarian of Congress shall, upon petition
8 filed under subsection (a) within 1 year after
9 such termination or expiration, convene a copy-
10 right arbitration royalty panel. The arbitration
11 panel shall promptly establish an interim roy-
12 alty rate or rates for the public performance by
13 means of a coin-operated phonorecord player of
14 non-dramatic musical works embodied in
15 phonorecords which had been subject to the ter-
16 minated or expired negotiated license agree-
17 ment. Such rate or rates shall be the same as
18 the last such rate or rates and shall remain in
19 force until the conclusion of proceedings by the
20 arbitration panel, in accordance with section
21 802, to adjust the royalty rates applicable to
22 such works, or until superseded by a new nego-
23 tiated license agreement, as provided in section
24 116(c).”.

25 (2) Subsection (b) is amended—

1 (A) by striking "Tribunal" the first place
2 it appears and inserting "Copyright Royalty
3 Tribunal or the Librarian of Congress";

4 (B) by striking "Tribunal" the second and
5 third places it appears and inserting "Librar-
6 ian"; and

7 (C) by striking "Tribunal" the last place it
8 appears and inserting "Copyright Royalty Tri-
9 bunal or the Librarian of Congress".

10 (3) Subsection (c) is amended by striking "Tri-
11 bunal" and inserting "Librarian of Congress".

12 (4) Subsection (d) is amended—

13 (A) by striking "Chairman of the Tribu-
14 nal" and inserting "Librarian of Congress";
15 and

16 (B) by striking "determination by the Tri-
17 bunal" and inserting "a determination".

18 (5) Subsection (e) is amended by striking "Tri-
19 bunal" and inserting "Librarian of Congress".

20 (e) REPEAL.—Sections 805 through 810 of title 17,
21 United States Code, and the items relating to such sec-
22 tions in the table of sections at the beginning of chapter
23 8 of such title, are repealed.

24 (f) CLERICAL AMENDMENT.—The table of sections at
25 the beginning of chapter 8 of title 17, United States Code,

1 is amended by striking the items relating to sections 801
2 and 802 and inserting the following:

“Sec. 801. Copyright arbitration royalty panels: establishment and purpose.

“Sec. 802. Membership and proceedings of copyright arbitration royalty panels.”.

3 **SEC. 3. JUKEBOX LICENSES.**

4 (a) **REPEAL OF COMPULSORY LICENSE.**—Section
5 116 of title 17, United States Code, and the item relating
6 to section 116 in the table of sections at the beginning
7 of chapter 1 of such title, are repealed.

8 (b) **NEGOTIATED LICENSES.**—(1) Section 116A of
9 title 17, United States Code, is amended—

10 (A) by redesignating such section as section
11 116;

12 (B) by striking subsection (b) and redesignating
13 subsections (c) and (d) as subsections (b) and (c),
14 respectively;

15 (C) in subsection (b)(2) (as so redesignated) by
16 striking “Copyright Royalty Tribunal” and inserting
17 “Librarian of Congress”;

18 (D) in subsection (c) (as so redesignated)—

19 (i) in the subsection caption by striking
20 “ROYALTY TRIBUNAL” and inserting “ARBI-
21 TRATION ROYALTY PANEL”; and

22 (ii) by striking “the Copyright Royalty Tri-
23 bunal” and inserting “a copyright arbitration
24 royalty panel”; and

1 (E) by striking subsections (e), (f), and (g).

2 (2) The table of sections at the beginning of chapter
3 1 of title 17, United States Code, is amended by striking
4 "116A" and inserting "116".

5 **SEC. 4. PUBLIC BROADCASTING COMPULSORY LICENSE.**

6 Section 118 of title 17, United States Code, is
7 amended—

8 (1) in subsection (b)—

9 (A) by striking the first 2 sentences;

10 (B) in the third sentence by striking
11 "works specified by this subsection" and insert-
12 ing "published nondramatic musical works and
13 published pictorial, graphic, and sculptural
14 works";

15 (C) in paragraph (1)—

16 (i) in the first sentence by striking " ,
17 within one hundred and twenty days after
18 publication of the notice specified in this
19 subsection,"; and

20 (ii) by striking "Copyright Royalty
21 Tribunal" each place it appears and insert-
22 ing "Librarian of Congress";

23 (D) in paragraph (2) by striking "Tribu-
24 nal" and inserting "Librarian of Congress";

25 (E) in paragraph (3)—

1 (i) by striking the first sentence and
2 inserting the following: “In the absence of
3 license agreements negotiated under para-
4 graph (2), the Librarian of Congress shall,
5 pursuant to section 803, convene a copy-
6 right arbitration royalty panel to determine
7 and publish in the Federal Register a
8 schedule of rates and terms which, subject
9 to paragraph (2), shall be binding on all
10 owners of copyright in works specified by
11 this subsection and public broadcasting en-
12 tities, regardless of whether such copyright
13 owners have submitted proposals to the Li-
14 brarian of Congress.”;

15 (ii) in the second sentence—

16 (I) by striking “Copyright Roy-
17 alty Tribunal” and inserting “copy-
18 right arbitration royalty panel”; and

19 (II) by striking “clause (2) of
20 this subsection” and inserting “para-
21 graph (2)”; and

22 (iii) in the last sentence by striking
23 “Copyright Royalty Tribunal” and insert-
24 ing “Librarian of Congress”; and
25 (F) by striking paragraph (4);

1 (2) by striking subsection (c); and

2 (3) in subsection (d)—

3 (A) by redesignating such subsection as
4 subsection (c);

5 (B) by striking “to the transitional provi-
6 sions of subsection (b)(4), and”; and

7 (C) by striking “Copyright Royalty Tribu-
8 nal” and inserting “copyright arbitration roy-
9 alty panel”.

10 **SEC. 5. SECONDARY TRANSMISSIONS BY SUPERSTATIONS**
11 **AND NETWORK STATIONS FOR PRIVATE**
12 **VIEWING.**

13 Section 119 of title 17, United States Code, is
14 amended—

15 (1) in subsection (b)—

16 (A) in paragraph (1) by striking “, after
17 consultation with the Copyright Royalty Tribu-
18 nal,” each place it appears;

19 (B) in paragraph (2) by striking “Copy-
20 right Royalty Tribunal” and inserting “Librar-
21 ian of Congress”;

22 (C) in paragraph (3) by striking “Copy-
23 right Royalty Tribunal” and inserting “Librar-
24 ian of Congress”; and

25 (D) in paragraph (4)—

1 (i) by striking “Copyright Royalty
2 Tribunal” each place it appears and insert-
3 ing “Librarian of Congress”;

4 (ii) by striking “Tribunal” each place
5 it appears and inserting “Librarian of
6 Congress”; and

7 (iii) in subparagraph (C) by striking
8 “conduct a proceeding” in the last sen-
9 tence and inserting “convene a copyright
10 arbitration royalty panel”; and

11 (2) by striking subsection (c) and inserting the
12 following:

13 “(c) DETERMINATION OF ROYALTIES.—The royalty
14 fee payable under subsection (b)(1)(B) shall be that estab-
15 lished by the Copyright Royalty Tribunal on May 1, 1992,
16 as corrected on May 18, 1992.”.

17 **SEC. 6. CONFORMING AMENDMENTS.**

18 (a) CABLE COMPULSORY LICENSE.—Section 111(d)
19 of title 17, United States Code, is amended as follows:

20 (1) Paragraph (1) is amended by striking
21 “, after consultation with the Copyright Royalty
22 Tribunal (if and when the Tribunal has been con-
23 stituted),”.

24 (2) Paragraph (1)(A) is amended by striking
25 “, after consultation with the Copyright Royalty Tri-

1 bunal (if and when the Tribunal has been con-
2 stituted),”.

3 (3) Paragraph (2) is amended by striking the
4 second and third sentences and by inserting the fol-
5 lowing: “All funds held by the Secretary of the
6 Treasury shall be invested in interest-bearing United
7 States securities for later distribution by the Librar-
8 ian of Congress in the event no controversy over dis-
9 tribution exists, or by a copyright arbitration royalty
10 panel in the event a controversy over such distribu-
11 tion exists. The Librarian shall compile and publish
12 on a semiannual basis, a compilation of all state-
13 ments of account covering the relevant 6-month pe-
14 riod provided by paragraph (1) of this subsection.”.

15 (4) Paragraph (4)(A) is amended—

16 (A) by striking “Copyright Royalty Tribu-
17 nal” and inserting “Librarian of Congress”;
18 and

19 (B) by striking “Tribunal” and inserting
20 “Librarian of Congress”.

21 (5) Paragraph (4)(B) is amended to read as
22 follows:

23 “(B) After the first day of August of each
24 year, the Librarian of Congress shall, upon the
25 recommendation of the Register of Copyrights,

1 determine whether there exists a controversy
2 concerning the distribution of royalty fees. If
3 the Librarian determines that no such con-
4 troversy exists, the Librarian shall, after de-
5 ducting reasonable administrative costs under
6 this section, distribute such fees to the copy-
7 right owners entitled, or to their designated
8 agents. If the Librarian finds the existence of
9 a controversy, the Librarian shall, pursuant to
10 chapter 8 of this title, convene a copyright arbi-
11 tration royalty panel to determine the distribu-
12 tion of royalty fees.”.

13 (6) Paragraph (4)(C) is amended by striking
14 “Copyright Royalty Tribunal” and inserting “Li-
15 brarian of Congress”.

16 (b) AUDIO HOME RECORDING ACT.—

17 (1) ROYALTY PAYMENTS.—Section 1004(a)(3)
18 of title 17, United States Code, is amended—

19 (A) by striking “Copyright Royalty Tribu-
20 nal” and inserting “Librarian of Congress”;
21 and

22 (B) by striking “Tribunal” and inserting
23 “Librarian of Congress”.

1 (2) DEPOSIT OF ROYALTY PAYMENTS.—Section
2 1005 of title 17, United States Code, is amended by
3 striking the last sentence.

4 (3) ENTITLEMENT TO ROYALTY PAYMENTS.—
5 Section 1006(c) of title 17, United States Code, is
6 amended by striking “Copyright Royalty Tribunal”
7 and inserting “Librarian of Congress shall convene
8 a copyright arbitration royalty panel which”.

9 (4) PROCEDURES FOR DISTRIBUTING ROYALTY
10 PAYMENTS.—Section 1007 of title 17, United States
11 Code, is amended—

12 (A) in subsection (a)(1) by striking “Copy-
13 right Royalty Tribunal” and inserting “Librar-
14 ian of Congress”;

15 (B) in subsection (b)—

16 (i) by striking “Copyright Royalty
17 Tribunal” and inserting “Librarian of
18 Congress”; and

19 (ii) by striking “Tribunal” each place
20 it appears and inserting “Librarian of
21 Congress”; and

22 (C) in subsection (c)—

23 (i) by striking the first sentence and
24 inserting “If the Librarian of Congress
25 finds the existence of a controversy, the Li-

1 brarian shall, pursuant to chapter 8 of this
2 title, convene a copyright arbitration roy-
3 alty panel to determine the distribution of
4 royalty payments.”; and

5 (ii) by striking “Tribunal” each place
6 it appears and inserting “Librarian of
7 Congress”.

8 (5) ARBITRATION OF CERTAIN DISPUTES.—Sec-
9 tion 1010 of title 17, United States Code, is
10 amended—

11 (A) in subsection (b)—

12 (i) by striking “Copyright Royalty
13 Tribunal” and inserting “Librarian of
14 Congress”; and

15 (ii) by striking “Tribunal” each place
16 it appears and inserting “Librarian of
17 Congress”;

18 (B) in subsection (e) by striking “Copy-
19 right Royalty Tribunal” each place it appears
20 and inserting “Librarian of Congress”;

21 (C) in subsection (f)—

22 (i) by striking “Copyright Royalty
23 Tribunal” each place it appears and insert-
24 ing “Librarian of Congress”;

1 (ii) by striking “Tribunal” each place
2 it appears and inserting “Librarian of
3 Congress”; and

4 (iii) in the third sentence by striking
5 “its” and inserting “the Librarian’s”; and
6 (D) in subsection (g)—

7 (i) by striking “Copyright Royalty
8 Tribunal” and inserting “Librarian of
9 Congress”; and

10 (ii) by striking “Tribunal” each place
11 it appears and inserting “Librarian of
12 Congress”.

13 **SEC. 7. EFFECTIVE DATE AND TERMINATION.**

14 (a) **IN GENERAL.**—This Act and the amendments
15 made by this Act shall take effect on January 1, 1994.

16 (b) **EFFECTIVENESS OF EXISTING RATES AND DIS-**
17 **TRIBUTIONS.**—All royalty rates and all determinations
18 with respect to the proportionate division of compulsory
19 license fees among copyright claimants, whether made by
20 the Copyright Royalty Tribunal, or by voluntary agree-
21 ment, before the effective date set forth in subsection (a)
22 shall remain in effect until modified by voluntary agree-
23 ment or pursuant to the amendments made by this Act.

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