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104TH CONGRESS
1ST SESSION

H. R. 1861

To make technical corrections in the Satellite Home Viewer Act of 1994
and other provisions of title 17, United States Code.

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 1995

Mr. MOORHEAD introduced the following bill; which was referred to the
Committee on the Judiciary

A BILL

To make technical corrections in the Satellite Home Viewer
Act of 1994 and other provisions of title 17, United
States Code.

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. SATELLITE HOME VIEWER ACT.**

4 The Satellite Home Viewer Act of 1994 (Public Law
5 103-369) is amended as follows:

6 (1) Section 2(3)(A) is amended to read as fol-
7 lows:

8 “(A) in clause (i) by striking ‘12 cents’
9 and inserting ‘17.5 cents per subscriber in the
10 case of superstations that as retransmitted by

1 the satellite carrier include any program which,
2 if delivered by any cable system in the United
3 States, would be subject to the syndicated ex-
4 clusivity rules of the Federal Communications
5 Commission, and 14 cents per subscriber in the
6 case of superstations that are syndex-proof as
7 defined in section 258.2 of title 37, Code of
8 Federal Regulations; and' ”.

9 (2) Section 2(4) is amended to read as follows:

10 “(4) Subsection (c) is amended—

11 “(A) in paragraph (1)—

12 “(i) by striking ‘until December 31,
13 1992,’;

14 “(ii) by striking ‘(2), (3) or (4)’ and
15 inserting ‘(2) or (3)’; and

16 “(iii) by striking the second sentence;

17 “(B) in paragraph (2)—

18 “(i) in subparagraph (A) by striking
19 ‘July 1, 1991’ and inserting ‘July 1,
20 1996’; and

21 “(ii) in subparagraph (D) by striking
22 ‘December 31, 1994’ and inserting ‘De-
23 cember 31, 1999, or in accordance with
24 the terms of the agreement, whichever is
25 later’; and

1 “(C) in paragraph (3)—

2 “(i) in subparagraph (A) by striking
3 ‘December 31, 1991’ and inserting ‘Janu-
4 ary 1, 1997’;

5 “(ii) by amending subparagraph (B)
6 to read as follows:

7 ‘(B) ESTABLISHMENT OF ROYALTY
8 FEES.—In determining royalty fees under this
9 paragraph, the copyright arbitration royalty
10 panel appointed under chapter 8 shall establish
11 fees for the retransmission of network stations
12 and superstations that most clearly represent
13 the fair market value of secondary trans-
14 missions. In determining the fair market value,
15 the panel shall base its decision on economic,
16 competitive, and programming information pre-
17 sented by the parties, including—

18 ‘(i) the competitive environment in
19 which such programming is distributed,
20 the cost of similar signals in similar pri-
21 vate and compulsory license marketplaces,
22 and any special features and conditions of
23 the retransmission marketplace;

1 ‘(ii) the economic impact of such fees
2 on copyright owners and satellite carriers;
3 and

4 ‘(iii) the impact on the continued
5 availability of secondary transmissions to
6 the public.’; and

7 “(iii) in subparagraph (C), by insert-
8 ing ‘or July 1, 1997, whichever is later’
9 after ‘section 802(g)’.”.

10 (3) Section 2(5)(A) is amended to read as fol-
11 lows:

12 “(A) in paragraph (5)(C) by striking ‘the
13 date of the enactment of the Satellite Home
14 Viewer Act of 1988’ and inserting ‘November
15 16, 1988’.”.

16 **SEC. 2. DUPLICATIVE PUBLICATION IN FEDERAL REG-**
17 **ISTER.**

18 Section 104A(e)(1)(B)(ii) of title 17, United States
19 Code, is amended by striking the last sentence.

20 **SEC. 3. NEGOTIATED LICENSE FOR JUKEBOXES.**

21 Section 116 of title 17, United States Code, is
22 amended—

23 (1) by amending subsection (b)(2) to read as
24 follows:

1 “(2) ARBITRATION.—Parties not subject to
2 such a negotiation may determine the result of the
3 negotiation by arbitration in accordance with the
4 provisions of chapter 8.”; and

5 (2) by adding at the end the following new sub-
6 section:

7 “(d) DEFINITIONS.—As used in this section, the fol-
8 lowing terms mean the following:

9 “(1) A ‘coin-operated phonorecord player’ is a
10 machine or device that—

11 “(A) is employed solely for the perform-
12 ance of nondramatic musical works by means of
13 phonorecords upon being activated by the inser-
14 tion of coins, currency, tokens, or other mone-
15 tary units or their equivalent;

16 “(B) is located in an establishment making
17 no direct or indirect charge for admission;

18 “(C) is accompanied by a list which is
19 comprised of the titles of all the musical works
20 available for performance on it, and is affixed
21 to the phonorecord player or posted in the es-
22 tablishment in a prominent position where it
23 can be readily examined by the public; and

24 “(D) affords a choice of works available
25 for performance and permits the choice to be

1 made by the patrons of the establishment in
2 which it is located.

3 “(2) An ‘operator’ is any person who, alone or
4 jointly with others—

5 “(A) owns a coin-operated phonorecord
6 player;

7 “(B) has the power to make a coin-oper-
8 ated phonorecord player available for placement
9 in an establishment for purposes of public per-
10 formance; or

11 “(C) has the power to exercise primary
12 control over the selection of the musical works
13 made available for public performance on a
14 coin-operated phonorecord player.”.

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

16 Section 118 of title 17, United States Code, is
17 amended as follows:

18 (1) Subsection (b) is amended by striking para-
19 graph (1) and redesignating paragraphs (2) and (3)
20 as paragraphs (1) and (2), respectively.

21 (2) Subsection (b)(2) (as redesignated by para-
22 graph (1) of this section) is amended by striking
23 “(2)” each place it appears and inserting “(1)”.

24 (3) Subsection (e) is amended to read as fol-
25 lows:

1 “(e)(1) Except as expressly provided in this sub-
2 section, this section shall not apply to works other than
3 those specified in subsection (b).

4 “(2) Owners of copyright in nondramatic literary
5 works and public broadcasting entities may, during the
6 course of voluntary negotiations, agree among themselves,
7 respectively, as to the terms and rates of royalty payments
8 without liability under the antitrust laws. Any such terms
9 and rates of royalty payments shall be effective upon being
10 filed in the Copyright Office, in accordance with regula-
11 tions that the Register of Copyrights shall prescribe.”.

12 **SEC. 5. REGISTRATION AND INFRINGEMENT ACTIONS.**

13 Section 411(b)(1) of title 17, United States Code, is
14 amended to read as follows:

15 “(1) serves notice upon the infringer, not less
16 than 48 hours before such fixation, identifying the
17 work and the specific time and source of its first
18 transmission, and declaring an intention to secure
19 copyright in the work; and”.

20 **SEC. 6. COPYRIGHT OFFICE FEES.**

21 Section 708(b) of title 17, United States Code, is
22 amended to read as follows:

23 “(b)(1) Subject to paragraph (2), in calender year
24 1996 and in any subsequent calendar year, the Register
25 of Copyrights, by regulation, may increase the fees speci-

1 fied in subsection (a) by the percent change in the
 2 Consumer Price Index published by the Bureau of Labor
 3 Statistics, calculated from the month before the last fee
 4 became effective to the month before the new fee is pub-
 5 lished, rounded off to the nearest dollar, or for a fee less
 6 than \$12, rounded off to the nearest 50 cents. In the case
 7 of a change calculated from 1990, the Consumer Price
 8 Index for the month of June 1990 shall be used.

9 “(2) The Register may not increase fees under para-
 10 graph (1) at intervals of less than 5 years.”.

11 **SEC. 7. COPYRIGHT ARBITRATION ROYALTY PANELS.**

12 (a) ESTABLISHMENT AND PURPOSE.—Section 801 of
 13 title 17, United States Code, is amended—

14 (1) in subsection (b)(1) by striking “and 116”
 15 in the first sentence and inserting “, 116, and 119”;

16 (2) in subsection (c) by inserting after “panel”
 17 at the end of the sentence the following:

18 “, including—

19 “(1) authorizing the distribution of those roy-
 20 alty fees collected under sections 111, 119, and
 21 1005 that the Librarian has found are not subject
 22 to controversy; and

23 “(2) accepting or rejecting royalty claims filed
 24 under sections 111, 119, and 1007 on the basis of

1 timeliness or the failure to establish the basis for a
2 claim”; and

3 (3) by amending subsection (d) to read as fol-
4 lows:

5 “(d) SUPPORT AND REIMBURSEMENT OF ARBITRA-
6 TION PANELS.—The Librarian of Congress, upon the rec-
7 ommendation of the Register of Copyrights, shall provide
8 the copyright arbitration royalty panels with the necessary
9 administrative services related to proceedings under this
10 chapter, and shall reimburse the arbitrators at such inter-
11 vals and in such manner as the Librarian shall provide
12 by regulation. Each such arbitrator is an independent con-
13 tractor acting on behalf of the United States, and shall
14 be paid pursuant to a signed agreement between the Li-
15 brary of Congress and the arbitrator. Subject to the provi-
16 sions of section 802(c), payments to the arbitrators shall
17 be considered costs incurred by the Library of Congress
18 and the Copyright Office for purposes of section
19 802(h)(1).”.

20 (b) PROCEEDINGS.—Section 802(h)(1) of title 17,
21 United States Code, is amended—

22 (1) by amending the heading to read “DEDUC-
23 TION OF COSTS OF LIBRARY OF CONGRESS AND
24 COPYRIGHT OFFICE FROM ROYALTY FEES.—”; and

1 (2) by inserting before the period at the end of
2 the third sentence the following: “, by assessing 50
3 percent of the costs to the parties who would receive
4 royalties from the royalty rate adopted in the pro-
5 ceeding and 50 percent of the costs to the parties
6 who would pay the royalty rate so adopted”.

7 **SEC. 8. DIGITAL AUDIO RECORDING DEVICES AND MEDIA.**

8 Section 1007(b) of title 17, United States Code, is
9 amended by striking “Within 30 days after” in the first
10 sentence and inserting “After”.

11 **SEC. 9. EFFECTIVE DATES.**

12 (a) **IN GENERAL.**—Except as provided in subsection
13 (b), the amendments made by this Act shall take effect
14 on the date of the enactment of this Act.

15 (b) **SATELLITE HOME VIEWER ACT.**—The amend-
16 ments made by section 1 shall be effective as if enacted
17 as part of the Satellite Home Viewer Act of 1994 (Public
18 Law 103-369).

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