

99TH CONGRESS
1ST SESSION

H. R. 2784

To amend title 17, United States Code, to create a Copyright Royalty Court, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 1985

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

A BILL

To amend title 17, United States Code, to create a Copyright Royalty Court, 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 Dispute Reso-
5 lution and Royalty Court Act of 1985".

6 **SEC. 2. ESTABLISHMENT OF COPYRIGHT ROYALTY COURT.**

7 (a) **ESTABLISHMENT.**—Section 801 of title 17, United
8 States Code, is amended—

9 (1) by amending the section heading and subsec-
10 tion (a) to read as follows:

1 **“§ 801. Copyright Royalty Court: Establishment and pur-**
2 **pose**

3 “(a) There is hereby created a court of the United
4 States to be known as the Copyright Royalty Court.”;

5 (2) in subsection (b)—

6 (A) by striking out “Tribunal” each time it
7 appears and inserting in lieu thereof “court”,

8 (B) in the second sentence of paragraph
9 (2)(B) by striking out “In” and all that follows
10 through “users:” and inserting in lieu thereof the
11 following: “In determining the reasonableness of
12 rates proposed following an amendment of Federal
13 Communications Commission rules and regula-
14 tions, and any subsequent adjustment to those
15 rates under section 804(b), the court shall consid-
16 er the objectives set forth in clause (1) of this sub-
17 section, and shall also consider, among other fac-
18 tors, the extent to which television broadcast sta-
19 tions compensate copyright owners for the second-
20 ary transmission of their signals by cable systems
21 located outside their respective local service
22 areas, the extent to which the value to cable sys-
23 tems of additional distant signals decreases or in-
24 creases as such signals are carried, the impact of
25 the rates on cable subscribers both as to the avail-
26 ability and cost of receiving copyrighted materials,

1 and the impact of the rates on competition with
2 television broadcast stations:”

3 (C) in paragraph (2)(C) by adding at the end
4 the following new sentence: “In determining the
5 reasonableness of such rates, and any subsequent
6 adjustment to those rates under section 804(b),
7 the court shall consider the objectives set forth in
8 clause (1) of this subsection and the factors set
9 forth in subclause (B) of this clause.”, and

10 (D) by striking out paragraph (3) and insert-
11 ing in lieu thereof the following:

12 “(3) to determine, in cases where controversy
13 exists, the distribution of royalty fees deposited with
14 the Register of Copyrights under sections 111 and
15 116.”; and

16 (3) by striking out subsection (c).

17 (b) DESIGNATION OF JUDGES.—Section 802 of such
18 title is amended to read as follows:

19 “§ 802. Designation of Judges.

20 “(a) The court shall consist of three judges, who shall be
21 designated by the Chief Justice of the United States from
22 judges of the United States district courts and circuit courts
23 of appeals who are judges in regular active service or who
24 are senior judges. No more than two of the judges may be
25 senior judges.

1 “(b) Each judge designated under this section shall
2 serve for a term of six years and shall not be eligible for
3 redesignation, except that the judges first designated shall be
4 designated for terms of two, four, and six years.

5 “(c) The Chief Justice of the United States shall desig-
6 nate one of the judges as the chief judge of the Copyright
7 Royalty Court. The chief judge shall serve as chief judge for
8 a term of two years.

9 “(d) Any vacancy in the court shall not affect its powers
10 and shall be filled, for the unexpired term of the designation,
11 in the same manner as the original designation was made.”.

12 (c) PROCEDURES OF THE COURT.—Section 803 of such
13 title is amended to read as follows:

14 **“§ 803. Procedures of the Court**

15 “(a) The court shall adopt rules governing its proce-
16 dures and methods of operation. The court shall have a seal
17 and shall hold sessions at such places as it may specify.

18 “(b) Every final judgment of the court shall be pub-
19 lished. Such judgment shall state in detail the criteria that
20 the court determined to be applicable to the particular pro-
21 ceeding, the various facts that it found relevant to its judg-
22 ment in that proceeding, and the specific reasons for its
23 judgment.”.

24 (d) INSTITUTION AND CONCLUSION OF PROCEED-
25 INGS.—Section 804 of such title is amended—

1 (1) in subsection (a) by striking out paragraph (1)
2 and inserting in lieu thereof the following:

3 “(1) the chief judge of the court cause to be pub-
4 lished in the Federal Register, or in such other publi-
5 cation that the court considers to be an effective means
6 of notice, notice of commencement of proceedings
7 under this chapter; and”;

8 (2) in subsections (a)(2) and (d) by striking out “in
9 the Federal Register”;

10 (3) in subsection (a)(2) and each subsection that
11 follows by striking out “Tribunal” each time it appears
12 and inserting in lieu thereof “court”, and by striking
13 out “Chairman” each time it appears and inserting in
14 lieu thereof “chief judge”; and

15 (4) in subsection (e) by striking out “decision” and
16 inserting in lieu thereof “judgment”.

17 (e) **STAFF OF THE COURT.**—Section 805 of such title is
18 amended to read as follows:

19 **“§ 805. Staff of the Court**

20 “(a) The court may hire and prescribe functions and
21 duties of such personnel, including a chief staff attorney, as it
22 considers necessary or proper to carry out the provisions of
23 this chapter.

1 “(b) The court may procure temporary and intermittent
2 services to the same extent as is authorized by section 3109
3 of title 5.”.

4 (f) ADMINISTRATIVE SUPPORT OF THE COURT.—Sec-
5 tion 806 of such title is amended to read as follows:

6 “§ 806. Administrative support of the Court

7 “The Administrative Office of the United States Courts
8 shall provide the court with necessary administrative serv-
9 ices, including those related to budgeting, accounting, finan-
10 cial reporting, travel, personnel, and procurement.”.

11 (g) SECTION ON DEDUCTION OF COSTS REPEALED.—
12 Section 807 of such title is repealed.

13 (h) REPORTS OF THE COURT.—Section 808 of such
14 title is amended to read as follows:

15 “§ 807. Reports

16 “In addition to its publication of the reports of all final
17 judgments under section 803(b), the court shall make an
18 annual report to the President and the Congress concerning
19 the court’s work during the preceding fiscal year, including a
20 detailed fiscal statement of account. This report may be in-
21 cluded as part of the annual report submitted to the Congress
22 and the Attorney General by the Director of the Administra-
23 tive Office of the United States Courts under section 604 of
24 title 28.”.

1 (i) **EFFECTIVE DATE OF FINAL JUDGMENTS.**—Section
2 809 of such title is amended to read as follows:

3 **“§ 808. Effective date of final judgments.**

4 “Any final judgment by the court under this chapter
5 shall become effective 30 days following its publication as
6 provided in section 803(b), unless before the end of that 30-
7 day period an appeal has been filed under section 809 to
8 vacate, modify, or correct such judgment, and notice of such
9 appeal has been served on all parties who appeared before
10 the court in the proceeding in question. Where the proceed-
11 ing involves the distribution of royalty fees under section 111
12 or 116, the court shall, upon the expiration of such 30-day
13 period, distribute any royalty fees not subject to an appeal
14 filed under section 809.”.

15 (j) **JUDICIAL REVIEW.**—Section 810 of such title is
16 amended to read as follows:

17 **“§ 809. Judicial review**

18 “Any final judgment of the court in a proceeding under
19 section 801(b) may be appealed by an aggrieved party to the
20 United States Court of Appeals for the District of Columbia
21 within 30 days after its publication. No court shall have juris-
22 diction to review a final decision of the Copyright Royalty
23 Court except as provided in this section.”.

1 (k) DISPUTE RESOLUTION.—Chapter 8 of such title is
2 further amended by adding at the end the following new
3 section:

4 **“§ 810. Dispute resolution.**

5 “(a) After commencement of a proceeding under this
6 chapter, the court shall provide the parties to the proceeding
7 with an opportunity to decide, within a reasonable time as
8 determined by the court, on a dispute resolution procedure
9 through mediation, negotiation, arbitration, appointment of a
10 special master, or otherwise. If the parties agree on such a
11 procedure, the court shall enter an order setting forth that
12 procedure.

13 “(b) If the parties to a proceeding are unable to agree
14 on a dispute resolution procedure under subsection (a), the
15 court may enter an order providing for such a procedure.

16 “(c) Any proceeding conducted pursuant to a procedure
17 under subsection (a) or (b) shall be completed not later than 6
18 months after the commencement of the proceeding.”.

19 (l) AUTHORIZATION OF APPROPRIATIONS.—Chapter 8
20 of such title is further amended by adding at the end the
21 following new section:

22 **“§ 811. Authorization of Appropriations**

23 “There are authorized to be appropriated for fiscal years
24 beginning after September 30, 1985, such sums as may be
25 necessary to carry out the purposes of this chapter.”.

1 (I) TABLE OF SECTIONS CONFORMING AMENDMENT.—

2 The table of sections for chapter 8 of such title is amended to
3 read as follows:

4 "CHAPTER 8—COPYRIGHT ROYALTY COURT

"Sec.

"801. Copyright Royalty Court: Establishment and purpose.

"802. Designation of Judges.

"803. Procedures of the Court.

"804. Institution and conclusion of proceedings.

"805. Staff of the Court.

"806. Administrative support of the Court.

"807. Reports.

"808. Effective date of final judgments.

"809. Judicial review.

"810. Arbitration.

"811. Authorization of appropriations."

5 **SEC. 3. CONFORMING AMENDMENTS RELATING TO FUNC-**
6 **TIONS OF THE COPYRIGHT ROYALTY COURT**
7 **AND THE COPYRIGHT OFFICE.**

8 (a) **SECONDARY TRANSMISSIONS.**—Section 111 of title
9 17, United States Code, is amended—

10 (1) in subsection (d) by striking out “, after con-
11 sultation with the Copyright Royalty Tribunal (if and
12 when the Tribunal has been constituted)” each place it
13 appears in paragraphs (1) and (2);

14 (2) in subsection (d)(3)—

15 (A) in the second sentence by striking out
16 “Royalty Tribunal” and inserting in lieu thereof
17 “Office”, and

1 (B) in the third sentence by striking out
2 “Tribunal” and inserting in lieu thereof “Court”;
3 and

4 (3) in subsection (d)(5)—

5 (A) by striking out “Royalty Tribunal” each
6 place in appears and inserting in lieu thereof
7 “Office” and by striking out “Tribunal” each
8 place it appears and inserting in lieu thereof
9 “Office”, and

10 (B) by striking out the last sentence of sub-
11 paragraph (B) and inserting in lieu thereof “If the
12 Office determines that such a controversy exists,
13 the Office shall petition the Copyright Royalty
14 Court to conduct a proceeding under chapter 8 of
15 this title to determine the distribution of royalty
16 fees.”.

17 (b) PHONORECORD PLAYERS.—Section 116 of title 17,
18 United States Code, is amended—

19 (1) in subsection (b)(1)(A) by striking out “, after
20 consultation with the Copyright Royalty Tribunal (if
21 and when the Tribunal has been constituted),”;

22 (2) in subsection (c)(1)—

23 (A) in the second sentence by striking out
24 “Royalty Tribunal” and inserting in lieu thereof
25 “Office”, and

1 (B) in the third sentence by striking out
2 “Tribunal” and inserting in lieu thereof “Court”;
3 (3) in subsection (c)(2)—

4 (A) in the first sentence by striking out
5 “Royalty Tribunal” and inserting in lieu thereof
6 “Office” and by striking out “Tribunal” and in-
7 serting in lieu thereof “Office”, and

8 (B) in the second sentence by striking out
9 “810” and inserting in lieu thereof “809” and by
10 striking out “Tribunal” and inserting in lieu
11 thereof “Court”;

12 (4) in subsection (c)(3)—

13 (A) in the first sentence by striking out
14 “Royalty Tribunal” and inserting in lieu thereof
15 “Office”,

16 (B) in the second sentence by striking out
17 “Tribunal” and inserting in lieu thereof “Office”,
18 and

19 (C) by striking out the last sentence and in-
20 serting in lieu thereof “If the Office determines
21 that such a controversy exists, the Office shall pe-
22 tition the Copyright Royalty Court to conduct a
23 proceeding under chapter 8 of this title to deter-
24 mine the distribution of royalty fees. During any
25 such proceeding, the court shall allow adequate

1 opportunity to the parties involved in the contro-
2 versy to present factual evidence to the court.”;
3 (5) in subsection (c)(4)(C), by striking out “Tribu-
4 nal” and inserting in lieu thereof “Court”; and
5 (6) in subsection (c)(5)—

6 (A) by striking out “Royalty Tribunal” both
7 places it appears and inserting in lieu thereof
8 “Office”, and

9 (B) by striking out “United States District
10 Court for the District of Columbia” and inserting
11 in lieu thereof “Copyright Royalty Court”.

12 (c) **NONCOMMERCIAL BROADCASTING.**—Section 118 of
13 title 17, United States Code, is amended—

14 (1) in subsection (b)—

15 (A) by amending the first two sentences of
16 subsection (b) to read as follows:

17 “(b) The chief judge of the Copyright Royalty Court
18 shall publish in the Federal Register, or in such other publi-
19 cation that the court considers to be an effective means of
20 notice, notice of the initiation of proceedings for the purpose
21 of determining reasonable terms and rates of royalty pay-
22 ments for the activities specified in subsection (d) with re-
23 spect to published nondramatic musical works and published
24 pictorial, graphic, and sculptural works. Copyright owners
25 and public broadcasting entities shall negotiate in good faith

1 and cooperate fully with the court in an effort to reach
2 reasonable and expeditious results.”,

3 (B) by striking out “Tribunal” each place it
4 appears and inserting in lieu thereof “Court”,

5 (C) in paragraph (3) by striking out “in the
6 Federal Register”, and

7 (D) by striking out paragraph (4);

8 (2) by amending subsection (c) to read as follows:

9 “(c) The procedure specified in subsection (b) shall be
10 repeated at 5-year intervals in accordance with rules pre-
11 scribed by the Copyright Royalty Court.”; and

12 (3) in subsection (d)—

13 (A) by striking out “the transitional provi-
14 sions of subsection (b)(4), and to”, and

15 (B) by striking out “Tribunal” and inserting
16 in lieu thereof “Court”.

17 **SEC. 4. EFFECTIVE DATE.**

18 This Act shall take effect 60 days after the enactment of
19 this Act.

20 **SEC. 5. EFFECT ON PENDING CASES.**

21 Any petition pending before the Copyright Royalty Tri-
22 bunal on the date of the enactment of this Act shall be trans-
23 ferred to the Copyright Royalty Court. The reversal or
24 remand for further proceedings of any matter relating to the
25 Copyright Royalty Tribunal pending before any Federal

1 court on the date of the enactment of this Act shall be for-
2 warded to the Copyright Royalty Court for appropriate
3 action.

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