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Union Calendar No. 268

104TH CONGRESS
2D SESSION

H. R. 1861

[Report No. 104-554]

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

MAY 6, 1996

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italics*]

[For text of introduced bill, see copy of bill as introduced on June 15, 1995]

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,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Copyright Clarifications*
3 *Act of 1996”.*

4 **SEC. 2. SATELLITE HOME VIEWER ACT.**

5 *The Satellite Home Viewer Act of 1994 (Public Law*
6 *103–369) is amended as follows:*

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

9 *“(A) in clause (i) by striking ‘12 cents’ and*
10 *inserting ‘17.5 cents per subscriber in the case of*
11 *superstations that as retransmitted by the sat-*
12 *ellite carrier include any program which, if de-*
13 *livered by any cable system in the United States,*
14 *would be subject to the syndicated exclusivity*
15 *rules of the Federal Communications Commis-*
16 *sion, and 14 cents per subscriber in the case of*
17 *superstations that are syndex-proof as defined in*
18 *section 258.2 of title 37, Code of Federal Regula-*
19 *tions; and’ ”.*

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

21 *“(4) Subsection (c) is amended—*

22 *“(A) in paragraph (1)—*

23 *“(i) by striking ‘until December 31,*
24 *1992,’;*

25 *“(ii) by striking ‘(2), (3) or (4)’ and*
26 *inserting ‘(2) or (3)’; and*

1 “(iii) by striking the second sentence;

2 “(B) in paragraph (2)—

3 “(i) in subparagraph (A) by striking
4 ‘July 1, 1991’ and inserting ‘July 1, 1996’;
5 and

6 “(ii) in subparagraph (D) by striking
7 ‘December 31, 1994’ and inserting ‘Decem-
8 ber 31, 1999, or in accordance with the
9 terms of the agreement, whichever is later’;
10 and

11 “(C) in paragraph (3)—

12 “(i) in subparagraph (A) by striking
13 ‘December 31, 1991’ and inserting ‘January
14 1, 1997’;

15 “(ii) by amending subparagraph (B)
16 to read as follows:

17 ‘(B) *ESTABLISHMENT OF ROYALTY FEES.*—

18 *In determining royalty fees under this para-*
19 *graph, the copyright arbitration royalty panel*
20 *appointed under chapter 8 shall establish fees for*
21 *the retransmission of network stations and*
22 *superstations that most clearly represent the fair*
23 *market value of secondary transmissions. In de-*
24 *termining the fair market value, the panel shall*
25 *base its decision on economic, competitive, and*

1 *programming information presented by the par-*
2 *ties, including—*

3 *‘(i) the competitive environment in*
4 *which such programming is distributed, the*
5 *cost of similar signals in similar private*
6 *and compulsory license marketplaces, and*
7 *any special features and conditions of the*
8 *retransmission marketplace;*

9 *‘(ii) the economic impact of such fees*
10 *on copyright owners and satellite carriers;*
11 *and*

12 *‘(iii) the impact on the continued*
13 *availability of secondary transmissions to*
14 *the public.’; and*

15 *“(iii) in subparagraph (C), by insert-*
16 *ing ‘or July 1, 1997, whichever is later’*
17 *after ‘section 802(g)’.”.*

18 (3) *Section 2(5)(A) is amended to read as fol-*
19 *lows:*

20 *“(A) in paragraph (5)(C) by striking ‘the*
21 *date of the enactment of the Satellite Home*
22 *Viewer Act of 1988’ and inserting ‘November 16,*
23 *1988’; and”.*

1 **SEC. 3. COPYRIGHT IN RESTORED WORKS.**

2 *Section 104A of title 17, United States Code, is amend-*
3 *ed as follows:*

4 (1) *Subsection (d)(3)(A) is amended to read as*
5 *follows:*

6 “(3) *EXISTING DERIVATIVE WORKS.—(A) In the*
7 *case of a derivative work that is based upon a re-*
8 *stored work and is created—*

9 *“(i) before the date of the enactment of the*
10 *Uruguay Round Agreements Act, if the source*
11 *country of the restored work is an eligible coun-*
12 *try on such date, or*

13 *“(ii) before the date of adherence or procla-*
14 *mation, if the source country of the restored work*
15 *is not an eligible country on such date of enact-*
16 *ment, a reliance party may continue to exploit*
17 *that derivative work for the duration of the re-*
18 *stored copyright if the reliance party pays to the*
19 *owner of the restored copyright reasonable com-*
20 *ensation for conduct which would be subject to*
21 *a remedy for infringement but for the provisions*
22 *of this paragraph.”.*

23 (2) *Subsection (e)(1)(B)(ii) is amended by strik-*
24 *ing the last sentence.*

25 (3) *Subsection (h)(2) is amended to read as fol-*
26 *lows:*

1 “(2) The ‘date of restoration’ of a restored copy-
2 right is the later of—

3 “(A) January 1, 1996, the date on which
4 the Agreement on Trade-Related Aspects of Intel-
5 lectual Property referred to in section 101(d)(15)
6 of the Uruguay Round Agreements Act enters
7 into force with respect to the United States, if
8 the source country of the restored work is a na-
9 tion adhering to the Berne Convention or a WTO
10 member country on such date, or

11 “(B) the date of adherence or proclamation,
12 in the case of any other source country of the re-
13 stored work.”.

14 (4) Subsection (h)(3) is amended to read as fol-
15 lows:

16 “(3) The term ‘eligible country’ means a nation,
17 other than the United States, that, after the date of
18 the enactment of the Uruguay Round Agreements
19 Act—

20 “(A) becomes a WTO member,

21 “(B) is or becomes a member of the Berne
22 Convention, or

23 “(C) becomes subject to a proclamation
24 under subsection (g).”.

1 **SEC. 4. LICENSES FOR NONEXEMPT SUBSCRIPTION TRANS-**
2 **MISSIONS.**

3 *Section 114(f) of title 17, United States Code, is*
4 *amended—*

5 *(1) in paragraph (1), by inserting “, or ending*
6 *30 days after the Librarian issues and publishes in*
7 *the Federal Register an order adopting or rejecting*
8 *the report of the copyright arbitration royalty panel,*
9 *if such panel is convened” after “December 31, 2000”;*
10 *and*

11 *(2) in paragraph (2), by striking “and publish*
12 *in the Federal Register”.*

13 **SEC. 5. ROYALTY PAYABLE UNDER COMPULSORY LICENSE.**

14 *Section 115(c)(3)(D) of title 17, United States Code,*
15 *is amended by striking “and publish in the Federal Reg-*
16 *ister”.*

17 **SEC. 6. NEGOTIATED LICENSE FOR JUKEBOXES.**

18 *Section 116 of title 17, United States Code, is amend-*
19 *ed—*

20 *(1) by amending subsection (b)(2) to read as fol-*
21 *lows:*

22 *“(2) ARBITRATION.—Parties not subject to such*
23 *a negotiation may determine the result of the negotia-*
24 *tion by arbitration in accordance with the provisions*
25 *of chapter 8.”; and*

1 (2) *by adding at the end the following new sub-*
2 *section:*

3 “(d) *DEFINITIONS.—As used in this section, the follow-*
4 *ing terms mean the following:*

5 “(1) *A ‘coin-operated phonorecord player’ is a*
6 *machine or device that—*

7 “(A) *is employed solely for the performance*
8 *of nondramatic musical works by means of*
9 *phonorecords upon being activated by the inser-*
10 *tion of coins, currency, tokens, or other monetary*
11 *units or their equivalent;*

12 “(B) *is located in an establishment making*
13 *no direct or indirect charge for admission;*

14 “(C) *is accompanied by a list which is com-*
15 *prised of the titles of all the musical works avail-*
16 *able for performance on it, and is affixed to the*
17 *phonorecord player or posted in the establish-*
18 *ment in a prominent position where it can be*
19 *readily examined by the public; and*

20 “(D) *affords a choice of works available for*
21 *performance and permits the choice to be made*
22 *by the patrons of the establishment in which it*
23 *is located.*

24 “(2) *An ‘operator’ is any person who, alone or*
25 *jointly with others—*

1 “(A) owns a coin-operated phonorecord
2 player;

3 “(B) has the power to make a coin-operated
4 phonorecord player available for placement in
5 an establishment for purposes of public perform-
6 ance; or

7 “(C) has the power to exercise primary con-
8 trol over the selection of the musical works made
9 available for public performance on a coin-oper-
10 ated phonorecord player.”.

11 **SEC. 7. LIMITATIONS ON EXCLUSIVE RIGHTS; COMPUTER**
12 **PROGRAMS.**

13 Section 117 of title 17, United States Code, is amended
14 as follows:

15 (1) Strike “Notwithstanding” and insert the following:

16 “(a) **MAKING OF ADDITIONAL COPY OR ADAPTATION**
17 **BY OWNER OF COPY.—Notwithstanding”.**

18 (2) Strike “Any exact” and insert the following:

19 “(b) **LEASE, SALE, OR OTHER TRANSFER OF ADDI-**
20 **TIONAL COPY OR ADAPTATION.—Any exact”.**

21 (3) Add at the end the following:

22 “(c) **MACHINE MAINTENANCE OR REPAIR.—Notwith-**
23 **standing the provisions of section 106, it is not an infringe-**
24 **ment for the owner or lessee of a machine to make or author-**
25 **ize the making of a copy of a computer program if such**

1 *copy is made solely by virtue of the activation of a machine*
 2 *that lawfully contains an authorized copy of the computer*
 3 *program, for purposes only of maintenance or repair of that*
 4 *machine, provided that—*

5 “(1) *such new copy is used in no other manner*
 6 *and is destroyed immediately after the maintenance*
 7 *or repair is completed, and*

8 “(2) *with respect to any computer program or*
 9 *part thereof that is not necessary for that machine to*
 10 *be activated, such program or part thereof is not*
 11 *accessed or used other than to make such new copy by*
 12 *virtue of the activation of the machine.*

13 “(d) **DEFINITIONS.**—*For purposes of this section—*

14 “(1) *the term ‘maintenance’ of a machine means*
 15 *servicing the machine in order to make it work in ac-*
 16 *cordance with its original specifications and any*
 17 *changes to those specifications authorized for that ma-*
 18 *chine; and*

19 “(2) *the term ‘repair’ of a machine means restor-*
 20 *ing it to the state of working in accordance with its*
 21 *original specifications and any changes to those speci-*
 22 *fications authorized for that machine.”.*

23 **SEC. 8. PUBLIC BROADCASTING COMPULSORY LICENSE.**

24 *Section 118 of title 17, United States Code, is amended*
 25 *as follows:*

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

4 (2) *Subsection (b)(2) (as redesignated by para-*
5 *graph (1) of this section) is amended by striking*
6 *“(2)” each place it appears and inserting “(1)”.*

7 (3) *Subsection (e) is amended to read as follows:*

8 “(e)(1) *Except as expressly provided in this subsection,*
9 *this section shall not apply to works other than those speci-*
10 *fied in subsection (b).*

11 “(2) *Owners of copyright in nondramatic literary*
12 *works and public broadcasting entities may, during the*
13 *course of voluntary negotiations, agree among themselves,*
14 *respectively, as to the terms and rates of royalty payments*
15 *without liability under the antitrust laws. Any such terms*
16 *and rates of royalty payments shall be effective upon being*
17 *filed in the Copyright Office, in accordance with regulations*
18 *that the Register of Copyrights shall prescribe.”.*

19 **SEC. 9. REGISTRATION AND INFRINGEMENT ACTIONS.**

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

22 “(1) *serves notice upon the infringer, not less*
23 *than 48 hours before such fixation, identifying the*
24 *work and the specific time and source of its first*

1 *transmission, and declaring an intention to secure*
2 *copyright in the work; and”.*

3 **SEC. 10. COPYRIGHT OFFICE FEES.**

4 (a) *FEE INCREASES.*—Section 708(b) of title 17, Unit-
5 *ed States Code, is amended to read as follows:*

6 “(b) *In calendar year 1996 and in any subsequent cal-*
7 *endar year, the Register of Copyrights, by regulation, may*
8 *increase the fees specified in subsection (a) in the following*
9 *manner:*

10 “(1) *The Register shall conduct a study of the*
11 *costs incurred by the Copyright Office for the registra-*
12 *tion of claims, the recordation of documents, and the*
13 *provision of services. The study shall also consider the*
14 *timing of any increase in fees and the authority to*
15 *use such fees consistent with the budget.*

16 “(2) *The Register shall have discretion to in-*
17 *crease fees up to the reasonable costs incurred by the*
18 *Copyright Office for the services described in para-*
19 *graph (1) plus a reasonable inflation adjustment to*
20 *account for any estimated increase in costs.*

21 “(3) *Any newly established fee based on para-*
22 *graph (2) shall be rounded off to the nearest dollar,*
23 *or for a fee less than \$12, rounded off to the nearest*
24 *50 cents.*

1 “(4) *The fees shall be fair and equitable and give*
2 *due consideration to the objectives of the copyright*
3 *system.*”

4 “(5) *If upon completion of the study, the Reg-*
5 *ister determines that the fees should be increased, the*
6 *Register shall prepare a proposed fee schedule and*
7 *submit the schedule with the accompanying economic*
8 *analysis to the Congress. The fees proposed by the*
9 *Register may be instituted after the end of 120 days*
10 *after the schedule is submitted to the Congress unless,*
11 *within that 120-day period, a law is enacted stating*
12 *in substance that the Congress does not approve the*
13 *schedule.*”

14 (b) *DEPOSIT OF FEES.—Section 708(d) of such title*
15 *is amended to read as follows:*

16 “(d)(1) *Except as provided in paragraph (2), all fees*
17 *received under this section shall be deposited by the Register*
18 *of Copyrights in the Treasury of the United States and shall*
19 *be credited to the appropriations for necessary expenses of*
20 *the Copyright Office. Such fees that are collected shall re-*
21 *main available until expended. The Register may, in ac-*
22 *cordance with regulations that he or she shall prescribe, re-*
23 *fund any sum paid by mistake or in excess of the fee re-*
24 *quired by this section.*”

1 “(2) *In the case of fees deposited against future serv-*
2 *ices, the Register of Copyrights shall request the Secretary*
3 *of the Treasury to invest in interest-bearing securities in*
4 *the United States Treasury any portion of the fees that,*
5 *as determined by the Register, is not required to meet cur-*
6 *rent deposit account demands. Funds shall be invested in*
7 *securities that permit funds to be available to the Copyright*
8 *Office at all times if they are determined to be necessary*
9 *to meet current deposit account demands. Such investments*
10 *shall be in public debt securities with maturities suitable*
11 *to the needs of the fund, as determined by the Register of*
12 *Copyrights, and bearing interest at rates determined by the*
13 *Secretary of the Treasury, taking into consideration current*
14 *market yields on outstanding marketable obligations of the*
15 *United States of comparable maturities.*

16 “(3) *The income on such investments shall be deposited*
17 *in the Treasury of the United States and shall be credited*
18 *to the appropriations for necessary expenses of the Copy-*
19 *right Office.*”

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

21 (a) *ESTABLISHMENT AND PURPOSE.*—Section 801 of
22 *title 17, United States Code, is amended—*

23 (1) *in subsection (b)(1) by striking “and 116” in*
24 *the first sentence and inserting “116, and 119”;*

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

3 “*including—*

4 “(1) *authorizing the distribution of those royalty*
5 *fees collected under sections 111, 119, and 1005 that*
6 *the Librarian has found are not subject to con-*
7 *troversy; and*

8 “(2) *accepting or rejecting royalty claims filed*
9 *under sections 111, 119, and 1007 on the basis of*
10 *timeliness or the failure to establish the basis for a*
11 *claim”;* *and*

12 (3) *by amending subsection (d) to read as fol-*
13 *lows:*

14 “(d) *SUPPORT AND REIMBURSEMENT OF ARBITRATION*
15 *PANELS.—The Librarian of Congress, upon the rec-*
16 *ommendation of the Register of Copyrights, shall provide*
17 *the copyright arbitration royalty panels with the necessary*
18 *administrative services related to proceedings under this*
19 *chapter, and shall reimburse the arbitrators at such inter-*
20 *vals and in such manner as the Librarian shall provide*
21 *by regulation. Each such arbitrator is an independent con-*
22 *tractor acting on behalf of the United States, and shall be*
23 *paid pursuant to a signed agreement between the Library*
24 *of Congress and the arbitrator. Payments to the arbitrators*

1 *shall be considered costs incurred by the Library of Congress*
2 *and the Copyright Office for purposes of section 802(h)(1).”.*

3 (b) *PROCEEDINGS.—Section 802(h)(1) of title 17,*
4 *United States Code, is amended—*

5 (1) *by amending the heading to read “DEDUC-*
6 *TION OF COSTS OF LIBRARY OF CONGRESS AND COPY-*
7 *RIGHT OFFICE FROM ROYALTY FEES.—”;*

8 (2) *in the first sentence by inserting “to support*
9 *distribution proceedings” after “Copyright Office”;*
10 *and*

11 (3) *by amending the third sentence to read as*
12 *follows: “In ratemaking proceedings, the Librarian of*
13 *Congress and the Copyright Office may assess their*
14 *reasonable costs directly to the parties to the most re-*
15 *cent relevant arbitration proceeding, 50 percent of the*
16 *costs to the parties who would receive royalties from*
17 *the royalty rate adopted in the proceeding and 50*
18 *percent of the costs to the parties who would pay the*
19 *royalty rate so adopted, subject to the discretion of the*
20 *arbitrators to assess costs under subsection (c).”.*

21 **SEC. 12. DIGITAL AUDIO RECORDING DEVICES AND MEDIA.**

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

1 **SEC. 13. TREATMENT OF PRE-1978 PUBLICATION OF SOUND**
2 **RECORDINGS.**

3 *Section 303 of title 17, United States Code, is amend-*
4 *ed—*

5 *(1) by striking “Copyright” and inserting “(a)*
6 *Copyright”;* and

7 *(2) by adding at the end the following:*

8 *“(b) The distribution before January 1, 1978, of a pho-*
9 *norecord shall not for any purpose constitute a publication*
10 *of the musical work embodied therein.”*

11 **SEC. 14. CONFORMING AMENDMENT.**

12 *Paragraph (5) of section 4 of the Digital Performance*
13 *Right in Sound Recordings Act of 1995 is redesignated as*
14 *paragraph (4).*

15 **SEC. 15. EFFECTIVE DATES.**

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

19 *(b) SATELLITE HOME VIEWER ACT.—The amend-*
20 *ments made by section 1 shall be effective as if enacted as*
21 *part of the Satellite Home Viewer Act of 1994 (Public Law*
22 *103–369).*

11)