

agreement has been published in the Federal Register by the Copyright Office. Such deals are authorized to cover the retroactive fees, as well as those going forward.

Second, the substitute amendment imposes a 6 month moratorium on fee collections from noncommercial entities, to allow for negotiations with such entities. This provision is particularly important for noncommercial webcasters, such as those operating at colleges and universities. The Librarian's decision contained an anomaly under which nonprofit entities that held FCC licenses were given a lower per performance rate than were commercial entities, but no such provision was made for noncommercial entities that were not FCC licensees. The bill provides a moratorium on the collection of royalties in order for an alternative agreement to be reached.

It also authorizes Sound Exchange to postpone retroactive royalty collections from small webcasters with whom it is negotiating deals. The original House-passed bill recognized the retroactive burden on many of the small commercial webcasters by allowing them to make their payments based on a percentage of revenue or percentage of expense, but also allows both small commercial and non-commercial webcasters to pay these retroactive fees in three payments over the span of a year.

Third, the substitute amendment adopts language making clear that such deals are not precedent in any judicial proceeding or in future CARPs.

Fourth, the substitute amendment provides for direct payment to artists and deductibility of expenses from the proceeds of the royalties.

Finally, the substitute amendment authorizes a GAO/Copyright Office study on the impact of agreements between third parties and webcasters and the effect that such agreements should have on percentage of expense royalty rates. This authorization does not contain any preliminary findings or sense of the Congress language as to how such study should be resolved.

The agreement to be negotiated between Sound Exchange and small webcasters will likely reflect the rates and terms set forth in the original House-passed bill. These terms provide an option of paying a percentage of revenue and stay in business. As one Vermont webcaster told me, "Although the percentage of revenue is too high, at least we have the option. A percentage of revenue deal with enable [us] to stay in business moving forward, grow our audience, and compete."

The Librarian of Congress royalty rate is based on a per performance formula, which has the unfortunate effect of requiring webcasters to pay high fees for their use of music, even before the audience of the webcaster has grown to a sufficient size to attract any appreciable advertising revenues. Without any percentage of revenue option (as the legislation allows), the

webcasting industry would be closed to all but those with the substantial resources necessary to subsidize the business until the advertising revenues caught up to the per performance royalty rate.

A number of concerns have been raised that the rate and terms of the agreements authorized under the substitute amendment do not constitute evidence of any rates, rate structure, fees, definitions, conditions or terms that would have been negotiated in the marketplace between a willing buyer and willing seller. The concern stems from the DMCA's statutory license fee standard directing the CARP to establish rates and terms "that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller," rather than a determination of "reasonable copyright royalty rates" according to a set of balancing factors. This new webcasting standard may be having the unfortunate and unintended result that webcasters and copyright owners are concerned that the rates and terms of any voluntary licensing agreements will be applied industry-wide. The new webcasting standard appears to be making all sides cautious and reluctant to enter into, rather than facilitating, voluntary licensing agreements.

Passage of this legislation does not mean that our work is done. As this webcasting issue has unfolded, I have heard complaints from all sides about the fairness and completeness of procedures employed in the arbitration. Indeed, the concerns of many small webcasters were never heard, since the cost of participating in the proceedings was prohibitively expensive and their ability to participate for free was barred by procedural rules. One thing is clear: Compulsory licenses are no panacea and their implementation may only invite more congressional intervention. To avoid repeated requests for the Congress or the courts to intercede, we must make sure the procedures and standards used to establish the royalty rates for the webcasting and other compulsory licenses produce fair, workable results. Next year, we should focus attention on reforming the CARP process.

ADDITIONAL STATEMENTS

IN CELEBRATION OF THE TENTH ANNIVERSARY OF CAB CALLOWAY SCHOOL OF THE ARTS IN WILMINGTON, DELAWARE

• Mr. CARPER. Mr. President, I rise today to celebrate the 10th anniversary of the Cab Calloway School of the Arts in Wilmington, the first public arts school in the State of Delaware. Since the late Cab Calloway cut the ribbon for the school's grand opening on November 23, 1992, the school has ex-

panded from a small middle school with vocal detractors to an overwhelmingly successful experiment in public school choice, boasting an enrollment of 760 6th to 12th graders. If their first decade is any indication of what they will offer in the future, we have much to look forward to.

Cab Calloway School of the Arts works to provide young people from diverse backgrounds with intensive training in the arts and a comprehensive academic curriculum that will prepare them for success in higher education and employment. They are succeeding.

The school's halls are filled with talented faculty, skilled supervisors, and dedicated staff. Its students have been awarded numerous accolades and recognition for their art, writing, theatre, academics, vocal and band performances, as well as academics.

Cab Calloway's students continue to defy the odds, meeting or exceeding our State's standards in reading, writing and math. Last year, the school's 10th graders ranked among the very highest in the State in reading and writing comprehension. Mixing academics with freedom of expression and strong parental support has boosted their students' self-confidence and given us all something to feel good about.

When I served as Governor of Delaware, Cab Calloway's students performed, at my request, at the Hotel DuPont for the Governor's National Association. They helped me celebrate my second inauguration as Governor at the Wilmington Grand Opera House and have since been named to the Governor's School of Excellence. They continue to make me proud.

Cab Calloway School of the Arts has represented the State of Delaware at The Kennedy Center in Washington DC, and its students have performed at the Delaware Mentoring Council Celebrations in Wilmington and Dover, attended by GEN. Colin Powell.

These days I work closely with HILLARY CLINTON in the Senate. When I brought her to tour the Cab Calloway School of the Arts in 1996, she was our First Lady, and I made sure that a tour showcasing the best of Delaware included the innovative school. We talked about the importance of school choice and the inroads made possible by a school dedicated to providing a cultural and academic experience that instills character and a greater appreciation of the arts.

As Governor of Delaware, and now as Senator, I have shared with people across America the story of Cab's success. I tell them about teachers such as Marty Lassman, who daily demonstrate unparalleled commitment and patience, the support staff that is there when needed, the students who again and again exceed expectations, and the parents and family members who understand they have an obligation to be full partners in the education of their children. Together, they serve as an inspiration and an example to communities across the country.

Delaware is a small State, but we are building a growing record of achievement in public school education. State-wide, scores have again increased in all grades and across the board in reading and math, as we begin to close the achievement gap.

Much of what we have accomplished in Delaware, and at the Cab Calloway School of the Arts, serves as a model for our Nation.

I thank the staff and students of the school, both past and present, for their efforts to create a more meaningful experience for our students, and I wish Cab Calloway School of the Arts a very happy 10th anniversary.

I rise today to offer my full support to future generations of students and educators at Cab Calloway School of the Arts and congratulate this extraordinary school on a remarkable decade of success.●

HONORING NATHANIEL BANKSTON UPON HIS RETIREMENT

● Mr. DASCHLE. Mr. President, today I want to share with my colleagues the dedication and public service rendered by Nathaniel Bankston, Registrar of Voters in East Baton Rouge Parish. He is retiring from public service today, and as he enters a new phase in his life, I look back and remember his accomplishments.

Mr. Bankston has served as the Registrar of Voters of East Baton Rouge Parish since 1969. His dedication to "getting the job done" causes him to reach out to both all parties, regardless of affiliation. He is a respected member of the community, having served as president of the Louisiana Registrars of Voters Associations, member on the Board of Trustees of the Louisiana Registrars of Voters Retirement System, and president of the East Baton Rouge Parish Board of Election Supervisors. He is a lifelong resident of Louisiana, having graduated from southeastern Louisiana University in Hammond, LA, in 1972.

He has spent his entire life striving to make Louisiana a better place, and it is with a heavy heart that I see him retire. Mr. Bankston is an upstanding citizen and it is my hope that his future holds all that he desires.●

HONORING THE LIFE OF ARNI COHEN

● Mr. BAYH. Mr. President, I rise to pay tribute to a fellow Hoosier, whose life embodied American ideals of entrepreneurship, community, and service.

In Indiana, we mourn Arni Cohen's death. Mr. Cohen began a pizza business by purchasing his first Arni's restaurant in 1965. Through a mixture of expansions and franchising, Mr. Cohen embodied the principle of free enterprise by populating 13 different cities in Indiana with nearly two dozen of his restaurants. Mr. Cohen's undying love for his community and baseball prompted him to create a softball

league for the community of West Lafayette, where he played with and managed the team. Always a community-minded individual, Arni Cohen also offered his restaurants to upstart musicians and comedians, allowing them to pave their way into show business. Mr. Cohen's years in the Army and his years as a city council member illustrate his commitment to serving his country and community.

Family and friends remember Arni Cohen as a charitable person, always smiling, and eager to offer a kind word to everyone. Mr. Cohen loved his community, honorably serving it for 37 years. His dedication and kindness to his community are a credit to his family and to the State of Indiana.

It is my privilege to pay tribute to Arni Cohen for his commitment and service by honoring him in the official record of the Senate. I send my heartfelt condolences to his family, friends, and the community of West Lafayette.

When I reflect upon the lives of men such as Arni Cohen, who dedicated his life to serving others, I am reminded of the principles of public service.●

RETIREMENT OF RON KING

● Mr. CRAPO. Mr. President, I rise today to acknowledge the upcoming retirement of Ron King, Director of Communications at the Department of Energy's Idaho Operations Office. The DOE Idaho Operations Office oversees management of the Idaho National Engineering and Environmental Laboratory, INEEL, and for almost 10 years Ron has served, with distinction, as the director of communications.

Ron's service to his country began with a career in United States Navy, which included various intelligence and administrative positions. After retiring from the U.S. Navy in 1979, Ron continued to work with the Navy as a Government and contractor employee. Ron's public service culminated with his service to the Department of Energy with posting in Montana and Idaho.

As Director of Communications, Ron served as the interface between the DOE and various stakeholders such as State of Idaho officials, the Idaho congressional delegation, tribal governments, community groups, academic institutions and media outlets. In each of these groups, Ron is well-known and respected and the DOE has benefited from Ron's representation.

Public service involves personal sacrifice, commitment to duty and hard work. Ron King exemplified these values during his service in the Idaho Operations Office. Ron will leave big shoes to be filled and his service will not be forgotten.

I want to wish Ron and his wife Cindy all of the best as Ron leaves Government service.●

EFFECTIVE DATE PROVISION OF INVOLUNTARY BANKRUPTCY CLARIFICATION

● Mr. BAUCUS. Mr. President, we are all aware that last Thursday the House failed to pass the conference report on H.R. 333, the bankruptcy reform measure. Further, failing to pass H.R. 333, the version of bankruptcy reform that the House did pass last Friday was not taken up for Senate consideration this past week for several reasons. However there are much needed reforms in the bankruptcy bill and one in particular that I would like to discuss today.

It is my understanding that the final bill passed by the House did contain a number of technical corrections that were agreed to on a bipartisan, bicameral basis after inadvertent drafting errors were discovered following the conclusion of the work of the conference committee on H.R. 333. One such error involved the effective date provision of section 1234. Section 1234 was not a new provision of law but a reiteration of current law. This section made clear that a claim that is in bona fide dispute over the existence of liability, or the amount of that liability, cannot be used as the basis for bringing an involuntary bankruptcy action. This clarification is consistent with the 1984 legislative history of this portion of Section 303 of the Bankruptcy Code. It also tracks the decisions of all five Courts of Appeal that have ruled on the bona fide dispute bar to the bringing of involuntary bankruptcy actions.

Section 1234 restated and strengthened congressional intent that an involuntary bankruptcy action should not be employed by litigants seeking to gain more leverage than they would have if they disputed contract performance in the proper judicial forum. The respondent in a bona fide dispute over liability for a claim or the amount thereof should not be disadvantaged by the stigma and expense of an involuntary bankruptcy proceeding, nor should our overcrowded bankruptcy courts be burdened with such disputes. In as much as section 1234 restated existing law, it was given immediate effect upon enactment—but, due to a drafting error, it would not have applied to cases now pending before the bankruptcy courts. This mistake would have had a particularly perverse effect in the five Federal circuits that have correctly ruled that bona fide dispute standard applies to both liability and the amount thereof; no circuit court has reached a contrary conclusion.

As soon as the conferees became aware of this mistake, they worked to fashion a correction contained in a concurrent resolution to be adopted simultaneously with the conference report. That and other enrolling changes were incorporated in the bankruptcy bill passed by the House last Friday. The involuntary bankruptcy provision was contained in section 1233 of that measure, which stated that "This section and the amendments made by this