SEC. 3. RURAL HEALTH CARE FACILITY, FORT BERTHOLD INDIAN RESERVATION, NORTH DAKOTA.

The Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act is amended—

(1) in section 3504 (106 Stat. 4732), by adding at the end the following:

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.''; and

(2) by striking section 3511 (106 Stat. 4739) and inserting the following:

''SEC. 3511. RURAL HEALTH CARE FACILITY, FORT BERTHOLD INDIAN RESERVATION, NORTH DAKOTA.

''There are authorized to be appropriated to the Secretary of Health and Human Services $20,000,000 for the construction of, and such sums as are necessary for other expenses relating to, a rural health care facility on the Fort Berthold Indian Reservation of the Three Affiliated Tribes, North Dakota.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Nevada (Mr. GIBBONS) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) each will control 20 minutes.

The Chair recognizes the gentleman from Nevada (Mr. GIBBONS).

GENERAL LEAVE

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous material on the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nevada?

There was no objection.

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Senate 1146 was sponsored by the gentleman from North Dakota, Senator KENT CONRAD. It was reported by unanimous consent of the House Resources Committee on June 3, 2004.

This legislation fulfills a government commitment to replace a U.S. Public Health Service hospital serving the members of the Three Affiliated Tribes of the Fort Berthold Reservation. In the late 1940s, the hospital was destroyed in a flood resulting from the construction of the Garrison Dam and Reservoir Project by the U.S. Army Corps of Engineers and the Bureau of Reclamation. The flood forced the relocation of many Indian families, and it is long overdue that Congress fulfills all components of its pledge to compensate the tribe. I urge the speedy adoption of this bill.

Mr. Speaker, I reserve the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in 1948, then Chairman George Gillette of the Three Affiliated Tribes of Fort Berthold, North Dakota, wept as a contract was signed to sell over 150,000 acres of tribal land to the U.S. Government to build the Garrison Dam. Through his grief, Chairman Gillette stated, ''We will sign this contract with a heavy heart. With a few scratches of the pen, we will sell the best part of our reservation. Right now, the future does not look good for us.''

Chairman Gillette was correct as 80 percent of the tribe was forcibly relocated, 94 percent of their agricultural land was destroyed and their hospital flooded. Today, 56 years later, Chairman Gillette can now smile as we finally authorize this health care facility.

Over this period of time, there has been one reason or another not to fulfill this promise made to the tribes. In fact, we are only here today because of the hard work and determined persistence of several people. The North Dakota delegation, led by Senator CONRAD, the sponsor of this bill, has worked tirelessly to get this passed. Senators CONRAD and DORGAN and our colleague, the gentleman from North Dakota (Mr. POMEROY), deserve much of the credit. I also want to thank the gentleman from California (Mr. POMBO) for allowing this bill to come to the floor today.

I would truly be remiss, however, if I did not credit Tex Hall, chairman of the Three Affiliated Tribes of Fort Berthold, and Ranking Member RAHALL of the Committee on Resources for all of their efforts to get us here today. Certainly there is a connection through the years from Chairman Gillette to Chairman Hall which has kept the drumbeat alive and steady not to give up the fight for this facility. Ranking Member RAHALL heard that drum and took heed, making this bill a high priority. You see, Mr. Speaker, the gentleman from West Virginia knows all too well how promises made when resources are desired can quickly turn into devastated lands and broken promises. With that empathy, the gentleman from West Virginia kept pushing to get this bill heard today and I thank him.

Mr. Speaker, I urge my colleagues to support this bill.

Mr. Speaker, I yield such time as he may consume to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. I thank my colleague for yielding me this time.

Mr. Speaker, this bill corrects a long overdue problem. When the Missouri River was dammed in North Dakota as part of the Pick-Sloan water project, the resulting flood created a lake about the size of Rhode Island. The lake is still with us. A number of communities were flooded out in the course of creating the reservoir. One of them, Elbowoods, was a community that was part of the Three Affiliated Tribes Reservation in western North Dakota. Elbowoods had a hospital, a 28-bed, 35,000 square foot hospital, a most significant medical facility in that rural part of North Dakota, certainly the most significant medical facility serving the reservation.

In order to persuade the Three Affiliated Tribes, Mandan, Hidatsa and Arikare nations, to vote in favor of the dam and give up 156,000 acres under this reservoir, the Federal Government made a commitment to replace the hospital. The tribes in western North Dakota are still waiting. This authorization will authorize up to $20 million for the construction of this medical facility.

My colleagues, I am very familiar with this area. I have been there many, many times. I am acquainted with their medical facilities. They are grossly inadequate. This is an area where there are significant health needs and grossly inadequate facilities in which to meet them and a 50-year promise unmet by the Federal Government.

I certainly want to thank those that have made it possible for this bill to come to the floor, the gentleman from California (Mr. POMBO) and, of course, as was mentioned by the preceding speaker, the very aggressive, ongoing efforts by the gentleman from West Virginia (Mr. RAHALL) to get this matter considered.

As I told the gentleman from California (Mr. POMBO), this matter is deeply important to me as a representative of North Dakota because I feel so strongly about the injustice of what was done with the flooding out of this hospital, promising another one and then never getting it done; so I am really deeply grateful that this has been allowed for consideration under the suspension calendar. I urge the unanimous adoption of it in the course of our deliberations.

Mrs. CHRISTENSEN. Mr. Speaker, I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

It marks a historic point in the Committee on Resources, having just passed its more than 200th piece of legislation under suspension in the House for the year which sets a record for not only the committee but I believe for the House in terms of legislation passed.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. GIBBONS) that the House suspend the rules and pass the Senate bill, S. 1146.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

CORRECTING ENROLLMENT OF H.R. 1417

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 145) to correct the enrollment of H.R. 1417.

The Clerk read as follows:

S. CON. RES. 145

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of H.R. 1417, an Act to amend title 17,

United States Code, to replace copyright arbitration royalty panels with Copyright Royalty Judges, and for other purposes (the Copyright Royalty and Distribution Reform Act of 2004), the Clerk of the House of Representatives shall make the following corrections:

(1) In section 801 of title 17, United States Code, as amended by section 3(a) of H.R. 1417—

(A) in subsection (b)(7)(A)—

(i) in clause (i), strike ''the other participants'' and insert ''participants''; and

(ii) in clause (ii), strike ''any other participant described in subparagraph (A)'' and insert ''any participant described in clause (i)'';

(B) in subsection (b)(7)(B), strike ''118(b) (2) or (3)'' and insert ''118(b)(2)'';

(C) in subsection (b)(8), insert a comma after ''802(g)''; and

(D) in subsection (c), strike ''As provided in section 801(f)(1), the'' and insert ''The''.

(2) In section 802 of title 17, United States Code, as amended by section 3(a) of H.R. 1417—

(A) in subsection (a)(1), in the second sentence—

(i) strike ''two Copyright'' and insert ''2 Copyright''; and

(ii) strike ''one shall'' and insert ''1 shall'';

(B) in subsection (c)—

(i) strike ''appointed the Chief Copyright'' and insert ''appointed as the Chief Copyright''; and

(ii) strike ''appointed Copyright'' and insert ''appointed as Copyright''; and

(C) in subsection (f)—

(i) in paragraph (1)(A)(ii), strike ''14 days of receipt by the Register of Copyrights of all'' and insert ''14 days after the Register of Copyrights receives all'';

(ii) in paragraph (1)(B)(i)—

(I) strike ''The Register shall'' and insert ''The Register of Copyrights shall'';

(II) strike ''30 days of receipt by the Register of Copyrights of all'' and insert ''30 days after the Register of Copyrights receives all''; and

(III) in the last sentence, insert ''to the Copyright Royalty Judges'' after ''is timely delivered'';

(iii) in paragraph (1)(D)—

(I) insert after the second sentence the following: ''The Register of Copyrights shall issue such written decision not later than 60 days after the date on which the final determination by the Copyright Royalty Judges is issued.'';

(II) in the following sentence, insert a comma after ''such written decision'';

(III) strike ''section 802(f)(1)(D)'' and insert ''this subparagraph'';

(IV) strike ''notification and undertakes to consult with'' and insert ''notification to, and undertakes to consult with,''; and

(V) strike ''fails within reasonable period after receipt of such notification'' and insert ''fails, within a reasonable period after receiving such notification,''.

(3) In section 803 of title 17, United States Code, as amended by section 3(a) of H.R. 1417—

(A) in subsection (a)(1), strike ''Librarian of Congress, copyright arbitration royalty panels,'' and insert ''the Librarian of Congress,'';

(B) in subsection (b)—

(i) in paragraph (1), amend subparagraph (A)(i) to read as follows:

''(A) CALL FOR PETITIONS TO PARTICIPATE.—(i) The Copyright Royalty Judges shall cause to be published in the Federal Register notice of commencement of proceedings under this chapter, calling for the filing of petitions to participate in a proceeding under this chapter for the purpose of making the relevant determination under section 111, 112, 114, 115, 116, 118, 119, 1004, or 1007, as the case may be—

''(I) promptly upon a determination made under section 804(a);

''(II) by no later than January 5 of a year specified in paragraph (2) of section 804(b) for the commencement of proceedings;

''(III) by no later than January 5 of a year specified in subparagraph (A) or (B) of paragraph (3) of section 804(b) for the commencement of proceedings, or as otherwise provided in subparagraph (A) or (C) of such paragraph for the commencement of proceedings;

''(IV) as provided under section 804(b)(8); or

''(V) by no later than January 5 of a year specified in any other provision of section 804(b) for the filing of petitions for the commencement of proceedings, if a petition has not been filed by that date.'';

(ii) in clause (ii) of paragraph (1)(A)—

(I) strike ''proceeding, under clause (i)'' and insert ''proceeding under clause (i)''; and

(II) strike ''section 803(b)(3)'' and insert ''paragraph (3)'';

(iii) in paragraph (4)(A), strike ''a participant in the proceeding asserts a claim in the amount of'' and insert ''the contested amount of a claim is'';

(iv) in paragraph (6)(C)—

(I) in clause (iv), insert a comma after ''orders'';

(II) in clause (v), strike ''according to'' and insert ''in accordance with''; and

(III) in clause (vi)(I), strike ''absent the discovery sought'' and insert '', absent the discovery sought,'';

(v) in clause (vii), strike ''interrogatories and'' and insert ''interrogatories, and''; and

(vi) in clause (ix)—

(I) in the first sentence, insert a comma after ''give testimony'' and insert a comma after ''inspection of documents or tangible things''; and

(II) in the last sentence, strike ''subparagraph'' and insert ''clause'';

(C) in subsection (c)—

(i) in paragraph (1), strike ''(b)(3)(C)(x)'' and insert ''(b)(6)(C)(x)'';

(ii) in paragraph (2)—

(I) in subparagraph (A)—

(aa) insert ''in a proceeding'' after ''a participant''; and

(bb) strike ''a proceeding is issued'' and insert ''the proceeding is issued'';

(II) in subparagraph (B), strike ''their initial determination concerning rates and terms to the participants in the proceeding'' and insert ''to the participants in the proceeding their initial determination concerning rates and terms''; and

(III) in subparagraph (C), strike ''except as provided under subsection (d)(1)'' and insert ''except that nonparticipation may give rise to the limitations with respect to judicial review provided for in subsection (d)(1)''; and

(iii) in paragraph (6), strike ''Following review of the determination by the Register of Copyrights under section 802(f)(1)(D)'' and insert ''By no later than the end of the 60-day period provided in section 802(f)(1)(D)''; and

(D) in the second sentence of subsection (d)(2)(A), strike ''transmission service'' and insert ''licensee''.

(4) In section 5(b)(1)—

(A) in subparagraph (A), strike ''and'' at the end;

(B) strike subparagraph (B); and

(C) redesignate subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(5) In the amendment made by section 5(b)(1)(A)—

(A) strike ''5-year periods'' and insert ''5-year period''; and

(B) strike ''such other periods'' and insert ''such other period''.

(6) Strike paragraph (3) of section 5(b) and insert the following:

(3) in paragraph (5), by striking ''determination by a copyright arbitration royalty panel or decision by the Librarian of Congress'' and inserting ''decision by the Librarian of Congress or determination by the Copyright Royalty Judges'';

(7) In the amendment made by section 5(c)(1)(A)(i)—

(A) strike ''5-year periods'' and insert ''the 5-year period''; and

(B) strike ''different transitional periods are provided in section 804(b), or such periods'' and insert ''a different transitional period is provided under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004, or such other period''.

(8) In the amendment made by section 5(c)(1)(B)(i), strike 'in section 804(b)'' and insert ''under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004''.

(9) In the amendment made by section 5(c)(2)(A)—

(A) strike ''5-year periods'' and insert ''the 5-year period''; and

(B) strike ''different transitional periods are provided in section 804(b), or such periods'' and insert ''a different transitional period is provided under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004, or such other period''.

(10) In the amendment made by section 5(c)(2)(B)(i), strike 'in section 804(b)'' and insert ''under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004''.

(11) Strike paragraph (3) of section 5(c) and insert the following:

(3) in paragraph (3), by striking ''determination by a copyright arbitration royalty panel or decision by the Librarian of Congress'' and inserting ''decision by the Librarian of Congress or determination by the Copyright Royalty Judges''; and

(12) In section 5(c)(4)(B), insert ''of subparagraph (A) the following:'' after ''by adding after the first sentence''.

(13) In the amendment made by section 5(d)(3)(A), strike ''during periods'' and insert ''during the period''.

(14) In section 5(d)(4)—

(A) strike ''and'' at the end of subparagraph (B);

(B) add ''and'' after the semicolon at the end of subparagraph (C); and

(C) add after subparagraph (C) the following:

(D) in the last sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''.

(15) In the amendment made by section 5(d)(5)(A)(i), strike '', Copyright Royalty Judges, or a copyright arbitration royalty panel to the extent those determinations were accepted by the Librarian of Congress'' and insert ''or Copyright Royalty Judges''.

(16) In the amendment made by section 5(f)(1)(B)—

(A) strike '', a copyright arbitration royalty panel,''; and

(B) strike ''to the extent that they were accepted by the Librarian of Congress,''.

(17) In section 5, insert the following after subsection (g) and redesignate succeeding subsections accordingly:

(h) RATEMAKING FOR SATELLITE CARRIERS.—Section 119(c) of title 17, United States Code, is amended—

(1) in paragraph (2)—

(A) in subparagraph (B), by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(B) in subparagraph (C), by striking ''Register of Copyrights shall prescribe'' and inserting ''Copyright Royalty Judges shall prescribe as provided in section 803(b)(6); and

(2) in paragraph (3)—

(A) in subparagraph (A)—

(i) by striking ''arbitration proceedings'' and inserting ''proceedings''; and

(ii) by striking ''arbitration proceeding'' and inserting ''proceedings'';

(B) in subparagraph (B)—

(i) by striking ''copyright arbitration royalty panel appointed under chapter 8'' and inserting ''Copyright Royalty Judges''; and

(ii) by striking ''panel shall base its decision'' and inserting ''Copyright Royalty Judges shall base their determination''; and

(C) in subparagraph (C)—

(i) in the heading, by striking ''DECISION OF ARBITRATION PANEL OR ORDER OF LIBRARIAN'' and inserting ''DETERMINATION UNDER CHAPTER 8''; and

(ii) by striking clauses (i) and (ii) and inserting the following:

''(i) is made by the Copyright Royalty Judges pursuant to this paragraph and becomes final, or

''(ii) is made by the court on appeal under section 803(d)(3),''.

(18) In the first sentence of section 6(b)(1)—

(A) strike ''date of enactment of this Act'' and insert ''effective date provided in subsection (a)''; and

(B) strike ''such date of enactment'' and insert ''such effective date''.

(19) Strike paragraph (2) of section 6(b) and insert the following:

(2) CERTAIN ROYALTY RATE PROCEEDINGS.—Notwithstanding paragraph (1), the amendments made by this Act shall not affect proceedings to determine royalty rates pursuant to section 119(c) of title 17, United States Code, that are commenced before January 31, 2006.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from California (Mr. BERMAN) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on Senate Concurrent Resolution 145 currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, prior to our last recess, the other body was frantically applying their finishing touches to H.R. 1417, a bill to reform the copyright royalty arbitration process which we will consider in a few minutes. When we get to that bill, I will describe the core amendments that were developed there. For now, I will just state that they are acceptable to the House Committee on the Judiciary.

Unfortunately, in the rush to send the amended bill back to the House, some inadvertent drafting errors were included in the text. The purpose of this concurrent resolution which passed the other body yesterday is to correct these provisions before the fact in the enrollment of the bill. In other words, the concurrent resolution will automatically make the appropriate changes to H.R. 1417, thereby ensuring that the measure will work as intended.

□ 1700

The most expeditious way to address this matter is by concurring in the Senate concurrent resolution. Because we cannot approve H.R. 1417 conditionally, it is important that we consider and support the enrolling resolution first.

The concurrent resolution is especially important because of the interaction of the present language in H.R. 1417 with that of H.R. 4518, the Satellite Home Viewer Extension and Reauthorization Act of 2004, which passed the House on October 6. Among other things, that measure extends the copyright compulsory license for satellite broadcasts for another 5 years.

As the Committee on the Judiciary moved H.R. 4518 through the legislative process, the major developers of copyrighted programming and the satellite carriers arrived at a voluntary agreement on the use and compensation of this programming.

However, the relevant Senate text in H.R. 1417 inadvertently required rate-making proceedings under the satellite license to be conducted pursuant to the rules and practices in place prior to the enactment of the CARP performed bill. This conflicts with those provisions in the satellite bill that take into account the voluntary agreement. In other words, unless the error is corrected, the voluntary agreement will not work as intended once the satellite bill is adopted.

Senate Concurrent Resolution 145 will ensure that the voluntary agreement and the text of the satellite bill will operate as intended by Congress and the parties to the rate-making negotiations.

This major fix aside, the concurrent resolution makes other noncontroversial tweaks to additional drafting errors. These tweaks include developing language that clarifies certain definitions; imposing time deadlines on the Copyright Office when reviewing legal matters; and tightening those rules that prevent claimants from ''gaming'' small-claim proceedings.

Finally, the concurrent resolution eliminates typographical errors and adopts other grammatical and stylistic changes where appropriate.

Mr. Speaker, after 3 years of the excruciating process, it is time to put CARP reform to bed. I urge Members to support this concurrent resolution and the underlying bill.

Mr. Speaker, I reserve the balance of my time.

Mr. BERMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I ask my colleagues to join me in supporting Senate Concurrent Resolution 145. It is a critical adjunct to H.R. 1417, the next bill to be considered on the suspension calendar today. S. Con. Res. 145 will correct a number of drafting errors within H.R. 1417 prior to enrollment of that bill. While many of these drafting errors are purely technical in nature, some may have significant negative repercussions. So it is critical that we concur in S. Con. Res. 145 now and thus ensure these errors will be corrected before H.R. 1417 becomes law.

I am not going to bore my colleagues with an explanation of all the technical changes made by S. Con. Res. 145, but I would like to bore my colleagues with a few of the changes that have the most substantive effect.

S. Con. Res. 145 ensures that H.R. 1417 will not create a major conflict with H.R. 4518, the satellite bill now pending before the Senate. Section 6(b)(2) of H.R. 1417 states that, notwithstanding any other provision of law, satellite license rate-setting proceedings will be conducted pursuant to the law, rules and practices in place prior to enactment of H.R. 1417. Thus, even if H.R. 4518 is enacted after H.R. 1417, section 6(b)(2) would take precedence over the provisions of H.R. 4518. Such an outcome would undo provisions of H.R. 4518 that created an expedited procedure for submitting and adopting voluntary section 119 rate agreements and thus undo language critical to the viability of H.R. 4518. S. Con. Res. 145 fixes this problem by ensuring that the process H.R. 4518 may later establish for determining satellite TV royalties will not be preempted by the terms of H.R. 1417.

S. Con. Res. 145 also addresses the concern that the Senate amendments to H.R. 1417 will render it impossible for decisions of copyright royalty judges to take effect.

The Senate amendments to H.R. 1417 state that the Librarian of Congress shall cause a copyright royalty judge determination to be published in the Federal Register following the Register's review of the CRJ's determination. However, the Register's review is both permissive and unlimited in time. If the Register never undertakes such a review, H.R. 1417 would appear to prohibit the Librarian from publishing the CRJ's determination.

S. Con. Res. 145 addresses this problem by establishing a time frame within which the Register must complete its review for legal error. As a result, the Librarian will, after a date certain, be authorized to publish the determinations of CRJs.

S. Con. Res. 145 addresses concerns that, as structured in Senate-passed H.R. 1417, the small claims process in distribution proceedings would not work. H.R. 1417 allows a distribution proceeding participant, who has a legitimate claim of $6 to avoid being forced into a small claims proceeding if he asserts a claim of $10,005. However, under H.R. 1417, that same participant cannot be sanctioned for bad faith inflation of a claim because the amount in controversy is less than $10,000. This anomaly allows participants to game the system and force full-blown distribution proceedings, exactly the problem small claim proceedings were designed to address.

S. Con. Res. 145 addresses this problem by hewing to the approach taken in the House-passed version of H.R. 1417. This approach ensures that participants are forced into small claims proceedings if the contested amount of their claim is $10,000 or less. Thus, a participant who asserts a claim of $10,005 could still be forced into a small claims proceeding if other participants asserted they were willing to pay $6, and thus the contested amount is less than $10,000. If the participant attempts to game the system by asserting a claim of $10,007, then the participant would face fines for asserting in bad faith an amount in controversy in excess of $10,000.

And, finally, S. Con. Res. 145 addresses one further substantive problem created by the Senate amendments to H.R. 1417. H.R. 1417 unintentionally removed the current legal requirement that voluntary agreements submitted to establish rates and terms under the section 112 compulsory license must include a minimum payment for uses of copyrighted works covered by section 112. S. Con. Res. 145 would ensure that H.R. 1417 does not alter this current legal obligation.

In conclusion, Mr. Speaker, adoption of S. Con. Res. 145 is critical to ensuring that H.R. 1417, which we will take up next, will operate as intended. Thus, I urge its adoption by my colleagues.

Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. CONYERS), ranking member of the Committee on the Judiciary.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Speaker, I thank the gentleman from California (Mr. BERMAN), ranking member of this very important Subcommittee on Courts, the Internet, and Intellectual Property, for yielding me this time.

His explanation has been more than sufficient in which we make sure that what we are doing with the Copyright Arbitration Royalty Panel is done correctly. And with H.R. 1417, with which I was pleased to join him and the gentleman from Wisconsin (Chairman SENSENBRENNER) and gentleman from Texas (Mr. SMITH), subcommittee chairman, on, with the gentleman from California (Mr. BERMAN), does it.

Mr. Speaker, I rise in support of this legislation. Those of us in Congress and the private sector who follow how the government sets copyright royalty rates agree that the current system needs change. It is expensive, unwieldy, and too unpredictable. Based on that, subcommittee Chairman SMITH, subcommittee Ranking Member BERMAN, and I introduced legislation, H.R. 1417, that would make substantial procedural changes.

We heard the current system is costly because the copyright owners and users have to pay for the arbitrators. Because copyright law subjects copyright owners and users to a compulsory process, we believe the law should not place this additional financial burden on them. Our bill creates 3 Copyright Royalty Judges who would be paid from appropriated funds to set royalty rates and distribute royalty fees.

Another complaint was that the CARP does not have adequate rules on how to address hearsay evidence. This bill explicitly requires that the judges treat hearsay evidence in the same manner that it is treated in Federal court. This will bring uniformity to the proceedings for parties on both sides of royalty disputes.

This bill also alters the terms for which certain royalty rates are in effect. Rates that are determined by the Judges will be in effect for 5 years. This should create some predictability and uniformity for those who rely on the Judges' determinations.

I urge my colleagues to vote "yes" on this bill as amended.

Mr. BERMAN. Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. STEARNS). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and concur in the Senate concurrent resolution, S. Con. Res. 145.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

COPYRIGHT ROYALTY AND DISTRIBUTION REFORM ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 1417) to amend title 17, United States Code, to replace copyright arbitration royalty panels with Copyright Royalty Judges, and for other purposes.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Copyright Royalty and Distribution Reform Act of 2004''.

SEC. 2. REFERENCE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 17, United States Code.

SEC. 3. COPYRIGHT ROYALTY JUDGE AND STAFF.

(a) IN GENERAL.—Chapter 8 is amended to read as follows:

"CHAPTER 8—PROCEEDINGS BY COPYRIGHT ROYALTY JUDGES

''Sec.
''801. Copyright Royalty Judges; appointment and functions.
''802. Copyright Royalty Judgeships; staff.
''803. Proceedings of Copyright Royalty Judges.
''804. Institution of proceedings.
''805. General rule for voluntarily negotiated agreements.

"§ 801. Copyright Royalty Judges; appointment and functions

''(a) APPOINTMENT.—The Librarian of Congress shall appoint 3 full-time Copyright Royalty Judges, and shall appoint 1 of the 3 as the Chief Copyright Royalty Judge. The Librarian shall make appointments to such positions after consultation with the Register of Copyrights.

''(b) FUNCTIONS.—Subject to the provisions of this chapter, the functions of the Copyright Royalty Judges shall be as follows:

''(1) To make determinations and adjustments of reasonable terms and rates of royalty payments as provided in sections 112(e), 114, 115, 116, 118, 119 and 1004. The rates applicable under sections 114(f)(1)(B), 115, and 116 shall be calculated to achieve the following objectives:

''(A) To maximize the availability of creative works to the public.

''(B) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

''(C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

''(D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

''(2) To make determinations concerning the adjustment of the copyright royalty rates under section 111 solely in accordance with the following provisions:

''(A) The rates established by section 111(d)(1)(B) may be adjusted to reflect—

''(i) national monetary inflation or deflation; or

''(ii) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of October 19, 1976,

except that—

''(I) if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(1)(B) shall be permitted; and

''(II) no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber.

The Copyright Royalty Judges may consider all factors relating to the maintenance of such level of payments, including, as an extenuating factor, whether the industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

''(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 15, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(1)(B) may be adjusted to ensure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the Copyright Royalty Judges shall consider, among other factors, the economic impact on copyright owners and users; except that no adjustment in royalty rates shall be made under this subparagraph with respect to any distant signal equivalent or fraction thereof represented by—

''(i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal; or