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105TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { 105–452

COPYRIGHT TERM EXTENSION ACT

MARCH 18, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. COBLE, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2589]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2589) to amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

59–006

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SECTION 1. SHORT TITLE.

This Act may be cited as the "Copyright Term Extension Act".

SEC. 2. DURATION OF COPYRIGHT PROVISIONS.

(a) PREEMPTION WITH RESPECT TO OTHER LAWS.—Section 301(c) of title 17, United States Code, is amended by striking "February 15, 2047" each place it appears and inserting "February 15, 2067".

(b) DURATION OF COPYRIGHT: WORKS CREATED ON OR AFTER JANUARY 1, 1978.—Section 302 of title 17, United States Code, is amended—

(1) in subsection (a) by striking "fifty" and inserting "70";

(2) in subsection (b) by striking "fifty" and inserting "70";

(3) in subsection (c) in the first sentence—

(A) by striking "seventy-five" and inserting "95"; and

(B) by striking "one hundred" and inserting "120"; and

(4) in subsection (e) in the first sentence—

(A) by striking "seventy-five" and inserting "95";

(B) by striking "one hundred" and inserting "120"; and

(C) by striking "fifty" each place it appears and inserting "70".

(c) DURATION OF COPYRIGHT: WORKS CREATED BUT NOT PUBLISHED OR COPYRIGHTED BEFORE JANUARY 1, 1978.—Section 303 of title 17, United States Code, is amended in the second sentence by striking "December 31, 2027" and inserting "December 31, 2047".

(d) DURATION OF COPYRIGHT: SUBSISTING COPYRIGHTS.—

(1) IN GENERAL.—Section 304 of title 17, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (1)—

(I) in subparagraph (B) by striking "47" and inserting "67"; and

(II) in subparagraph (C) by striking "47" and inserting "67";

(ii) in paragraph (2)—

(I) in subparagraph (A) by striking "47" and inserting "67"; and

(II) in subparagraph (B) by striking "47" and inserting "67"; and

(iii) in paragraph (3)—

(I) in subparagraph (A)(i) by striking "47" and inserting "67"; and

(II) in subparagraph (B) by striking "47" and inserting "67";

(B) by amending subsection (b) to read as follows:

"(b) COPYRIGHTS IN THEIR RENEWAL TERM AT THE TIME OF THE EFFECTIVE DATE OF THE COPYRIGHT TERM EXTENSION ACT OF 1997.—Any copyright still in its renewal term at the time that the Copyright Term Extension Act of 1997 becomes effective shall have a copyright term of 95 years from the date copyright was originally secured.";

(C) in subsection (c)(4)(A) in the first sentence by inserting "or, in the case of a termination under subsection (d), within the five-year period specified by subsection (d)(2)," after "specified by clause (3) of this subsection,"; and

(D) by adding at the end the following new subsection:

"(d) TERMINATION RIGHTS PROVIDED IN SUBSECTION (c) WHICH HAVE EXPIRED ON OR BEFORE THE EFFECTIVE DATE OF THE COPYRIGHT TERM EXTENSION ACT OF 1997.—In the case of any copyright other than a work made for hire, subsisting in its renewal term on the effective date of the Copyright Term Extension Act of 1997 for which the termination right provided in subsection (c) has expired by such date, where the author or owner of the termination right has not previously exercised such termination right, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated in subsection (a)(1)(C) of this section, other than by will, is subject to termination under the following conditions:

"(1) The conditions specified in subsection (c) (1), (2), (4), (5), and (6) of this section apply to terminations of the last 20 years of copyright term as provided by the amendments made by the Copyright Term Extension Act of 1997.

"(2) Termination of the grant may be effected at any time during a period of 5 years beginning at the end of 75 years from the date copyright was originally secured.".

(2) COPYRIGHT RENEWAL ACT OF 1992.—Section 102 of the Copyright Renewal Act of 1992 (Public Law 102–307; 106 Stat. 266; 17 U.S.C. 304 note) is amended—

(A) in subsection (c)—

(i) by striking "47" and inserting "67";

(ii) by striking "(as amended by subsection (a) of this section)"; and

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(iii) by striking "effective date of this section" each place it appears and inserting "effective date of the Copyright Term Extension Act of 1997"; and

(B) in subsection (g)(2) in the second sentence by inserting before the period the following: ", except each reference to forty-seven years in such provisions shall be deemed to be 67 years".

SEC. 3. TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM.

Sections 203(a)(2) and 304(c)(2) of title 17, United States Code, are each amended—

(1) by striking "by his widow or her widower and his or her children or grandchildren"; and

(2) by inserting after subparagraph (C) the following:

"(D) In the event that the author's widow, widower, children, and grandchildren are not living, the author's executors shall own the author's entire termination interest, or, in the absence of a will of the author, the author's next of kin shall own the author's entire termination interest, on a per stirpes basis according to the number of such author's next of kin represented. The share of the children of a dead next of kin at the same level of relationship to the author eligible to take a share of a termination interest can be exercised only by the action of a majority of them.".

SEC. 4. REPRODUCTION BY LIBRARIES AND ARCHIVES.

Section 108 of title 17, United States Code, is amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following:

"(h)(1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.

"(2) No reproduction, distribution, display, or performance is authorized under this subsection if—

"(A) the work is subject to normal commercial exploitation;

"(B) a copy or phonorecord of the work can be obtained at a reasonable price; or

"(C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.

"(3) The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.".

SEC. 5. VOLUNTARY NEGOTIATION REGARDING DIVISION OF ROYALTIES.

It is the sense of the Congress that copyright owners of audiovisual works for which the term of copyright protection is extended by the amendments made by this Act, and the screenwriters, directors, and performers of those audiovisual works, should negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements with respect to the establishment of a fund or other mechanism for the amount of remuneration to be divided among the parties for the exploitation of those audiovisual works.

SEC. 6. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

PURPOSE AND SUMMARY

H.R. 2589, the "Copyright Term Extension Act," will extend the term of copyright protection in all copyrighted works that have not fallen into the public domain by twenty years.

BACKGROUND AND NEED FOR LEGISLATION

Pursuant to Article I, Section 8 of the United States Constitution, Title 17 of the United States Code gives the owners and authors of creative works an exclusive right to keep others from using

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their work for a limited period of time through copyright protection.

The term of copyright protection varies depending on the type of work. Under current law, most creative works receive copyright protection for the life of the author plus fifty years. In a work created by two or more authors, the copyright term endures for the life of the last surviving author plus fifty years. In the case of anonymous works, pseudonymous works, and works made for hire, the copyright term endures for a period of seventy-five years from the year of its publication, or a term of one hundred years from its creation, whichever expires first. A work made for hire is a work prepared by an employee in the scope of his employment or a work that is specifically commissioned for use in certain types of works, such as a collective work or motion picture.

Upon the expiration of the copyright term, the work falls into the public domain. This means that anyone may perform the work, display the work, make copies of the work, distribute copies of the work, and create derivative works based on the work without first having to get authorization from the copyright holder. Essentially, the copyright holder no longer has the exclusive ability to exploit the work to their financial gain and no longer "owns" the work.

The United States has international obligations to protect copyrights as well. The Berne Convention, originally drafted in 1886, is the international treaty which mandates basic copyright protection rules for its member countries. Currently there are over 100 countries that are members of the convention. The United States became a member in 1989. Under the Berne Convention, member countries must protect copyright for a term of life of the author plus fifty years. Under "the rule of the shorter term", member states need only protect the work of foreign authors to the same extent that they would be protected in their country of origin.

In 1995, the European Union extended the copyright term for all of its member states from life of the author plus fifty years to life of the author plus seventy years. As the world leader in the export of intellectual property, this has profound effects for the United States if it does not extend copyright term as well.

European Union countries, which are huge markets for U.S. intellectual property, would not have to provide twenty years of copyright protection to U.S. works and the U.S. would lose millions of dollars in export revenues. Extending copyright term to life of the author plus seventy years means that U.S. works will generally be protected for the same amount of time as works created by European Union authors. Therefore, the United States will ensure that profits generated from the sale of U.S. intellectual property abroad will come back to the United States.

Extending copyright protection will be an incentive for U.S. authors to continue using their creativity to produce works, and provide copyright owners generally with the incentive to restore older works and further disseminate them to the public. Authors will be able to pass along to their children and grandchildren the financial benefits of their works.

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HEARINGS

The Committee's Subcommittee on Courts and Intellectual Property held a hearing on the issue of copyright term extension on June 27, 1997. Testimony was received from Fritz Attaway representing the Motion Picture Association of America; George David Weiss, representing the Songwriters Guild of America; Frances Preston, representing Broadcast Music, Incorporated; and Professor Jerome Reichman of Vanderbilt Law School.

COMMITTEE CONSIDERATION

On September 30, 1997, the Subcommittee on Courts and Intellectual Property met in open session and ordered reported the bill H.R. 2589 by voice vote, a quorum being present. On March 3, 4, 1998, the Committee met in open session and ordered reported favorably the bill H.R. 2589, as amended, by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 2589, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 11, 1998.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2589, the Copyright Term Extension Act.

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If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kim Cawley.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 2589—Copyright Term Extension Act

CBO estimates that enacting this bill would not have a significant effect on the federal budget. We estimate the Copyright Office would spend less than $500,000 to promulgate necessary regulations if the bill were enacted. Because enactment of this bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 2589 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not affect the budgets of state, local, or tribal governments.

H.R. 2589 would extend the copyright term for works created on or after January 1, 1978, from life of the author plus 50 years after the author's death to life of the author plus 70 years after death. The bill would extend most other current copyrights for an additional 20 years. The bill also would direct the Copyright Office to prepare regulations to allow libraries to reproduce works in hard copies or in digital form during the 20-year copyright extension period, for purposes of preservation, scholarships, or research, provided certain conditions are met. Based on information from the Copyright Office, we estimate that promulgating these regulations and updating the office's printed materials would cost less than $500,000, assuming appropriation of the necessary amounts.

The CBO staff contact for this estimate is Kim Cawley. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

SECTION 1. SHORT TITLE

This section states that this bill may be cited as the "Copyright Term Extension Act."

SECTION 2. DURATION OF COPYRIGHT PROVISIONS

Subsection (a), Preemption With Respect to Other Laws

Section 301(c) of the current copyright statute contains an exception to the general preemption of state common law and statutory copyright. The exception "grandfathers" state common law and statutory protection for sound recordings against record piracy for 75 years from February 15, 1972, the date the federal copyright statute was amended to first grant federal protection for sound recordings. Because this bill will extend the total term of protection for pre-1978 copyrighted works by 20 years, to a total of 95 years, a similar 20-year extension is be given to the "grandfathered" pre-February 15, 1972 sound recordings in H.R. 2589.

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Subsection (b), Duration of Copyright: Works created on or After January 1, 1978

Section 302(a) of the current copyright statute grants a basic term of life-plus-50-years; in the case of joint works, Section 302(b) measures the "life" by that of the longest surviving co-author. The bill makes both terms life-plus-70-years. Section 302(c) of the current statute grants a term of 75 years from publication or 100 years from creation (whichever expires first) in the cases of works made for hire, anonymous and pseudonymous works (as there is no known "life" to be measured in those cases). The bill extends those terms by 20 years, to 95 years from publication or 120 years from creation, whichever expires first. Section 302(e) of the current statute establishes a presumption with respect to an author's death: if a search of Copyright Office records made after 75 years from publication or 100 years from creation of a work does not disclose that the author died within the past 50 years, the author is presumed dead for at least 50 years and no infringement action will lie. The bill extends all those time periods by 20 years.

Subsection (c), Duration of Copyright: Works Created but Not Published or Copyrighted Before January 1, 1978

Prior to January 1, 1978, state common law copyright for unpublished works was perpetual. The 1976 Copyright Act preempted such perpetual common law protection, and the perpetual term for unpublished works protected by common law on January 1, 1978 transformed to the life-plus-50-years (or other applicable) term. However, because some of those unpublished works were written by authors who had been dead for more than 50 years on January 1, 1978, it was thought unfair to thrust those works into the public domain immediately (which would have been the effect if the life-plus-50-year term were applied). Section 303 of the current law gave those unpublished works a minimum of 25 years of protection until December 31, 2002. In order to provide an incentive to make those works available to the public, an additional 25 years was provided if the work was published before December 31, 2002, making the potentially available term last through the year 2027. In the 104th Congress, the bill H.R. 989 extended both of these dates. H.R. 2589 leaves unaffected the ordinary term for section 303 works, so that protection expires at the latest in the year 2002. These older works by definition have not been subject to commercial exploitation, so that the benefit from extending the term of protection for this category of works do not outweigh the detriments from limiting public access to these often historically significant works. However, works in this category that are published before the year 2002 would have protection until the year 2047, an extra twenty years beyond the current possible term.

Subsection (d), Duration of Copyright: Subsisting Copyrights

Subsection (d)(1) In General

This section amends Section 304(a) which deals with copyrights in their first term on January 1, 1978. Under current law, works in their first term are eligible for a renewal term of 47 years. H.R. 2589 will extend the renewal term of copyright protection by twen-

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ty years making it a 67 year renewal term. This section also amends Section 304(b) which deals with copyrights in their renewal term before January 1, 1978. Under current law, works in their renewal term before January 1, 1978, received a term of seventy-five years from the date copyright was originally secured. This bill would extend that term to ninety-five years from the date copyright was originally secured. This bill also subjects to termination any exclusive or nonexclusive transfers or licenses of works in their renewal term in certain circumstances. This is to allow the original authors of works and their beneficiaries to benefit from the extended copyright protection.

Subsection (d)(2), Copyright Renewal Act of 1992 Amendment

In 1992, Public Law 102–307 (the Copyright Renewal Act of 1992) amended the then-current Section 304(a) to make renewals of pre-1978 works automatic rather than dependent on timely filing of a renewal application. Section 102(2) of Title I of Public Law 102–307 spoke of the effect of renewal "for a further term of 47 years" on grants of transfer or license made before the amendment went into effect. As the bill will make the renewal term 67 rather than 47 years, this provision of Public Law 102–307 is accordingly amended, to avoid any implication that a shorter term still applies to some older works.

SECTION 3. TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM

This section amends Sections 203(a)(2) and 304(c)(2) by allowing an author's executor to receive his entire termination interest in the event that the author's widow, widower, children, or grandchildren are not living, or in the absence of a will, the author's next of kin shall own the author's entire termination interest.

SECTION 4. REPRODUCTION BY LIBRARIES AND ARCHIVES

This section is designed to permit libraries and archives to make certain uses of copyrighted material, including in digital form, during the 20-year extension, in certain circumstances. This is an exemption for libraries and archives, or other nonprofit educational institution, allowing them to reproduce, distribute, display, or perform a copy of a work or phonorecord for purposes of preservation, scholarship, or research. However, the exemption applies only where the entity has determined after reasonable investigation, that none of the following conditions apply: (1) that the work is subject to normal commercial exploitation, (2) a copy of the work can be obtained at a reasonable price, and (3) the copyright owner or its agents have provided notice that either of the first two conditions apply. This exemption would allow library users the benefit of access to published works that are not commercially exploited or otherwise reasonably available during the extended term.

SECTION 5. VOLUNTARY NEGOTIATION REGARDING DIVISION OF ROYALTIES

This is a new provision containing a Sense of Congress that the parties involved in the making of motion pictures should negotiate

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voluntarily and in good faith to decide amongst themselves the amount of remuneration to be divided between them for the amounts received as a result of this bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 17, UNITED STATES CODE

* * * * * * *

CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

* * * * * * *

§ 108. Limitations on exclusive rights: Reproduction by libraries and archives

(a) * * *

* * * * * * *

(h)(1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.

(2) No reproduction, distribution, display, or performance is authorized under this subsection if—

(A) the work is subject to normal commercial exploitation;

(B) a copy or phonorecord of the work can be obtained at a reasonable price; or

(C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.

(3) The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.

[(h)] *(i)* The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections (b) and (c), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).

* * * * * * *

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CHAPTER 2—COPYRIGHT OWNERSHIP AND TRANSFER

* * * * * * *

§ 203. Termination of transfers and licenses granted by the author

(a) CONDITIONS FOR TERMINATION.—In the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, otherwise than by will, is subject to termination under the following conditions:

(1) * * *

(2) Where an author is dead, his or her termination interest is owned, and may be exercised, [by his widow or her widower and his or her children or grandchildren] as follows:

(A) * * *

* * * * * * *

(D) In the event that the author's widow, widower, children, and grandchildren are not living, the author's executors shall own the author's entire termination interest, or, in the absence of a will of the author, the author's next of kin shall own the author's entire termination interest, on a per stirpes basis according to the number of such author's next of kin represented. The share of the children of a dead next of kin at the same level of relationship to the author eligible to take a share of a termination interest can be exercised only by the action of a majority of them.

* * * * * * *

CHAPTER 3—DURATION OF COPYRIGHT

* * * * * * *

§ 301. Preemption with respect to other laws

(a) * * *

* * * * * * *

(c) With respect to sound recordings fixed before February 15, 1972, any rights or remedies under the common law or statutes of any State shall not be annulled or limited by this title until February 15, [2047] *2067*. The preemptive provisions of subsection (a) shall apply to any such rights and remedies pertaining to any cause of action arising from undertakings commenced on and after February 15, 2047. Notwithstanding the provisions of section 303, no sound recording fixed before February 15, 1972, shall be subject to copyright under this title before, on, or after February 15, [2047] *2067*.

* * * * * * *

§ 302. Duration of copyright: Works created on or after January 1, 1978

(a) IN GENERAL.—Copyright in a work created on or after January 1, 1978, subsists from its creation and, except as provided by

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the following subsections, endures for a term consisting of the life of the author and [fifty] *70* years after the author's death.

(b) JOINT WORKS.—In the case of a joint work prepared by two or more authors who did not work for hire, the copyright endures for a term consisting of the life of the last surviving author and [fifty] *70* years after such last surviving author's death.

(c) ANONYMOUS WORKS, PSEUDONYMOUS WORKS, AND WORKS MADE FOR HIRE.—In the case of an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of [seventy-five] *95* years from the year of its first publication, or a term of [one hundred] *120* years from the year of its creation, whichever expires first. If, before the end of such term, the identity of one or more of the authors of an anonymous or pseudonymous work is revealed in the records of a registration made for that work under subsections (a) or (d) of section 408, or in the records provided by this subsection, the copyright in the work endures for the term specified by subsection (a) or (b), based on the life of the author or authors whose identity has been revealed. Any person having an interest in the copyright in an anonymous or pseudonymous work may at any time record, in records to be maintained by the Copyright Office for that purpose, a statement identifying one or more authors of the work; the statement shall also identify the person filing it, the nature of that person's interest, the source of the information recorded, and the particular work affected, and shall comply in form and content with requirements that the Register of Copyrights shall prescribe by regulation.

* * * * * * *

(e) PRESUMPTION AS TO AUTHOR'S DEATH.—After a period of [seventy-five] *95* years from the year of first publication of a work, or a period of [one hundred] *120* years from the year of its creation, whichever expires first, any person who obtains from the Copyright Office a certified report that the records provided by subsection (d) disclose nothing to indicate that the author of the work is living, or died less than [fifty] *70* years before, is entitled to the benefits of a presumption that the author has been dead for at least [fifty] *70* years. Reliance in good faith upon this presumption shall be a complete defense to any action for infringement under this title.

§ 303. Duration of copyright: Works created but not published or copyrighted before January 1, 1978

(a) Copyright in a work created before January 1, 1978, but not theretofore in the public domain or copyrighted, subsists from January 1, 1978, and endures for the term provided by section 302. In no case, however, shall the term of copyright in such a work expire before December 31, 2002; and, if the work is published on or before December 31, 2002, the term of copyright shall not expire before December 31, [2027] *2047*.

* * * * * * *

§ 304. Duration of copyright: Subsisting copyrights

(a) COPYRIGHTS IN THEIR FIRST TERM ON JANUARY 1, 1978.—(1)(A) Any copyright, the first term of which is subsisting on Janu-

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ary 1, 1978, shall endure for 28 years from the date it was originally secured.

(B) In the case of—

(i) * * *

* * * * * * *

the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of [47] *67* years.

(C) In the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work—

(i) * * *

* * * * * * *

shall be entitled to a renewal and extension of the copyright in such work for a further term of [47] *67* years.

(2)(A) At the expiration of the original term of copyright in a work specified in paragraph (1)(B) of this subsection, the copyright shall endure for a renewed and extended further term of [47] *67* years, which—

(i) * * *

* * * * * * *

(B) At the expiration of the original term of copyright in a work specified in paragraph (1)(C) of this subsection, the copyright shall endure for a renewed and extended further term of [47] *67* years, which—

(i) * * *

* * * * * * *

(3)(A) An application to register a claim to the renewed and extended term of copyright in a work may be made to the Copyright Office—

(i) within 1 year before the expiration of the original term of copyright by any person entitled under paragraph (1)(B) or (C) to such further term of [47] *67* years; and

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(B) Such an application is not a condition of the renewal and extension of the copyright in a work for a further term of [47] *67* years.

* * * * * * *

[(b) COPYRIGHTS IN THEIR RENEWAL TERM OR REGISTERED FOR RENEWAL BEFORE JANUARY 1, 1978.—The duration of any copyright, the renewal term of which is subsisting at any time between December 31, 1976, and December 31, 1977, inclusive, or for which renewal registration is made between December 31, 1976, and December 31, 1977, inclusive, is extended to endure for a term of seventy-five years from the date copyright was originally secured.]

(b) COPYRIGHTS IN THEIR RENEWAL TERM AT THE TIME OF THE EFFECTIVE DATE OF THE COPYRIGHT TERM EXTENSION ACT OF 1997.—Any copyright still in its renewal term at the time that the Copyright Term Extension Act of 1997 becomes effective shall have a copyright term of 95 years from the date copyright was originally secured.

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(c) TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM.—In the case of any copyright subsisting in either its first or renewal term on January 1, 1978, other than a copyright in a work made for hire, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated by subsection (a)(1)(C) of this section, otherwise than by will, is subject to termination under the following conditions:

(1) * * *

(2) Where an author is dead, his or her termination interest is owned, and may be exercised, [by his widow or her widower and his or her children or grandchildren] as follows:

(A) * * *

* * * * * * *

(D) In the event that the author's widow, widower, children, and grandchildren are not living, the author's executors shall own the author's entire termination interest, or, in the absence of a will of the author, the author's next of kin shall own the author's entire termination interest, on a per stirpes basis according to the number of such author's next of kin represented. The share of the children of a dead next of kin at the same level of relationship to the author eligible to take a share of a termination interest can be exercised only by the action of a majority of them.

* * * * * * *

(4) The termination shall be effected by serving an advance notice in writing upon the grantee or the grantee's successor in title. In the case of a grant executed by a person or persons other than the author, the notice shall be signed by all of those entitled to terminate the grant under clause (1) of this subsection, or by their duly authorized agents. In the case of a grant executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or his or her duly authorized agent or, if that author is dead, by the number and proportion of the owners of his or her termination interest required under clauses (1) and (2) of this subsection, or by their duly authorized agents.

(A) The notice shall state the effective date of the termination, which shall fall within the five-year period specified by clause (3) of this subsection, *or, in the case of a termination under subsection (d), within the five-year period specified by subsection (d)(2),* and the notice shall be served not less than two or more than ten years before that date. A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.

* * * * * * *

(d) TERMINATION RIGHTS PROVIDED IN SUBSECTION (c) WHICH HAVE EXPIRED ON OR BEFORE THE EFFECTIVE DATE OF THE COPYRIGHT TERM EXTENSION ACT OF 1997.—In the case of any copyright other than a work made for hire, subsisting in its renewal term on the effective date of the Copyright Term Extension Act of 1997 for

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which the termination right provided in subsection (c) has expired by such date, where the author or owner of the termination right has not previously exercised such termination right, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated in subsection (a)(1)(C) of this section, other than by will, is subject to termination under the following conditions:

(1) The conditions specified in subsection (c) (1), (2), (4), (5), and (6) of this section apply to terminations of the last 20 years of copyright term as provided by the amendments made by the Copyright Term Extension Act of 1997.

(2) Termination of the grant may be effected at any time during a period of 5 years beginning at the end of 75 years from the date copyright was originally secured.

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SECTION 102 OF THE COPYRIGHT RENEWAL ACT OF 1992

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SEC. 102. COPYRIGHT RENEWAL PROVISIONS.

(a) * * *

* * * * * * *

(c) LEGAL EFFECT OF RENEWAL OF COPYRIGHT UNCHANGED.—The renewal and extension of a copyright for a further term of [47] *67* years provided for under paragraphs (1) and (2) of section 304(a) of title 17, United States Code [(as amended by subsection (a) of this section)] shall have the same effect with respect to any grant, before the [effective date of this section] *effective date of the Copyright Term Extension Act of 1997*, of a transfer or license of the further term as did the renewal of a copyright before the [effective date of this section] *effective date of the Copyright Term Extension Act of 1997* under the law in effect at the time of such grant.

* * * * * * *

(g) EFFECTIVE DATE; COPYRIGHTS AFFECTED BY AMENDMENT.—(1) Subject to paragraphs (2) and (3), this section and the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) The amendments made by this section shall apply only to those copyrights secured between January 1, 1964, and December 31, 1977. Copyrights secured before January 1, 1964, shall be governed by the provisions of section 304(a) of title 17, United States Code, as in effect on the day before the effective date of this section, *except each reference to forty-seven years in such provisions shall be deemed to be 67 years.*

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ADDITIONAL VIEWS OF CONGRESSWOMAN ZOE LOFGREN

Despite opposition from much of the academic legal community, The New York Times, and others, to the extension of the term of copyrights through H.R. 2589, I have been a supporter of extending the term. I have supported term extension because I believe that the reciprocal recognition of copyrights by the European Union—part of the tradeoff if the United States extends copyright terms—is important for American copyright holders. However, I signed on as an original cosponsor of H.R. 2589 with the understanding that the original bill was only a starting point and not a final product.

While the objectives of H.R. 2589 are important, the bill could be improved. In Subcommittee and at full Committee markup, I asked that H.R. 2589 deal with the narrow, yet important, situation when a creative work is lawfully possessed by a library or school, remains protected by copyright solely as a consequence of the term extension under H.R. 2589, yet is commercially unavailable. When we consider that copyright terms will grow to last long after the creator has passed on, it is reasonable to expect that there will be some copyrighted works that, toward the end of their copyright term, will be out-of-print or unavailable. In that narrow case, I think it makes sense to allow, for the purposes of research, private study, or archival activities, the work to be used as if it were still in the public domain.

This would be a benign and public-spirited exception, which would cause no damage to copyright holders. For instance, in the amendment considered and rejected by voice vote at full Committee markup, this publication-profit exception could have been terminated merely by a notification by the copyright holder to the copyright office or the public/non-profit institution that commercial exploitation was taking place or contemplated.

While the failure to adopt this amendment is not fatal to the bill, I believe it is important to listen carefully to schools and libraries and to craft provisions of law that will assist them in their honorable mission to disseminate the accumulated knowledge and wisdom of mankind. Therefore, despite the fact that the amendment rejected in full Committee was narrow and arcane, I still believe that it is important for the Congress to consider and adopt some amendment to this bill that will accommodate the mission of public sector libraries and schools to assist in the intellectual development of humankind.

ZOE LOFGREN.

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