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Citation: 1 Copyright Technical Amendments Act Satellite Home Act Amendments P.L. 105-80 111 Stat. 1529 H9882 1997

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Fri Mar 22 12:58:58 2013

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MAKING TECHNICAL AMENDMENTS TO TITLE 17, UNITED STATES CODE

Mr. COBLE. Mr. Speaker, I move to suspend the rules and concur in the Senate amendments to the bill (H.R. 672) to make technical amendments to certain provisions of title 17, United States Code.

The Clerk read as follows:

Senate amendments:

Page 15, after line 8, insert:

SEC. 11. DISTRIBUTION OF PHONORECORDS.

Section 303 of title 17, United States Code, is amended—

(1) by striking "Copyright" and inserting "(a) Copyright"; and

(2) by inserting at the end the following:

"(b) The distribution before January 1, 1978, of a phonorecord shall not for any purpose constitute a publication of the musical work embodied therein.".

Page 15, line 9, strike out "11" and insert "12".

Page 20, line 7, strike out "12" and insert "13".

Page 20, line 16, strike out "11(b)(1)" and insert "12(b)(1)".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from North Carolina [Mr. COBLE] and the gentleman from Massachusetts [Mr. FRANK] each will control 20 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. COBLE].

GENERAL LEAVE

Mr. COBLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill under consideration.

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

There was no objection.

Mr. COBLE. Mr. Speaker, I yield myself such time as I may consume. H.R. 672 contains much needed technical amendments to the Copyright Act. The Copyright Office needs these amendments in order to administer the Copyright Act efficiently and effectively. H.R. 672 also clarifies that the distribution of a phonorecord before January 1, 1978, did not constitute a publication of the musical work embodied therein.

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In 1995 the ninth circuit, in La Cienega versus Z.Z. Top, overturned nearly 90 years of Presidential decisions and held that a phonorecord did constitute a publication of the musical work embodied in it. As a result, thousands of pre-1978 songs are at risk of falling into the public domain because the authors and music publishers relied on the Copyright Office decisions and did not place a copyright symbol on the phonorecords.

We must protect the copyright holders who justifiable relied upon judicial and Copyright Office decisions. The United States cannot afford to let its rich musical heritage be lost into the public domain, and I urge the Members to vote "yes" on H.R. 672.

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

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, my colleague, the chairman, has explained this. This is a bill which was broadly supported on both sides. We have some controversial issues that will be coming up later dealing with the copyright subject matter. This is not one of them.

What we are doing here is concurring in the first place with the Senate over a base bill that we already passed. This is a bill that included amendments of a technical nature that we already passed, with one or two dissenting votes on a rollcall.

The Senate added this bill, which we have referred to as La Cienega, because that was the name of the case, and what we have here is a reading by the courts, and it was not the court's choice of policy, it was a reading of the technical language of the statute, the effect of which would be to deprive decent, hard-working composers of the right to benefit from their compositions, not because of any real dispute over who owned what, not because of any policy issue, but because of a very narrow technical point. And I am pleased that we were able to bring this forward; I am pleased that the other body has gone forward with it. I hope we will just vote this through. It is, as I said, narrow, technical; it leaves other copyright issues ahead of us.

I suppose it is a sign that sometimes the law moves a little more slowly than technology that we are today passing a bill about phonorecords. When the phrase "phonorecords" first went into the law in 1909, there were not very many because they were too new. Now there are not very many because they are too old. So we have in this legislative history sort of gone through the life cycle of phonorecords.

I should note that the 1909 act was passed in the same year as the birth of our colleague, the gentleman from Illinois, which is irrelevant but interesting.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield 4 minutes to the gentleman from Massachusetts and Nashville as a sideline [Mr. DELAHUNT], my colleague on the subcommittee.

Mr. DELAHUNT. Mr. Speaker, let me first acknowledge the hard work that was done on this particular proposal by both the Chair, my friend and colleague from North Carolina, and by the ranking member. As they both indicated, this bill is mostly about fairness, but there is even a trade deficit reform or concern, rather, addressed in this proposal.

Because of the opinion that was rendered in the case that has been referred to, La Cienega, there is now a cloud over the copyright of virtually every piece of American music written before 1978. American musicians, composers, and publishers now stand to lose some 1 and one-quarter billion dollars a year, and a significant portion of that 1 and one-quarter billion dollars is generated by overseas sales as American music is universally acknowledged to be the most popular on the planet. In fact, music is one of our most valuable exports and one of the few bright spots in our balance of trade.

We will hear this week in the course of the debate on fast track about how our former trade circle with Mexico is now a deficit of some $17 billion, and of course our trade deficit with China escalates by billions with every new report. Well, we cannot afford to lose the income derived from foreign sales of pre-1978 musical works. It is painfully clear we are in no position to exacerbate our ballooning trade deficit, and unless we pass this bill and reverse the La Cienega decision, that is exactly what will happen.

But this measure is, as both gentlemen indicated, much more than just trying to do something about our balance of trade problems. It is about being fair, being fair to thousands of hard-working, talented creators of American music who, for 86 years, were told by the Government and the American judicial system that their work was protected by the Copyright Act of 1909.

They were told all that was necessary to protect their works was to place the familiar copyright symbol on the printed musical score, the sheet music, if my colleagues will. We have all seen that symbol; it is the C in a circle. They were told that it was not necessary to place that symbol on the recording of their composition. They relied on the interpretation of the Copyright Act of 1909 because that is all the Government, through the Copyright Office, said that the Copyright Act required.

Furthermore, Mr. Speaker, there are a number of Federal court decisions that confirmed the position of the Copyright Office. So this was the law for 86 years, until 1995 when La Cienega arrived on the scene. The bill before us today would rectify this injustice, and I urge swift passage as any delay places at risk an entire industry and threatens to stifle that incredible creative talent of American song writers.

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

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

Mr. Speaker, I will say very briefly I want to thank the ranking member, the gentleman from Massachusetts [Mr. FRANK], Members on both sides of the subcommittee, and the staff. We worked very effectively and harmoniously together to craft this very important piece of legislation.

Mr. BERMAN. Mr. Speaker, I rise in strong support of H.R. 672, the Copyright Clarification Act, and particularly the Senate amendment thereto.

In 1995, the Ninth Circuit issued a ruling in La Cienaga Music Corp. versus ZZ Top, which threatens the validity of copyright for musical works created prior to 1978. This decision poses a severe hardship for thousands of

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songwriters, many of whom I am proud to count as my constituents. What these composers and songwriters did was nothing more than to rely on an industry standard of many decades duration, which provides that the distribution of a phonorecord does not constitute publication of a musical work. This long-time understanding of copyright law has been ratified and reaffirmed by the Second Circuit over 20 years ago. American songwriters had every reason to consider this issue to be a matter of settled law.

But the LaCienaga decision took that settled law and cast it on its head, threatening to thrust into the public domain hundreds of thousands of musical works which presently enjoy copyright protection. This post-hoc penalty on copyright owners for failure to comply with copyright formalities, in reliance upon settled law, struck the members of the Subcommittee on Courts and Intellectual Property and, I am happy to say, the members of the other body as well, as grossly unfair. We concluded that the Ninth Circuit had reached an anomalous and insupportable result which in the interest of fundamental fairness begged to be corrected.

That is what the legislation before us would do. I commend this bill to my colleagues and urge its passage.

Mr. BONO. Mr. Speaker, I rise in support of H.R. 672 and urge my colleagues to join me. This is a very important measure needed in congressional response to a bizarre court decision. This decision also threatens to undermine the national economy. It is estimated that copyright industries contribute up to $4 billion to our economy and, in addition, are one of our most valuable exports.

The case of *La Cienaga Music Co.* v. *ZZ Top,* 53 F. 3d 950 (9th Cir. 1995), *cert. denied,* 116 S.Ct. 331 (1995) is unfortunate as it has jeopardized the private property rights for thousands of creative individuals who live within the jurisdiction of the Federal Court of Appeals of the Ninth Circuit. I am advised that this court decision makes it impossible for certain affected individual creators to bring an infringement action within the Ninth Circuit. Hence, you may have a copyright, but you have no available remedies against piracy.

Much of the credit for today belongs to House Judiciary Committee Chairman HYDE and Subcommittee Chairman COBLE for their diligence and attention to this issue. This is a bipartisan enterprise, and thanks for today also rests with Representative FRANK. This measure should be noncontroversial and speedily adopted by the House. As you know, this particular new language was contained in a much more comprehensive bill that I have sponsored along with Senate Judiciary Chairman HATCH, H.R. 1621. My House chairmen are also helping to bring along the rest of this badly needed legislation for copyright term extension to the floor. That cannot come too soon.

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

The SPEAKER pro tempore [Mr. PACKARD]. The question is on the motion offered by the gentleman from North Carolina [Mr. COBLE] that the House suspend the rules and concur in the Senate amendments to H.R. 672.

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

A motion to reconsider was laid on the table.

NO ELECTRONIC THEFT (NET) ACT

Mr. COBLE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2265) to amend the provisions of titles 17 and 18, United States Code, to provide greater copyright protection by amending criminal copyright infringement provisions, and for other purposes, as amended.

The Clerk read as follows:

H.R. 2265

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "No Electronic Theft (NET) Act".

SEC. 2. CRIMINAL INFRINGEMENT OF COPYRIGHTS.

(a) DEFINITION OF FINANCIAL GAIN.—Section 101 of title 17, United States Code, is amended by inserting after the undesignated paragraph relating to the term "display", the following new paragraph: "The term 'financial gain' includes receipt, or expectation of receipt, of anything of value, including the receipt of other copyrighted works.".

(b) CRIMINAL OFFENSES.—Section 506(a) of title 17, United States Code, is amended to read as follows:

"(a) CRIMINAL INFRINGEMENT.—Any person who infringes a copyright willfully either—

"(1) for purposes of commercial advantage or private financial gain, or

"(2) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than $1,000,

shall be punished as provided under section 2319 of title 18. For purposes of this subsection, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement.".

(c) LIMITATION ON CRIMINAL PROCEEDINGS.—Section 507(a) of title 17, United States Code, is amended by striking "three" and inserting "5".

(d) CRIMINAL INFRINGEMENT OF A COPYRIGHT.—Section 2319 of title 18, United States Code, is amended—

(1) in subsection (a), by striking "subsection (b)" and inserting "subsections (b) and (c)";

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by striking "subsection (a) of this section" and inserting "section 506(a)(1) of title 17"; and

(B) in paragraph (1)—

(i) by inserting "including by electronic means," after "if the offense consists of the reproduction or distribution,"; and

(ii) by striking "with a retail value of more than $2,500" and inserting "which have a total retail value of more than $2,500"; and

(3) by redesignating subsection (c) as subsection (e) and inserting after subsection (b) the following:

"(c) Any person who commits an offense under section 506(a)(2) of title 17—

"(1) shall be imprisoned not more than 3 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution of 10 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of $2,500 or more;

"(2) shall be imprisoned not more than 6 years, or fined in the amount set forth in this title, or both, if the offense is a second or subsequent offense under paragraph (1); and

"(3) shall be imprisoned not more than 1 year, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than $1,000.

"(d)(1) During preparation of the presentence report pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

"(2) Persons permitted to submit victim impact statements shall include—

"(A) producers and sellers of legitimate works affected by conduct involved in the offense;

"(B) holders of intellectual property rights in such works; and

"(C) the legal representatives of such producers, sellers, and holders.".

(e) UNAUTHORIZED FIXATION AND TRAFFICKING OF LIVE MUSICAL PERFORMANCES.—Section 2319A of title 18, United States Code, is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

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

"(d) VICTIM IMPACT STATEMENT.—(1) During preparation of the presentence report pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

"(2) Persons permitted to submit victim impact statements shall include—

"(A) producers and sellers of legitimate works affected by conduct involved in the offense;

"(B) holders of intellectual property rights in such works; and

"(C) the legal representatives of such producers, sellers, and holders.".

(f) TRAFFICKING IN COUNTERFEIT GOODS OR SERVICES.—Section 2320 of title 18, United States Code, is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

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

"(d)(1) During preparation of the presentence report pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

"(2) Persons permitted to submit victim impact statements shall include—

"(A) producers and sellers of legitimate goods or services affected by conduct involved in the offense;

"(B) holders of intellectual property rights in such goods or services; and

"(C) the legal representatives of such producers, sellers, and holders.".

(g) DIRECTIVE TO SENTENCING COMMISSION.—(1) Under the authority of the Sentencing

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