Renewal Term Extensions under the 1909 Copyright Act

Extending Term to December 31, 1976

COPYRIGHT MISCELLANY

DECEMBER 12, 1974.--Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. KASTENMEIER, from the Committee on the Judiciary, submitted the following
R E P O R T
together with
DISSENTING VIEWS
[To accompany S.J. Res. 3976]

The Committee on Judiciary, to whom was referred the bill (S. 3976) to amend title 17 of the United States Code to remove the expiration date for a limited copyright in sound recordings, to increase the criminal penalties for piracy and counterfeiting of sound recordings, to extend the duration of copyright protection in certain cases, to establish a National Commission of New Technological Uses of Copyrighted Works, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

1. On page 2, line 12, and on page 2, line 19, strike out "three years" and insert in lieu thereof "one year".

2. On page 2, line 14, and on page 2, line 21, strike out "seven years" and insert in lieu thereof "two years".

3. On page 4, line 18, strike out the semicolon and insert in lieu thereof a comma and the following new language:

"with at least one member selected from among experts in consumer protection affairs;"

4. On page 6, line 8, after the word "title" strike out the period and insert in lieu thereof the following new language:

"until June 30, 1976."

PURPOSE OF THE AMENDMENTS

Amendments Nos. 1 and 2 provide a new maximum penalty of imprisonment for the willful infringement for profit of a copyright in a sound recording and for knowingly and fraudulently transporting in commerce records carrying counterfeit labels *(18 United States Code, sec. 2318).* The new maximum is one year for a first offense and two years for subsequent offenses. This compares with maximum imprisonment for three years for a first offense and seven years for a second offense proposed by the bill as introduced. No change is made in the maximum fine provided by the bill as introduced, which remains at $ 25,000 for a first offense and $ 50,000 for subsequent offenses. Existing law provides for a fine of not less than $ 100 nor more than $ 1,000 or imprisonment of not more than one year, or both, for willful infringements for profit of copyrights generally and irrespective of whether the offense is a first or a subsequent offense (title *17 United States Code, sec. 104).*

Amendment No. 3 is intended to assure at least minimal attention on the part of the National Commission on New Technological Uses of Copyrighted Works to the interests of consumers.

Amendment No. 4 expresses the Committee's wish to exercise legislative oversight of the Commission's activities with respect to authorizations to appropriate funds for periods subsequent to June 30, 1976.

PURPOSE OF THE AMENDED BILL

S. 3976, which passed the Senate on September 9, 1974, deals with three major matters:

1. It would render permanent the expiring prohibition against piracy of sound recordings and maximum existing imprisonment penalties for willful infringement for profit and for counterfeiting of sound recordings (sections 101, 102, and 103);

2. It would extend the duration of expiring copyrights in certain cases (section 104), and

3. It would establish a National Commission on New Technological Uses of Copyrighted Works (sections 201-208).

STATEMENT

PIRACY PROVISIONS

Sections 101, 102, and 103 of S. 3976, as amended are identical in effect with the provisions of H.R. 13364, as amended, which passed the House on October 8, 1974, and has since been pending in the Senate Judiciary Committee. For parliamentary reasons it has now become desirable for the House to pass the identical provisions (also amended as to penalties) in enacting S. 3976. No reason appears, moreover, why we should not adopt the statement made in the report on H.R. 13364 (H. Rept. 93-1389) which in part reads as follows:

(1) ELIMINATION OF TERMINATION DATE

During the 92nd Congress the Committee became aware of allegations of widespread unauthorized reproduction of phonograph records and tapes. Trade sources had estimated the annual volume of such piracy to be in excess of $ 100 million and the annual value of legitimate prerecorded tape sales at approximately $ 300 million. In this context the Committee reported that the pirating of records and tapes was not only depriving legitimate manufacturers of substantial income, but of equal importance, that it was denying performing artists and musicians of royalties and contributions to pension and welfare funds (Sen. Rept. 92-487, Sept. 22, 1971, p.2). For these reasons, the Committee recommended and the Congress enacted Public Law 92-140. The grant of a copyright in sound recordings, was, however, limited to sound recordings fixed, published, and copyrighted on and after February 15, 1972 (the effective date of the bill), and before January 1, 1975.

"The Committee explained that the purpose of the terminal limitation was to "provide a period for further consideration of various alternatives for solving the problems in this area, before resorting to permanent legislative enactment." It also observed that by January 1, 1975, the protection of sound recordings might be part of a copyright law revision.

"Since the enactment of Public Law 92-140, no satisfactory alternative to the approach taken in that measure has presented itself. Moreover, although the other body has now passed a copyright revision bill (S. 1361) which incorporated the provisions of H.R. 13364 dealing with sound recordings, it is not realistic to expect that a completed copyright law revision measure containing permanent sound recordings legislation will have passed both Houses in identical form by the end of the calendar year.

The Subcommittee hearing on H.R. 13364, at which the legislation was supported by the Department of State, Justice Commerce, by the Register of Copyrights, and by witnesses on behalf of the private sector, disclosed no reason why the protection of sound recordings should be permitted to lapse. Indeed the Department of State predicts that a lapse in protection may trigger an increase in piracy and confront the industry with disastrous economic consequences.

Concerning the perpetuation of protection without lapse, the Register of Copyrights testified:

"Both record produces and performers benefit from this legislation since their respective creative contributions, typically governed by contracts, are recognized and protected. There is no question in my mind that tape piracy is fundamentally anticompetitive. As I stated in my testimony before the predecessor of your Subcommittee in 1971, piracy tends to increase the price of legitimate recordings; this is because the record producers lose sales volume on their 'hit records,' which must return sufficient gross to cover losses on other recordings. No pirate duplicates a loser. The public pays for piracy in the end. The Copyright Office firmly believes that what the public pays for recorded music should go to creators rather than scavengers."

The perpetuation of protection without lapse cannot await enactment of a revision bill. It requires separate legislation that can be promptly enacted.

Beyond this, the Government witnesses have called to the attention of the Subcommittee that the United States has become the eighth state to become a member of the Convention for the Protection of Producers of Phonograms Against

Unauthorized Duplication of their Phonograms (Phonogram Convention). This treaty requires the contracting states to protect the nationals of other contracting states against piracy of sound recordings. The Department of State reports that H.R. 13364 is the implementing legislation for the Phonogram Convention and is essential for meeting of international commitments. The first paragraph of H.R. 13364, by repealing the January 1, 1975, expiration date of Public Law 92-140, meets these commitments.

(2) PENALTY CHANGES

Beside removing the expiration date in Public Law 92-140 H.R. 13364 would increase the penalty for infringing sound recordings willfully and for profit, and for knowingly and fraudulently transporting records carrying counterfeit labels *(18 U.S. Code, sec. 2318).* Present law punishes such behavior by a fine of not less than $ 100 or more than $ 1,000 or imprisonment of more than one year, or both. H.R. 13364 would impose a maximum imprisonment of three years or a maximum fine of $ 25,000, or both, for a first offense and a maximum imprisonment of seven years or a maximum fine of $ 50,000 or both, for subsequent offenses.

The reason given in support of this very substantial proposed increase in penalties is that record piracy is so profitable that ordinary penalties fail to deter prospective offenders.

The Committee recognizes the force of the argument and agrees that the economic penalties should be substantial. It accordingly adopts the provisions creating maximum fines of $ 25,000 and $ 50,000, for first and subsequent offenses respectively.

With respect to the penalty of imprisonment, however, the Committee is reluctant to sanction the proposed maxima of three years and seven years for what is essentially an economic offense. We believe that the present one year maximum imprisonment should be retained for cases involving a first offense. With respect to subsequent offenses, however, we believe this maximum may appropriately be doubled. The Subcommittee thus recommends a two-year maximum for offenses subsequent to the first.

SECTION-BY-SECTION ANALYSIS

The first section of H.R. 13364, as amended, amends section 3 of Public Law 92-140 by eliminating the December 31, 1974, expiration date of the newly created copyright protection of sound recordings. The subject legislation does not affect the existing exclusion from coverage of sound recordings fixed, published, and copyrighted before February 15, 1972 (the effective date of P.L. 92-140).

Section 2 of H.R. 13364, as amended, amends the copyright law *(17 U.S. Code, sec. 104,)* [sic] making the willful infringement for profit of sound recordings subject to a fine of not more than $ 25,000 or imprisonment of not more than one year, or both, for a first offense and a fine of not more than $ 50,000 or imprisonment of not more than two years, or both, for a subsequent offense. Existing penalties, applicable to willful infringements for profit of copyrights generally, prescribes imprisonment for not exceeding one year or a fine of not less than $ 100 nor more than $ 1,000, or both.

Section 3 of H.R. 13364, as amended, makes an identical change in identical provisions of title *18, United States Code, section 2318.* Under the amendment, whoever knowingly and with fraudulent intent transfers in commerce a phonograph record bearing a counterfeit label will be subject to a fine of not more than $ 25,000 or imprisonment of not more than one year, or both, for a first offense and a fine of not more than $ 50,000 or imprisonment of not more than two years, or both, for a subsequent offense.

EXTENSION OF EXPIRING COPYRIGHTS

Section 104 of Title I of the legislation would extend until December 31, 1976 the copyright in works now in their second term of copyright and due to expire on December 31, 1974. This section will not result in any cost to the United States. The Committee is advised that copyright in approximately 124,000 works will expire on December 31 of this year unless an interim extension of the term is passed. Of this total, approximately two-thirds are musical compositions. The Copyright Office estimates that an additional 13,350 copyrights are due to expire in calendar year 1975 and 15,300 in calendar year 1976. By the end of 1976 the total of copyrights affected by interim extension legislation would be approximately 153,500.

If section 104 is enacted, it will be the ninth in a series of interim extensions of the renewal term of expiring copyrights, which began with Public Law 87-668 in 1962. The first three-year interim extension was followed by a two-year extension, Public Laws 89-142, then by five successive one-year extensions, Public Laws 90-141, 90-416, 90-147,

91-555, and 92-170, and finally by another two-year extension, Public Law 92-566, which expires at the end of this year. S. 3976 would add another two-year extension, ending on December 31, 1976.

The principal justification for the extensions has been the bill for general revision of the copyright law, which would add 19 years to the renewal term of all subsisting copyrights, making a total term of 75 years. In the past, support of these temporary extensions was thought warranted under the view that a total 75-year term for subsisting copyrights was fully justified. As long as the revision bill providing a 75-year term was progressing toward enactment, it was thought undesirable to allow subsisting copyrights to expire while the bill was moving through the necessary legislative process. Families of authors and in a few instances authors themselves, as well as assignees and successors of assignees are direct beneficiaries of the royalties from the majority of these copyrights, and it seemed drastic to permit their works to fall into the public domain during active legislative consideration of a bill that would definitively extend the term in all subsisting copyrights. It should be noted that in no case would any of these works be given protection longer than the 75-year term which is established as the norm under the revision bill, S. 1361, which passed the Senate on the same day as did S. 3976.

The revision bill became stalled in the Senate because of a dispute over rights in cable television transmissions, an issue completely unrelated to the length of copyright term.

Senate passage of S. 1361 on September 9, 1974, by a margin of 70 to 1, warrants the view that considerable legislative momentum has been regained by the revision project. Indeed the prospect for revision seems brighter than at any time since 1967.

A total of 150,000 copyright properties are caught up in the question of extension by the end of 1976. About two-thirds of these works are musical compositions, and in the bulk of these cases the families of composer-authors or their heirs, as well as a few authors and assignees will benefit personally from royalty payments flowing from these works.

In short, the Committee believes that the status and prospects of the general revision bill do provide the justification for another interim extension.

NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS

Title II of S. 3976 would create a National Commission on New Technological Uses of Copyrighted Works in the Library of Congress. This study commission was first proposed in a separate bill in the Senate, S. 2216, and passed that body in the first session of the 90th Congress. The proposal was later included as Title II of a package bill (including the copyright revision bill as Title I and the design protection bill as Title III) in the Senate Judiciary Committee print of S. 543 in December, 1969. This same format has been followed in the successive copyright general revision bills in the Senate. The National Commission proposal passed the Senate twice on September 9 of this year: first as part of the copyright general revision package, S. 1361, and then as Title II of S. 3976, the bill under consideration.

The Commission would study and compile data on the use of copyrighted works "in conjunction with automatic systems capable of storing, processing, retrieving, and transferring information, and ... by various forms of machine reproduction, not including reproduction by or at the request of instructors for use in face-to-face teaching activities."

Twelve members of the Commission would be appointed by the President with four each from among three groups:

1. Authors and copyright owners;

2. Copyright users; and

3. The general public. The Committee's amendment No. 3 requires that at least one of the four public members shall be selected from among experts in consumer protection affairs. The Librarian of Congress would serve as the thirteenth voting member, and the Register of Copyrights would serve *ex officio* as a nonvoting member. The supporting staff, headed by an Executive Director, would be an administrative part of the Library of Congress.

Within three years enactment of the bill, a final Commission Report would be made, including recommendations for changes in the copyright law for the twin purposes of assuring access to copyrighted works while providing appropriate recognition of proprietary interests. An interim report would be due within one year after the first Commission meeting.

The inadequacy of the present law to deal with the range of problems arising from the use of copyrighted works in computer systems is well-recognized. Moreover, even though section 108 of the revision bill deals with certain aspects of library photocopying, and other aspects of the problem are now before the Supreme Court in the *Williams and*

Wilkins case, neither enactment of the revision bill nor a definitive decision in the lawsuit can be expected to solve the copyright problems presented by library photocopying or reprography generally. Both of these important public issues urgently need to be studied in depth by recognized experts, and to be reviewed by a commission or other organized body representing all of the interests affected. It is for this reason the Committee is advised that the Copyright Office has supported creation of a National Commission either as part of the general revision bill or, if necessary, as separate legislation.

The Committee agrees that it is not necessary to await enactment of the general revision package before undertaking the studies and consultations contemplated in Title II of S. 3976. We share the hope of the Register of Copyrights that the studies and consultations needed to provide solutions to the copyright problems presented by reprography and the storage and transfer of information will be undertaken without further delay, and that they may be considered independent of the general revision bill itself.

SECTIONAL ANALYSIS OF TITLE II

An analysis of the provisions of Title II (sections 201-208) follows:

Section 201(a) establishes the Commission in the Library of Congress. Section 201(b) defines the purpose of the Commission as the study and compilation of data on the reproduction and use of copyrighted works (1) in automatic systems capable of storing, processing, retrieving, and transferring information, and by various forms of machine reproductions, not including reproduction by instructors for use in face-to-face teaching activities; (2) and the creation of new works by the application or intervention of automatic systems or machine reproduction. It is further provided that the Commission shall make recommendation as to such changes in copyright law or procedures that may be necessary to assure for such purposes access to copyrighted works, and to provide recognition of the rights of copyright owners.

Section 202(a) provides that the Commission shall be composed of 13 members as follows: four members, selected from authors and other copyright owners; four members selected from users of copyrighted works; four nongovernmental members selected from the public generally [at this point the Committee's amendment No. 3 requires at least one of the public members shall be selected from among experts in consumer protection affairs], all to be appointed by the President; and the Librarian of Congress.

Section 202(b) provides that the President shall appoint a Chairman and Vice Chairman from among the four members selected from the public and the Register of Copyrights shall serve as a nonvoting member of the Commission.

Section 202(c) defines a quorum. Section 202(d) provides for the filling of vacancies on the Commission.

Section 203(a) specifies the compensation to be received by members of the Commission. Section 203(b) provides that officers or employees of the Federal Government shall serve on the Commission without compensation, other than expenses.

Section 204(a) authorizes the Commission to appoint a staff which shall be an administrative part of the Library of Congress. This staff shall be under the exclusive control of the Commission and its Executive Director. The staff should be composed of individuals who are knowledgeable in those areas which are relevant to the work of the Commission and should not be limited solely to specialist in copyright law. Section 204(b) authorizes the Commission to procure temporary and intermittent services.

Section 205 authorizes the appropriations of such sums as may be necessary to carry out the provisions of this legislation [at this point the Committee's amendment No. 4 limits the authorization to appropriate funds to funds for the period preceding June 30, 1976].

Section 206(a) requires that the Commission shall submit to the President and the Congress within 1 year of its first meeting a preliminary report on its activities. Section 206(b) directs the Commission to submit a final report within 3 years after the effective date of this legislation. Section 206(c) authorizes the Commission to publish certain interim reports.

Section 207(a) authorizes the Commission to hold hearings, administer oaths and require, by subpena or otherwise, the attendance of witnesses and the production of documents. Section 207(b) provides authorization for various meetings, seminars or conferences.

Section 208 provides that the Commission shall terminate 60 days after the submission of its final report.

COST TO THE UNITED STATES

With respect to the piracy provisions (sections 101, 102, and 103), the Library of Congress advises the Committee as follows:

Sections 101, 102, and 103 of Title I would make the sound recording copyright a permanent feature of title 17 U.S.C., increase the criminal penalties for infringement of a sound recording copyright, under section 104 of that title, and increase the criminal penalties for counterfeit records under title 18 U.S.C. The Copyright Office estimates that claims to copyright in 15,000 sound recordings will be registered per year, and that approximately $ 216,000 will be needed to support this operation. There will be a return of $ 90,000 in fees to the Copyright Office, based on the present registration fee of $ 6.00. In addition to the fees, 30,000 deposit copies will be received with an estimated value of $ 150,000.

The enactment of the interim extension of renewal terms (section 104) will entail no cost to the United States.

With respect to the Commission, the Librarian has advised as follows:

Title II of S. 3976 would create a National Commission on New Technological Uses of Copyrighted Works, with the mandate to examine these uses and to recommend changes in the copyright law to deal with them. The Commission would report on the problem of machine reproduction of copyrighted works by photocopying machines and similar methods after one year, and would complete its work within three years.

In estimating the cost to the United States of this Commission, the Copyright Office has projected a staff of 45 technical, legal, and clerical personnel to support the work of the 13 Commission members. However, the full complement of staff would not be reached until the final year of the Commission; hence the cost the first year is slightly over half the cost for the third and final year of the Commission's life. The Copyright Office has prepared the following estimate of the cost to the United States for the salaries of the 12 nongovernmental Commission members and the supporting staff and for all expenses, including travel, space, furniture, equipment, utilities, supplies, and printing:

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Although the Committee recognizes that cost estimates of this character must often be rough, and although it tentatively accepts and adopts these estimates, the Committee serves notice that it intends to exercise its oversight function and to keep itself informed with respect to these substantial expenditures. Expenditures of the magnitude of those here involved cannot be allowed to occur without close legislative scrutiny.

RECORD VOTE

The Committee decided to report S. 3976 favorably to the House as above amended by roll call vote at a meeting held on December 11, 1974, at which 21 members voted "Aye" and seven members voted "Nay."

COMMUNICATION

COMMUNICATION

Attached hereto and made part hereof is a copy of a letter dated November 18, 1974, from the Librarian of Congress to the Chairman of the Committee on the Judiciary, dealing with S. 3976.

THE LIBRARIAN OF CONGRESS,
Washington, D.C., November 18,
1974..

HON. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. RODINO: In accordance with your request, conveyed on your behalf by Mr. Fuchs, the Register of Copyrights has prepared an estimate of the cost to the United States if S. 3976 is enacted.

S. 3976 consists of two titles. Section 101, 102, and 103 of Title I would make the sound recording copyright a permanent feature of title 17 U.S.C., increase the criminal penalties for infringement of a sound recording copyright, under section 104 of that title, and increase the criminal penalties for counterfeit records under title 18 U.S.C. The Copyright Office estimates that claims to copyright in 15,000 sound recordings will be registered per year, and that approximately $ 216,000 will be needed to support this operation. There will be a return of $ 90,000 in fees to the Copyright Office, based on the present registration fee of $ 6.00. In addition to the fees, 30,000 deposit copies will be received with an estimated value of $ 150,000.

Section 104 of Title I of the legislation would extend until December 31, 1976 the copyright in works now in their second term of copyright and due to expire on December 31, 1974. This section will not result in any cost to the United States. The Committee may be interested to know that copyright in approximately 124,000 works will expire on December 31 of this year unless an interim extension of the term is passed. Of this total, approximately two-thirds are musical compositions. The Copyright Office estimates that an additional 13,350 copyrights are due to expire in calendar year 1975 and 15,300 in calendar year 1976. By the end of 1976 the total of copyrights affected by interim extension legislation would be approximately 153,500.

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If I can be of further assistance, please contact me.

Sincerely yours,

L. QUINCY MUMFORD,
Librarian of Congress.

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):

SECTION 3 OF PUBLIC LAW 92-140

SEC. 3. This Act shall take effect four months after its enactment except that section 2 of this Act shall take effect immediately upon its enactment. The provisions of title 17, United States Code, as amended by section 1 of this Act, shall apply only to sound recordings fixed, published, and copyrighted on and after the effective date of this Act [and before January 1, 1975], and nothing in title 17, United States Code, as amended by section 1 of this Act, shall be applied retroactively or be construed as affecting in any way any rights with respect to sound recordings fixed before the effective date of this Act.

* * * * *

SECTION 104 OF TITLE 17 OF THE UNITED STATES CODE

§ 104. Willful infringement for profit.

Any person who willfully and for profit shall infringe any copyright secured by this title, or who shall knowingly and willfully aid or abet such infringement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not exceeding one year or by a fine of not less than $ 100 nor more than $ 1,000, or

both, in the discretion of the court: *Provided, however,* That nothing in this title shall be so construed as to prevent the performance of religious or secular works such as oratorios, cantatas, masses, or octavo choruses by public schools, church choirs, or vocal societies, rented, borrowed, or obtained from some public library, public school, church choir, school choir, or vocal society, provided the performance is given for charitable or educational purposes and not for profit. *Any person who willfully and for profit shall infringe any copyright provided by subsection 1(f) of title 17 of the United States Code as amended, or who should knowingly and willfully aid or abet such infringement, shall be fined not more than $ 25,000 or imprisoned for not more than one year, or both, for the first offense and shall be fined not more than $ 50,000 or imprisoned not more than two years, or both, for any subsequent offense.*

* * * * *

SECTION 2318 OF TITLE 18 OF THE UNITED STATES CODE

§ 2318. Transportation, sales, or receipt of phonograph records bearing forged or counterfeit labels.

Whoever knowingly and with fraudulent intent, transports, causes to be transported, receives, sells, or offers for sale in interstate or foreign commerce any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded to which or upon which is stamped, pasted, or affixed any forged or counterfeited label, knowing the label to have been falsely made, forged, or counterfeited[.] shall be fined not more than [$ 1,000] *$ 25,000* or imprisoned *for* not more than one year, or both, *for the first such offense, and shall be fined not more than $ 50,000 or imprisoned not more than two years, or both, for any subsequent offense.*

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* * * * *

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VIEWS OF HONORABLE ROBERT W. KASTENMEIER DISSENTING IN PART

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The foregoing report conveys the views of the Committee majority as I understood them. For reasons often stated (e.g., in House Reports 92-605 and 92-1449) I cannot concur in the action of my colleagues in ordering a further extension of expiring renewal terms of copyright. It continues to be my belief that in too many instances the measure will operate to provide an unjustifiable windfall at the expense of the public domain.

ROBERT W. KASTENMEIER.

VIEWS OF HONORABLE ROBERT F. DRINAN DISSENTING IN PART TO S. 3976

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If the only purpose of this bill were to extend existing copyrights for two more years, I would have no serious objection to it. To be sure, there is some doubt whether such an extension is calculated to promote "the Progress of Science and useful Arts" by giving artists exclusive rights to their works "for limited Times." That constitutional directive is somewhat obscured when it is considered that many of the inventors and authors, whose product we seek to protect, have been dead for a very long time. Because the Subcommittee on Courts, Civil Liberties, and the Administration of Justice has placed revision of the entire copyright law high on its agenda for the 94th Congress, I support the two year extension as a matter of equity, fully aware that the 93rd Congress is about to adjourn.

But copyright extension is not the only aim of S. 3976. It also seeks to perpetuate protection for sound recordings, and to establish a "National Commission on New Technological Uses of Copyrighted Works." First, with respect to the sound recording provisions--the so-called "anti-piracy" sections--I have previously set forth my views at some length. A few weeks ago, this Committee passed H.R. 13364, a bill which is nearly identical to Sections 101-103 of S. 3976.

In House Report No. 93-1389, filed on September 30, 1974, I explicated my reasons for opposing the bill to continue protection of sound recordings. In that report at pages 13-17, I explored fully my objections to the measure. I concluded that I could not "support this bill in its present form principally for three reasons: (1) we have not adequately examined the impact of this measure on the competitive aspects of the recording industry, on consumer prices, and on artistic freedom; (2) the criminal penalties in the bill are too severe; and (3) the proposal does not contain an expiration date." Since that occasion, no evidence has been presented to this Committee which would cause me to alter my view on the matter.

Second, S. 3976 also would establish a National Commission on New Technological Uses of Copyrighted Works. This 13 member commission would study the innovative aspects of copyright usage and report back to the Congress and the President. All members of the commission would be appointed by the President, and it is estimated that it would cost approximately $ 2,461,400 to support its work for three years.

I cannot vote in favor of this provision because it gives to the President the sole power of appointment. Even the usual check of requiring the "advice and consent" of the Senate is absent. This arrangement is particularly objectionable when it is considered that the commission staff will be "an administrative part of the Library of Congress." It is quite beyond me why we should lodge exclusive control over the commission members with the Chief Executive. Furthermore, at least eight of its members are required to be chosen from persons who have a vested interest in preserving and extending copyrights. If anything is needed at this time, it is an independent judgment of the utility of the assumed benefits of copyright protection.

In addition the estimated cost for the three year work of the commission appears excessive. Almost $ 2.5 million will be spent to examine new, emerging, and technical areas of copyrights. I think we could save the public a great deal of money if we merely authorized funds to support independent research on the subject. That would surely accomplish

our aim, and reap the additional advantage of securing truly independent judgments about the applicability of copyrights in these new areas.

From what has been said here and in House Report No. 93-1389, it is quite plain that I cannot vote in favor of S. 3976. My objections to the "anti-piracy" sections and to the establishment of a national commission far outweigh my support for the two year extension of existing copyrights.

ROBERT F. DRINAN.

[Editor's Note: There was no Senate Report in 1974 issued on this renewal act.]

Public Law 93-573
93rd Congress, S. 3976
December 31, 1974

Sec. 104. In any case in which the renewal term of copyright subsisting in any work on the date of approval of this bill, or the term thereof as extended by Public Law 87-668, by Public Law 89-142, by Public Law 90-141, by Public Law 90-416, by Public Law 91-147, by Public Law 91-555, by Public Law 92-170, or by Public Law 92-566 (or by all or certain of said laws), would expire prior to December 31, 1976, such term is hereby continued until December 31, 1976.

Approved December 31, 1974.