I

105TH CONGRESS
1ST SESSION

H. R. 2281

To amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 1997

Mr. COBLE (for himself, Mr. HYDE, Mr. CONYERS, and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty.

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 ''WIPO Copyright Treaties Implementation Act''.

SEC. 2. TECHNICAL AMENDMENTS.

(a) DEFINITIONS.—Section 101 of title 17, United States Code, is amended—

(1) by striking the definition of ''Berne Convention work'';

(2) in the definition of ''The 'country of origin' of a Berne Convention work''—

(A) by striking ''The 'country of origin' of a Berne Convention work, for purposes of section 411, is the United States if'' and inserting ''For purposes of section 411, a work is a 'United States work' only if'';

(B) in paragraph (1)—

(i) in subparagraph (B) by striking ''nation or nations adhering to the Berne Convention'' and inserting ''treaty party or parties'';

(ii) in subparagraph (C) by striking ''does not adhere to the Berne Convention'' and inserting ''is not a treaty party''; and

(iii) in subparagraph (D) by striking ''does not adhere to the Berne Convention'' and inserting ''is not a treaty party''; and

(C) in the matter following paragraph (3) by striking ''For the purposes of section 411, the 'country of origin' of any other Berne Convention work is not the United States.'';

(3) by inserting after the definition of ''fixed'' the following:

''The 'Geneva Phonograms Convention' is the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, concluded at Geneva, Switzerland, on October 29, 1971.'';

(4) by inserting after the definition of ''including'' the following:

''An 'international agreement' is—

''(1) the Universal Copyright Convention;

''(2) the Geneva Phonograms Convention;

''(3) the Berne Convention;

''(4) the WTO Agreement;

''(5) the WIPO Copyright Treaty;

''(6) the WIPO Performances and Phonograms Treaty; and

''(7) any other copyright treaty to which the United States is a party.'';

(5) by inserting after the definition of ''transmit'' the following:

''A 'treaty party' is a country or intergovernmental organization other than the United States that is a party to an international agreement.'';

(6) by inserting after the definition of ''widow'' the following:

''The 'WIPO Copyright Treaty' is the WIPO Copyright Treaty concluded at Geneva, Switzerland, on December 20, 1996.'';

(7) by inserting after the definition of ''The 'WIPO Copyright Treaty' '' the following:

''The 'WIPO Performances and Phonograms Treaty' is the WIPO Performances and Phonograms Treaty concluded at Geneva, Switzerland, on December 20, 1996.''; and

(8) by inserting after the definition of ''work made for hire'' the following:

''The terms 'WTO Agreement' and 'WTO member country' have the meanings given those terms in paragraphs (9) and (10), respectively, of section 2 of the Uruguay Round Agreements Act.''.

(b) SUBJECT MATTER OF COPYRIGHT; NATIONAL ORIGIN.—Section 104 of title 17, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1) by striking ''foreign nation that is a party to a copyright treaty to which the United States is also a party'' and inserting ''treaty party'';

(B) in paragraph (2) by striking ''party to the Universal Copyright Convention'' and inserting ''treaty party'';

(C) by redesignating paragraph (5) as paragraph (6);

(D) by redesignating paragraph (3) as paragraph (5) and inserting it after paragraph (4);

(E) by inserting after paragraph (2) the following:

''(3) the work is a sound recording that was first fixed in a treaty party; or'';

(F) in paragraph (4) by striking ''Berne Convention work'' and inserting ''pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party''; and

(G) by inserting after paragraph (6), as so redesignated, the following:

''For purposes of paragraph (2), a work that is published in the United States or a treaty party within 30 days after publication in a foreign nation that is not a treaty party

shall be considered to be first published in the United States or such treaty party, as the case may be.''; and

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

''(d) EFFECT OF PHONOGRAMS TREATIES.—Notwithstanding the provisions of subsection (b), no works other than sound recordings shall be eligible for protection under this title solely by virtue of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.''.

(c) COPYRIGHT IN RESTORED WORKS.—Section 104A(h) of title 17, United States Code, is amended—

(1) in paragraph (1), by striking subparagraphs (A) and (B) and inserting the following:

''(A) a nation adhering to the Berne Convention;

''(B) a WTO member country;

''(C) a nation adhering to the WIPO Copyright Treaty;

''(D) a nation adhering to the WIPO Performances and Phonograms Treaty; or

''(E) subject to a Presidential proclamation under subsection (g).'';

(2) by amending paragraph (3) to read as follows:

''(3) The term 'eligible country' means a nation, other than the United States, that—

''(A) becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;

''(B) on such date of enactment is, or after such date of enactment becomes, a nation adhering to the Berne Convention;

''(C) adheres to the WIPO Copyright Treaty;

''(D) adheres to the WIPO Performances and Phonograms Treaty; or

''(E) after such date of enactment becomes subject to a proclamation under subsection (g).'';

(3) in paragraph (6)—

(A) in subparagraph (C)(iii) by striking ''and'' after the semicolon;

(B) at the end of subparagraph (D) by striking the period and inserting ''; and''; and

(C) by adding after subparagraph (D) the following:

''(E) if the source country for the work is an eligible country solely by virtue of its adher-

ence to the WIPO Performances and Phonograms Treaty, is a sound recording.'';

(4) in paragraph (8)(B)(i)—

(A) by inserting ''of which'' before ''the majority''; and

(B) by striking ''of eligible countries''; and

(5) by striking paragraph (9).

(d) REGISTRATION AND INFRINGEMENT ACTIONS.—Section 411(a) of title 17, United States Code, is amended in the first sentence—

(1) by striking ''actions for infringement of copyright in Berne Convention works whose country of origin is not the United States and''; and

(2) by inserting ''United States'' after ''no action for infringement of the copyright in any''.

(e) STATUTE OF LIMITATIONS.—Section 507(a) of title 17, United State Code, is amended by striking ''No'' and inserting ''Except as expressly provided otherwise in this title, no''.

SEC. 3. COPYRIGHT PROTECTIONS SYSTEMS AND COPYRIGHT MANAGEMENT INFORMATION.

Title 17, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 12—COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS

''Sec.
''1201. Circumvention of copyright protection systems.
''1202. Integrity of copyright management information.
''1203. Civil remedies.
''1204. Criminal offenses and penalties.

"§ 1201. Circumvention of copyright protection systems

''(a) VIOLATIONS REGARDING CIRCUMVENTION OF TECHNOLOGICAL PROTECTION MEASURES.—(1) No person shall circumvent a technological protection measure that effectively controls access to a work protected under this title.

''(2) No person shall manufacture, import, offer to the public, provide or otherwise traffic in any technology, product, service, device, component, or part thereof that—

''(A) is primarily designed or produced for the purpose of circumventing a technological protection measure that effectively controls access to a work protected under this title;

''(B) has only limited commercially significant purpose or use other than to circumvent a technological protection measure that effectively controls access to a work protected under this title; or

''(C) is marketed by that person or another acting in concert with that person for use in circumventing a technological protection measure that

effectively controls access to a work protected under this title.

''(3) As used in this subsection—

''(A) to 'circumvent a technological protection' means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological protection measure, without the authority of the copyright owner; and

''(B) a technological protection measure 'effectively controls access to a work' if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

''(b) ADDITIONAL VIOLATIONS.—(1) No person shall manufacture, import, offer to the public, provide or otherwise traffic in any technology, product, service, device, component, or part thereof that—

''(A) is primarily designed or produced for the purpose of circumventing protection afforded by a technological protection measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof;

''(B) has only limited commercially significant purpose or use other than to circumvent protection afforded by a technological protection measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof; or

''(C) is marketed by that person or another acting in concert with that person for use in circumventing protection afforded by a technological protection measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof.

''(2) As used in this subsection—

''(A) the term 'circumvent protection afforded by a technological protection measure' means avoiding, bypassing, removing, deactivating, or otherwise impairing a technological protection measure; and

''(B) a technological protection measure 'effectively protects a right of a copyright owner' under this title if the measure, in the ordinary course of its operation, prevents, restricts, or otherwise limits the exercise of a right of a copyright owner under this title.

''(c) IMPORTATION.—The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer,

or consignee of any technology, product, service, device, component, or part thereof as described in subsection (a) or (b) shall be actionable under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

''(d) OTHER RIGHTS, ETC., NOT AFFECTED.—Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.

''(e) LAW ENFORCEMENT AND INTELLIGENCE ACTIVITIES.—This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

"§ 1202. Integrity of copyright management information

''(a) FALSE COPYRIGHT MANAGEMENT INFORMATION.—No person shall knowingly—

''(1) provide copyright management information that is false, or

''(2) distribute or import for public distribution copyright management information that is false,

with the intent to induce, enable, facilitate, or conceal infringement.

''(b) REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION.—No person shall, without the authority of the copyright owner or the law—

''(1) intentionally remove or alter any copyright management information,

''(2) distribute or import for distribution copyright management information, knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law, or

''(3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law,

knowing or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title.

''(c) DEFINITION.—As used in this chapter, the term 'copyright management information' means the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form:

''(1) The title and other information identifying the work, including the information set forth on a notice of copyright.

''(2) The name of, and other identifying information about, the author of a work.

''(3) The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright.

''(4) Terms and conditions for use of the work.

''(5) Identifying numbers or symbols referring to such information or links to such information.

''(6) Such other information as the Register of Copyrights may prescribe by regulation, except that the Register of Copyrights may not require the provision of any information concerning the user of a copyrighted work.

''(d) LAW ENFORCEMENT AND INTELLIGENCE ACTIVITIES.—This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

"§ 1203. Civil remedies

''(a) CIVIL ACTIONS.—Any person injured by a violation of section 1201 or 1202 may bring a civil action in an appropriate United States district court for such violation.

''(b) POWERS OF THE COURT.—In an action brought under subsection (a), the court—

''(1) may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain a violation;

''(2) at any time while an action is pending, may order the impounding, on such terms as it deems reasonable, of any device or product that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation;

''(3) may award damages under subsection (c);

''(4) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof;

''(5) in its discretion may award reasonable attorney's fees to the prevailing party; and

''(6) may, as part of a final judgment or decree finding a violation, order the remedial modification or the destruction of any device or product involved in the violation that is in the custody or control of

the violator or has been impounded under paragraph (2).

''(c) AWARD OF DAMAGES.—

''(1) IN GENERAL.—Except as otherwise provided in this chapter, a person committing a violation of section 1201 or 1202 is liable for either—

''(A) the actual damages and any additional profits of the violator, as provided in paragraph (2); or

''(B) statutory damages, as provided in paragraph (3).

''(2) ACTUAL DAMAGES.—The court shall award to the complaining party the actual damages suffered by the party as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages, if the complaining party elects such damages at any time before final judgment is entered.

''(3) STATUTORY DAMAGES.—(A) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1201 in the sum of not less than $200 or more than $2,500 per act of circumvention, device, product, component,

offer, or performance of service, as the court considers just.

''(B) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1202 in the sum of not less than $2,500 or more than $25,000.

''(4) REPEATED VIOLATIONS.—In any case in which the injured party sustains the burden of proving, and the court finds, that a person has violated section 1201 or 1202 within 3 years after a final judgment was entered against that person for another such violation, the court may increase the award of damages up to triple the amount that would otherwise be awarded, as the court considers just.

''(5) INNOCENT VIOLATIONS.—The court in its discretion may reduce or remit the total award of damages in any case in which the violator sustains the burden of proving, and the court finds, that the violator was not aware and had no reason to believe that its acts constituted a violation.

"§ 1204. Criminal offenses and penalties

''(a) IN GENERAL.—Any person who violates section 1201 or 1202 willfully and for purposes of commercial advantage or private financial gain—

''(1) shall be fined not more than $500,000 or imprisoned for not more than 5 years, or both, for the first offense; and

''(2) shall be fined not more than $1,000,000 or imprisoned for not more than 10 years, or both, for any subsequent offense.

''(b) STATUTE OF LIMITATIONS.—Notwithstanding section 507(a) of this title, no criminal proceeding shall be maintained under subsection (a) unless such proceeding is commenced within 5 years after the cause of action arose.''.

SEC. 4. CONFORMING AMENDMENT.

The table of chapters for title 17, United States Code, is amended by adding at the end the following:

"12. Copyright Protection and Management Systems ..... 1201".

SEC. 5. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b), the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) AMENDMENTS RELATING TO CERTAIN INTERNATIONAL AGREEMENTS.—(1) The following shall take ef-

fect upon the entry into force of the WIPO Copyright Treaty with respect to the United States:

(A) Paragraph (5) of the definition of ''international agreement'' contained in section 101 of title 17, United States Code, as amended by section 2(a)(4) of this Act.

(B) The amendment made by section 2(a)(6) of this Act.

(C) Subparagraph (C) of section 104(h)(1) of title 17, United States Code, as amended by section 2(c)(1) of this Act.

(D) Subparagraph (C) of section 104(h)(3) of title 17, United States Code, as amended by section 2(c)(2) of this Act.

(2) The following shall take effect upon the entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States:

(A) Paragraph (6) of the definition of ''international agreement'' contained in section 101 of title 17, United States Code, as amended by section 2(a)(4) of this Act.

(B) The amendment made by section 2(a)(7) of this Act.

(C) The amendment made by section 2(b)(2) of this Act.

(D) Subparagraph (D) of section 104(h)(1) of title 17, United States Code, as amended by section 2(c)(1) of this Act.

(E) Subparagraph (D) of section 104(h)(3) of title 17, United States Code, as amended by section 2(c)(2) of this Act.

(F) The amendments made by section 2(c)(3) of this Act.

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