101ST CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
101-887

COPYRIGHT REMEDY CLARIFICATION ACT

OCTOBER 16, 1989.—Ordered to be printed

Mr. KASTENMEIER, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 3045]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3045) to amend chapters 5 and 9 of title 17, United States Code, to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of copyright and infringement of exclusive rights in mask works, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private person or against other public entities, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Copyright Remedy Clarification Act".

SEC. 2. LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS FOR INFRINGEMENT OF COPYRIGHT AND EXCLUSIVE RIGHTS IN MASK WORKS.

(a) COPYRIGHT INFRINGEMENT.—(1) Section 501(a) of title 17, United States Code, is amended by adding at the end the following: "As used in this subsection, the term 'anyone' includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employ-

ee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.".

(2) Chapter 5 of title 17, United States Code, is amended by adding at the end the following new section:

"§ 511. Liability of States, instrumentalities of States, and State officials for infringement of copyright

"(a) IN GENERAL.—Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for a violation of any of the exclusive rights of a copyright owner provided by sections 106 through 119, for importing copies of phonorecords in violation of section 602, or for any other violation under this title.

"(b) REMEDIES.—In a suit described in subsection (a) for a violation described in that subsection, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any public or private entity other than a State, instrumentality of a State, or officer or employee of a State acting in his or her official capacity. Such remedies include impounding and disposition of infringing articles under section 503, actual damages and profits and statutory damages under section 504, costs and attorney's fees under section 505, and the remedies provided in section 510.".

(3) The table of sections at the beginning of chapter 5 of title 17, United States Code, is amended by adding at the end the following new item:

"Sec. 511. Liability of States, instrumentalities of States, and State officials for infringement of copyright.".

(b) INFRINGEMENT OF EXCLUSIVE RIGHTS IN MASK WORKS.—(1) Section 910(a) of title 17, United States Code, is amended by adding at the end the following: "As used in this subsection, the term 'any person' includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.".

(2) Section 911 of title 17, United States Code, is amended by adding at the end the following new subsection:

"(g)(1) Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for a violation of any of the exclusive rights of the owner of a mask work under this chapter, or for any other violation under this chapter.

"(2) In a suit described in paragraph (1) for a violation described in that paragraph, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any public or private entity other than a State, instrumentality of a State, or officer or employee of a State acting in his or her official capacity. Such remedies include actual damages and profits under subsection (b), statutory damages under subsection (c), impounding and disposition of infringing articles under subsection (e), and costs and attorney's fees under subsection (f).".

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall take effect with respect to violations that occur on or after the date of the enactment of this Act.

And the Senate agree to the same.

That the Senate recede from its amendment to the title of the bill.

BOB KASTENMEIER,
GEO. W. CROCKETT, Jr.,
HOWARD L. BERMAN,
CARLOS J. MOORHEAD,
HOWARD COBLE,
Managers on the Part of the House.

DENNIS DECONCINI,
PATRICK LEAHY,
TED KENNEDY,
ORRIN HATCH,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3045) to amend title 17 of the United States Code to clarify the remedies available for copyright and mask work infringement, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment added a new section 3 to the House bill. The Senate recedes from the addition of section 3.

Due to a printing error, the word "official" was omitted from the first sentence of proposed section 911(g)(1) of title 17 in H.R. 3045 as passed by the House. The House therefore recedes to sections 1, 2, and 4 of the Senate bill.

1. SHORT TITLE

This section in the House and Senate bills is identical. The House recedes.

2. LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS FOR INFRINGEMENT OF COPYRIGHT AND EXCLUSIVE RIGHTS IN MASK WORKS

This section in the House and Senate bills is identical except for a printing error that omitted the word "official" from the first sentence of proposed 17 U.S.C. 911(g)(1) in the bill as passed by the House.

The House recedes.

3. COSTS AND ATTORNEY'S FEES

This section was added by amendment by the Senate. The amendment limits reimbursement for attorneys' fees and other costs to copyright owners unless the copyright owner falls within one of three specified categories, taken from the Equal Access to Justice Act: a business with a net worth of $5 million or less, with 500 or fewer employees; a tax exempt organization or cooperative association with 500 or fewer employees; or an individual with a net worth of $1 million or less.

The Committee agrees with the Register of Copyrights, Ralph Oman, who described the amendment as unnecessary, since "[a]ward of attorney's fees is discretionary with the courts, and judges generally will not award large fees for the benefit of affluent plaintiffs who sue nonprofit defendants . . . The states generally would not be assessed attorney's fees anyway."

The Register also advised that the Congress should preserve the discretion of judges to award attorneys' fees where appropriate, in order to "deter abuse by individual state officials, who might otherwise be grossly negligent about respecting the copyright law."

Finally, the Register concluded that "[i]f the states violate the copyright law, they are injuring the property rights of citizens and the status of the citizen should not affect the remedies available. Moreover, by depriving more affluent citizens of attorney's fees, you will discourage some of them from filing lawsuits to vindicate their property rights."

The Senate recedes.

4. EFFECTIVE DATE

This section in the House and Senate bills is identical. The House recedes.

BOB KASTENMEIER,
GEO. W. CROCKETT, Jr.,
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