102D CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 102-379
Part 1

COPYRIGHT AMENDMENTS ACT OF 1991

NOVEMBER 25, 1991.—Ordered to be printed

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

REPORT

[To accompany H.R. 2372 which on May 16, 1991, was referred jointly to the Committee on the Judiciary and the Committee on House Administration]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2372) to amend title 17, United States Code, with respect to fair use and copyright renewal, to authorize the National Film Registry Board, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Copyright Amendments Act of 1991".

TITLE I—RENEWAL OF COPYRIGHT

SEC. 101. SHORT TITLE.

This title may be referred to as the "Copyright Renewal Act of 1991".

SEC. 102. COPYRIGHT RENEWAL PROVISIONS.

(a) DURATION OF COPYRIGHT: SUBSISTING COPYRIGHTS.—Section 304(a) of title 17, United States Code, is amended to read as follows:

"(a) COPYRIGHTS IN THEIR FIRST TERM ON JANUARY 1, 1978.—(1)(A) Any copyright, the first term of which is subsisting on January 1, 1978, shall endure for 28 years from the date it was originally secured.

"(B) In the case of—

"(i) any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or

"(ii) any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such is made for hire,

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 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) the author of such work, if the author is still living,

"(ii) the widow, widower, or children of the author, if the author is not living,

"(iii) the author's executors, if such author, widow, widower, or children are not living, or

"(iv) the author's next of kin, in the absence of a will of the author,

shall be entitled to a renewal and extension of the copyright in such work for a further term of 47 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 years, which—

"(i) if an application to register a claim to such further term has been made to the Copyright Office within 1 year before the expiration of the original term of copyright, and the claim is registered, shall vest, upon the beginning of such further term, in the proprietor of the copyright who is entitled to claim the renewal of copyright at the time the application is made; or

"(ii) if no such application is made or the claim pursuant to such application is not registered, shall vest, upon the beginning of such further term, in the person or entity that was the proprietor of the copyright as of the last day of the original term of copyright.

"(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 years, which—

"(i) if an application to register a claim to such further term has been made to the Copyright Office within 1 year before the expiration of the original term of copyright, and the claim is registered, shall vest, upon the beginning of such further term, in any person who is entitled under paragraph (1)(C) to the renewal and extension of the copyright at the time the application is made; or

"(ii) if no such application is made or the claim pursuant to such application is not registered, shall vest, upon the beginning of such further term, in any person entitled under paragraph (1)(C), as of the last day of the original term of copyright, to the renewal and extension of the copyright.

"(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 years; and

"(ii) at any time during the renewed and extended term by any person in whom such further term vested, under paragraph (2) (A) or (B), or by any successor or assign of such person, if the application is made in the name of such person.

In the case of applications made under clause (i) for works not originally registered, the Register may, in accordance with regulations, require an original term registration as a condition to the registration for the renewed and extended term, except in the case of a Berne Convention work whose country of origin is not the United States.

"(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 years.

"(4)(A) If an application to register a claim to the renewed and extended term of copyright in a work is not made within 1 year before the expiration of the original term of copyright in a work, or if the claim pursuant to such application is not registered, then a derivative work prepared under authority of a grant of a transfer or license of copyright that is made before the expiration of the original term of copyright, may continue to be used under the terms of the grant during the renewed and extended term of copyright without infringing the copyright, except that such use does not extend to the preparation during such renewed and extended term of other derivative works based upon the copyrighted work covered by such grant.

"(B) If an application to register a claim to the renewed and extended term of copyright in a work is made within 1 year before its expiration, and the claim is registered, the certificate of such registration shall constitute prima facie evidence as to the validity of the copyright during its renewed and extended term and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration of a renewed and extended term of copyright made after the end of that 1-year period shall be within the discretion of the court.

"(C) If an application to register a claim in the first term of copyright is not made before expiration of the first term, the remedies of actual and statutory damages, attorney's fees, and seizure and forfeiture otherwise provided by sections 504, 505, and 509, respectively, shall not be available to the copyright owner for any act of infringement that commences before registration is made of a claim in the renewed and extended term of copyright, even if the infringing conduct continues after registration is made.".

(b) LEGAL EFFECT OF RENEWAL OF COPYRIGHT UNCHANGED.—The renewal and extension of a copyright for a further term of 47 years as provided 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, of a transfer or license of the further term as did the renewal of a copyright before the effective date of this section under the law in effect at the time of such grant.

(c) CONFORMING AMENDMENT.—Section 304(c) of title 17, United States Code, is amended in the matter preceding paragraph (1) by striking "second proviso of subsection (a)" and inserting "subsection (a)(1)(C)".

(d) REGISTRATION PERMISSIVE.—Section 408(a) of title 17, United States Code, is amended by striking "At" and all that follows through "unpublished work," and inserting "At any time during the subsistence of the first term of copyright in any published or unpublished work in which the copyright was secured before January 1, 1978, and during the subsistence of any copyright secured on or after that date,".

(e) FALSE REPRESENTATION.—Section 506(e) of title 17, United States Code, is amended by inserting after "409," the following: "in the application for a renewal registration,".

(f) COPYRIGHT OFFICE FEES.—Section 708(a)(2) of title 17, United States Code, is amended—

(1) by striking "in its first term"; and

(2) by striking "$12" and inserting "$20".

(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, 1963, and December 31, 1977. Copyrights secured before January 1, 1963, 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.

(3) This section and the amendments made by this section shall not affect any court proceedings pending on the effective date of this section.

TITLE II—NATIONAL FILM PRESERVATION

SEC. 201. SHORT TITLE.

This title may be cited as the "National Film Preservation Act of 1991".

SEC. 202. NATIONAL FILM REGISTRY OF THE LIBRARY OF CONGRESS.

The Librarian of Congress (hereinafter in this title referred to as the "Librarian") shall establish a National Film Registry pursuant to the provisions of this title, for the purpose of maintaining and preserving films that are culturally, historically, or aesthetically significant.

SEC. 203. DUTIES OF THE LIBRARIAN OF CONGRESS.

(a) STUDY OF FILM PRESERVATION.—(1) The Librarian shall, after consultation with the Board established pursuant to sectioin 204, conduct a study on the current state of film preservation and restoration activities, including the activities of the Library of Congress and the other major film archives in the United States. The Librarian shall, in conducting the study—

(A) take into account the objectives of the national film preservation program set forth in clauses (i) through (iii) of subsection (b)(1)(A); and

(B) consult with film archivists, eductors and historians, copyright owners, film industry representatives, including those involved in the preservation of film, and others involved in activities related to film preservation.

(2) Not later than 1 year after the date of the enactment of this Act, the Librarian shall submit to the Congress a report containing the results of the study conducted under paragraph (1).

(b) POWERS.—(1) The Librarian shall, after consultation with the Board, do the following:

(A) After completion of the study required by subsection (a), the Librarian shall, taking into account the results of the study, establish a comprehensive

national film preservation program for motion pictures, in conjunction with other film archivists and copyright owners. The objectives of such a program shall include—

(i) coordinating activities to assure that efforts or archivists and copyright owners, and others in the public and private sector, are effective and complementary;

(ii) generating public awareness of and support for those activities; and

(iii) increasing accessibility of films for educational purposes, and improving nationwide activities in the preservation of works in other media such as videotape.

(B) The Librarian shall establish guidelines and procedures under which films may be included in the National Film Registry, except that no film shall be eligible for inclusion in the National Film Registry until 10 years after such film's first publication.

(C) The Librarian shall establish procedures under which the general public may make recommendations to the Board regarding the inclusion of films in the National Film Registry.

(D) The Librarian shall establish procedures for the examination by the Librarian of prints of films named for inclusion in the National Film Registry to determine their eligibility for the use of the seal of the National Film Registry under paragraph (3).

(E) The Librarian shall determine which films satisfy the criteria established under subparagraph (B) and qualify for inclusion in the National Film Registry, except that the Librarian shall not select more than 25 films each year for inclusion in the Registry.

(2) The Librarian shall publish in the Federal Register the name of each film that is selected for inclusion in the National Film Registry.

(3) The Librarian shall provide a seal to indicate that a film has been included in the National Film Registry and is the Registry version of that film.

(4) The Librarian shall publish in the Federal Register the criteria used to determine the Registry version of a film.

(5) The Librarian shall submit to the Congress a report, not less than once every two years, listing films included in the National Film Registry and describing the activities of the Board.

(c) SEAL.—The seal provided under subsection (b)(3) may be used on any copy of the Registry version of a film. Such seal may be used only after the Librarian has examined and approved the print from which the copy was made. In the case of copyrighted works, only the copyright owner or an authorized licensee of the copyright may place or authorize the placement of the seal on a copy of a film selected for inclusion in the National Film Registry, and the Librarian may place the seal on any print or copy of the film that is maintained in the National Film Registry Collection of the Library of Congress. The person authorized to place the seal on a copy of a film selected for inclusion in the National Film Registry may accompany such seal with the following language: "This film is included in the National Film Registry, which is maintained by the Library of Congress, and was preserved under the National Preservation Act of 1991.".

(d) DEVELOPMENT OF STANDARDS.—The Librarian shall develop standards or guidelines by which to assess the preservation or restoration of films that will qualify films for use of the seal under this section.

SEC. 204. NATIONAL FILM PRESERVATION BOARD.

(a) NUMBER AND APPOINTMENT.—(1) The Librarian shall establish in the Library of Congress a National Film Preservation Board to be comprised of up to 18 members, who shall be selected by the Librarian in accordance with the provisions of this section. Subject to subparagraphs (C) and (O), the Librarian shall request each organization listed in subparagraphs (A) through (P) to submit to the Librarian a list of not less than 3 candidates qualified to serve as a member of the Board. Except for the members-at-large appointed under paragraph (2), the Librarian shall appoint 1 member from each such list submitted by such organizations, and shall designate from that list an alternate who may attend those meetings to which the individual appointed to the Board cannot attend. The organizations are the following:

(A) The Academy of Motion Pictures Arts and Sciences.

(B) The Directors Guild of America.

(C) The Writers Guild of America. The Writers Guild of America East and the Writers Guild of America West shall each nominate not less than 3 candidates,

and a representative from 1 such organization shall be selected as the member and a representative from the other such organization as the alternative.

(D) The National Society of Film Critics.

(E) The Society for Cinema Studies.

(F) The American Film Institute.

(G) The Department of Theatre, Film and Television of the College of Fine Arts at the University of California, Los Angeles.

(H) The Department of Film and Television of the Tisch School of the Arts at New York University.

(I) The University Film and Video Association.

(J) The Motion Picture Association of America.

(K) The National Association of Broadcasters.

(L) The Alliance of Motion Picture and Television Producers.

(M) The Screen Actors Guild of America.

(N) The National Association of Theater Owners.

(O) The American Society of Cinematographers and the International Photographers Guild, which shall jointly submit 1 list of candidates from which a member and alternate will be selected.

(P) The United States members of the International Federation of Film Archives.

(2) In addition to the Members appointed under paragraph (1), the Librarian shall appoint up to 2 members-at-large. The Librarian shall select the at-large members from names submitted by organizations in the film industry, creative artists, producers, film preservation organizations, academic institutions with the film study programs, and others with knowledge of copyright law and of the importance, use, and dissemination of films. The Librarian shall, in selecting 1 such member-at-large, give preference to individuals who are commercial film archivists. The Librarian shall also select from the names submitted under this paragraph an alternate for each member-at-large, who may attend those meetings to which the member-at-large cannot attend.

(b) CHAIRPERSON.—The Librarian shall appoint 1 member of the Board to serve as Chairperson.

(c) TERM OF OFFICE.—(1) The term of each member of the Board shall be 3 years, except that there shall be no limit to the number of terms that any individual member may serve.

(2) A vacancy in the Board shall be filled in the manner in which the original appointment was made under subsection (a), except that the Librarian may fill the vacancy from a list of candidates previously submitted by the organization or organizations involved. Any member appointed to fill a vacancy before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term.

(d) QUORUM.—9 members of the board shall constitute a quorum but a lesser number may hold hearings.

(e) BASIC PAY.—Members of the Board shall serve without pay. While away from their home or regular places of business in the performance of functions of the Board, members of the board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expense under section 5701 of title 5, United States Code.

(f) MEETINGS.—The Board shall meet at least once each calendar year. Meetings shall be at the call of the Librarian.

(g) CONFLICT OF INTEREST.—The Librarian shall establish rules and procedures to address any potential conflict of interest between a member of the Board and the responsibilities of the Board.

SEC. 205. RESPONSIBILITIES AND POWERS OF BOARD.

(a) IN GENERAL.—The Board shall review nominations of films submitted to it for inclusion in the National Film Registry and shall consult with the Librarian, as provided in section 203, with respect to the inclusion of such films in the Registry and the preservation of these and other films that are culturally, historically, or aesthetically significant.

(b) NOMINATION OF FILMS.—The Board shall consider, for inclusion in the National Film Registry, nominations submitted by the general public as well as representatives of the film industry, such as the guilds and societies representing actors, directors, screenwriters, cinematographers and other creative artists, producers, film critics, film preservation organizations, and representatives of academic institutions

with film study programs. The Board shall nominate not more than 25 films each year for inclusion in the Registry.

(c) GENERAL POWERS.—The Board may, for the purpose of carrying out its duties, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Librarian and the Board considers appropriate.

SEC. 206. NATIONAL FILM REGISTRY COLLECTION OF THE LIBRARY OF CONGRESS.

(a) ACQUISITION OF ARCHIVAL QUALITY COPIES.—The Librarian shall endeavor to obtain, by gift from the owner, an archival quality copy of the Registry version of each film included in the National Film Registry. Whenever possible the Librarian shall endeavor to obtain the best surviving materials, including preprint materials.

(b) ADDITIONAL MATERIALS.—The Librarian shall endeavor to obtain, for educational and research purposes, additional materials related to each film included in the National Film Registry, such as background materials, production reports, shooting scripts (including continuity scripts) and other similar materials.

(c) PROPERTY OF UNITED STATES.—All copies of films on the National Film Registry that are received by the Librarian and other materials received by the Librarian under subsection (b) shall become the property of the United States Government, subject to the provisions of title 17, United States Code.

(d) NATIONAL FILM REGISTRY COLLECTION.—All copies of films on the National Film Registry that are received by the Librarian and all materials received by the Librarian under subsection (b) shall be maintained in a special collection in the Library of Congress to be known as the "National Film Registry Collection of the Library of Congress". The Librarian shall, by regulation, and in accordance with title 17, United States Code, provide for reasonable access to films in such collection for scholarly and research purposes.

SEC. 207. SEAL OF THE NATIONAL FILM REGISTRY.

(a) USE OF THE SEAL.—(1) No person shall knowingly distribute or exhibit to the public a version of a film which bears the seal described in section 203(b)(3) if such film—

(A) is not included in the National Film Registry; or

(B) is included in the National Film Registry, but such copy was not made from a print that was examined and approved for the use of the seal by the Librarian under section 203(c).

(2) No person shall knowingly use the seal described in section 203(b)(3) to promote any version of a film other than a Registry version.

(b) EFFECTIVE DATE OF THE SEAL.—The use of the seal described in section 203(b)(3) shall be effective for each film after the Librarian publishes in the Federal Register the name of that film as selected for inclusion in the National Film Registry.

SEC. 208. REMEDIES.

(a) JURISDICTION.—The several district courts of the United States shall have jurisdiction, for cause shown, to prevent and restrain violations of section 207(a).

(b) RELIEF.—(1) Except as provided in paragraph (2), relief for a violation of section 207(a) shall be limited to the removal of the seal of the national Film Registry from the film involved in the violation.

(2) In the case of a pattern or practice of the willful violation of section 207(a), the United States district courts may order a civil fine of not more than $10,000 and appropriate injunctive relief.

SEC. 209. LIMITATIONS OF REMEDIES.

The remedies provided in section 208 shall be the exclusive remedies under this title, or any other Federal or State law, regarding the use of the seal described in section 203(b)(3).

SEC. 210. STAFF OF BOARD; EXPERTS AND CONSULTANTS.

(a) STAFF.—The Librarian may appoint and fix the pay of such personnel as the Librarian considers appropriate to carry out this title.

(b) EXPERTS AND CONSULTANTS.—The Librarian may, in carrying out this title, procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum rate of basic pay payable for GS-15 of the General Schedule. In no case may a member of the Board be paid as an expert or consultant under such section.

SEC. 211. DEFINITIONS.

As used in this title—

(1) the term "Librarian" means the Librarian of Congress;

(2) the term "Board" means the National Film Preservation Board;

(3) the term "film" means a "motion picture" as defined in section 101 of title 17, United States Code, except that such term does not include any work not originally fixed on film stock, such as a work fixed on videotape or laser disks;

(4) the term "publication" means "publication" as defined in section 101 of title 17, United States Code; and

(5) the term "Registry version" means, with respect to a film, the version of the film first published, or as complete a version as the bona fide preservation and restoration activities by the Librarian, an archivist other than the Librarian, or the copyright owner can compile in those cases where the original material has been irretrievably lost.

SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Librarian to carry out the purposes of this title—

(1) $300,000 for fiscal year 1992, and

(2) $300,000 for each of the fiscal years 1993 and 1994, plus such additional amount, for each such fiscal year, as reflects any increase in the Consumer Price Index, as determined by the Secretary of Labor, occurring since the beginning of fiscal year 1992.

SEC. 213. EFFECTIVE DATE.

The provisions of this title shall apply to any copy of any film, including those copies of films selected for inclusion in the National Film Registry under the National Film Preservation Act of 1988, except that any film so selected under such Act shall be deemed to have been selected for the National Film Registry under this title.

SEC. 214. REPEAL.

The National Film Preservation Act of 1988 (2 U.S.C. 178 and following) is repealed.

Amend the title so as to read: "A bill to amend title 17, United States Code, with respect to copyright renewal, to reauthorize the National Film Preservation Board, and for other purposes.".

EXPLANATION OF AMENDMENT

Inasmuch as H.R. 2372 was ordered reported with a single amendment in the nature of a substitute, the contents of this report constitute an explanation of that amendment.

PURPOSE OF THE LEGISLATION

The purpose of the Copyright Amendments Act of 1991 is twofold, reflected in the two titles. Title I is entitled the Copyright Renewal Act of 1991, and Title II is entitled the National Film Preservation Act of 1991.

The purpose of Title I is to allow automatic renewal of copyright in works eligible for renewal between the years 1991 and 2005. The renewal provisions are revised prospectively to prevent forfeitures for failure to register, without eliminating the copyright renewal term and without impairing existing "expectancies" (contingent renewal rights) or contractual interests in them. Renewal of copyright will occur automatically. Registration of renewal claims is made voluntary rather than mandatory. Registration would sometimes determine the person entitled to the renewal term and there are strong incentives to register renewal applications.

The purpose of Title II is to reauthorize the film preservation activities of the Library of Congress and the National Film Preservation Board for a period of three years. The Act will assure that films of important cultural, historical, and aesthetic significance to our country are preserved. It will further promote film as an art

form and improve public awareness of the need to safeguard our nation's motion pictures.

As introduced, H.R. 2372 was a three-title bill. The title relating to the fair use of unpublished copyrighted works (originally Title I) was deleted during Subcommittee consideration of the bill.

HEARINGS

The Subcommittee on Intellectual Property and Judicial Administration, to which the bill was referred, held four days of hearings on H.R. 2372.[1]

On May 30, 1991, the Subcommittee held a hearing on Title I of H.R. 2372, as introduced, relating to the subject of fair use of unpublished works. Testimony was received from a panel of witnesses representing publishing interests (Floyd Abrams, Esquire, on behalf of the Authors Guild; Ms. Kati Marton, an author; Mark Morrill, Esquire, on behalf of the American Association of Publishers; and Kenneth M. Vittor, Esquire, on behalf of the Magazine Publishers of America) and a panel representing the interests of computer companies (James M. Burger, Esquire, Apple Computer, Inc.; and William Neukom, Esquire, on behalf of the Software Publishers Association).

On June 6, 1991, a second day of hearings was held on Title I, with testimony being received from Scott Turow, Esquire (also an author); the Register of Copyrights (Mr. Ralph Oman); and a panel of diverse interests (Edward J. Black, Esquire, on behalf of the Computer and Communications Industry Association; August W. Steinhilber on behalf of the Educators' Ad Hoc Committee on Copyright Law; Professor Shira Perlmutter, School of Law, Catholic University; and Robert C. Waggoner, Video Services Monitoring Services of America, Inc.). Several of the witnesses testified about other provisions in H.R. 2372.

On June 12, 1991, the Subommittee held a hearing on the National Film Preservation Act of 1991. The following witnesses testified before the Subcommittee: Dr. James Billington, the Librarian of Congress; Ms Fay Kanin, Chairperson of the National Film Preservation Board; Mr. Nicholas Counter III, the President of the Alliance of Motion Picture and Television Producers (AMPTP), who testified on behalf of AMPTP and the Motion Picture Association of America, Inc.; Mr. Elliot Silverstein, the Chairman of the President's Committee of the Directors Guild of America; and Mr. Brian Walton, the Executive Director of Writer's Guild West.

On June 20, 1991, the Subcommittee conducted a hearing on the subject of copyright renewal. Testimony was received from Mr. Morton Gould, President, American Society of Composers, Authors and Publishers; Ms. Frances President, President of Broadcast Music, Inc., accompanied by Mrs. Jacqueline Byrd, widow of BMI songwriter Robert Byrd; Mr. George David Weiss, President, Songwriters' Guild; Erwin Karp, Esquire, on behalf of the Committee for Literary Property Studies; and Mr. Vincent Candilora, President, SESAC.

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[1] See Hearings on the Copyright Amendments Act of 1991 Before the Subcomm. on Intellectual Property and Judicial Administration of the House Comm. on the Judiciary, 102nd Cong., 1st Sess. (1991) [hereinafter referred to as House Hearings].

COMMITTEE VOTE

On November 19, 1991, a reporting quorum being present, the Committee on the Judiciary ordered H.R. 2372 reported to the House by voice vote, as amended by an amendment in the nature of a substitute.

DISCUSSION

I. LEGISLATIVE HISTORY

H.R. 2372 was introduced on May 16, 1991, and was jointly referred to the Committees on the Judiciary and House Administration due to shared jurisdiction of Title II of the bill.

Based on an extensive record compiled during four days of hearings, the Subcommittee on Intellectual Property and Judicial Administration marked up H.R. 2372 on October 1, 1991. After adoption of an amendment in the nature of a substitute, the bill was reported favorably to the full Committee, a quorum of Members being present.

On November 19, 1991, the full Committee marked up H.R. 2372 and, a quorum of Members being present, approved the amendment in the nature of a substitute and favorably reported the bill by voice vote.

BACKGROUND

TITLE I—RENEWAL OF COPYRIGHT

Title I amends the copyright law by eliminating the current requirement that a renewal registration must be filed with the Copyright Office to get a second term of copyright protection for works copyrighted before January 1, 1978.

Beginning with the first Federal copyright law, enacted more than 200 years ago, Congress divided the term of United States copyright into two separate periods. Under the 1909 Act, the first term lasted for 28 years. If the copyright owner renewed the work with the Copyright Office during the 28th year, the copyright was extended for another 28 year term, that is, a total of 56 years of protection. But if the copyright owner failed to file for renewal within the 28th year of the first term, the copyright terminated, and the work went into the public domain.

This renewal registration system was left intact by the 1976 general revision of the copyright law for works copyrighted before 1978.[2]

During the 1976 revision, educators and scholars voiced concerns that keeping works out of the public domain by extending the duration of copyright protection would limit access to valuable materials. In 1976 Congress weighed these concerns against the rights of authors and on balance found in favor of extending the term of protection but retaining the renewal provisions of the 1909 law. Congress also accepted the longer term for works then in existence by extending the second term by nineteen years.

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[2] See Public Law 94-553, 90 Stat. 2541 (Oct. 19, 1976). For further background about the history of copyright renewal, see id. (statement of Ralph Oman, Register of Copyrights).

During consideration of the 1976 Copyright Act, the Senate and House Reports both called the renewal provision "one of the worst features of the present copyright law. * * * A substantial burden and expense, this unclear and highly technical requirement results in incalculable amounts of unproductive works. In a number of cases it is the cause of inadvertent and unjust loss of copyright." [3]

Although the 1976 Copyright Act eliminated the renewal system for all works created on or after January 1, 1978, the renewal system was retained for works in which Federal copyright subsisted on December 31, 1977 except that the second term of copyright was extended to 47 years, giving a total of 75 years protection for copyrights that were renewed. The 1976 Copyright Act therefore gave authors or owners of copyrights nineteen years longer protection than they were entitled to prior to enactment of the Act. This extension of term was significant.

In the years preceding the 1976 Act, no one seriously proposed an automatic renewal system that would not impair existing contracts. Congress concluded in 1976 that elimination of the renewal provisions for subsisting copyrights would harm the existing expectations and contractual relations based on the renewal provision. Congress decided that the potential impairment of contractual rights was too risky, on statutory and constitutional grounds. It therefore retained the renewal system for pre-1978 works, while establishing a single, continuous term for post-1977 works.[4]

Under current law and practice, the Copyright Office makes it abundantly clear to copyright holders that "* * * if renewal registration is not made within the statutory time limits, these copyrights will expire at the end of their first terms, and protection will be lost permanently." [5]

Yet, the renewal provision is still "a trap for the unwary author" [6] of previously registered and published copyrighted works. The Copyright Office does not send authors a reminder that the end of the first term is approaching and that expiration of protection will occur if a timely renewal application is not filed. In unfortunate situations, failure to renew occurs, resulting in loss of the only source of income for authors and their families.[7] Many authors and their heirs are unaware of the renewal requirements that demand careful record-keeping and monitoring in order to file a renewal application in the twenty-eighth year for each registered copyrighted work. In addition, many authors or their heirs rely on agents or publishers who may inadvertently forget to file timely renewal registrations.

Statistics provided to the Committee by the Copyright Office reveal that a fairly low percentage of copyright owners renew their works. In 1988, 44,589 applications for renewal were filed with the Office, renewal approximately 20 percent of the copyrights eligible

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[3] S. Rept. 94-473, 94th Cong. 1st Sess. 117-118 (1975); H. Rept. 94-1476, 94th Cong., 2d Sess. 134 (1976).

[4] See House Hearings, supra note 1 (statement of Irwin Karp).

[5] (Emphasis in original text). Circular 15t (Extension of Copyright Terms), Copyright Office, Library of Congress (April 1991).

[6] Letter to Honorable William Hughes from Professor Jane C. Ginsburg (dated May 30, 1991).

[7] See House Hearings, supra note 1 (statement of Jacqueline Byrd, widow of BMI songwriter Robert Byrd who wrote the song "Little Bitty Pretty One").

for renewal in that year. In 1989, only 38,417 applications were received, representing approximately a 17 percent renewal rate. In 1990, 52,298 applications were filed renewing approximately 22 percent of the copyrights eligible for renewal that year.[8]

Classes of works with consistently higher levels of renewals include books, periodicals, musical compositions and motion pictures. Works with an exceeding low level of renewal are technical drawings, photos, lectures, and commercial prints and labels. The renewal statistics do not tell the whole story because there are many, many published works that were never registered in the first place. Under current law, these works do not even qualify for a renewal application.

In the view of the Committee, it is clear that there are many thousands of works—including, but not limited to, independently made motion pictures, photographs, dramas, maps and music—that have been abandoned by their original owners and would never be renewed under any circumstance.

Automatic renewal, without conditions, would have the effect of stemming the flow of works into the public domain at the conclusion of the initial term of copyright protection. As explained by a respected professor of copyright law: "if the past is any guide, thousands of works which otherwise would have become available for general, unrestricted public use each year would remain subject to copyright for an additional 47-year term." [9] Another law professor agreed:

> The test of any copyright bill should be whether it benefits the public interest. The present bill benefits a few private interests, but not the public interest. It provides continued copyright protection for works that would otherwise be in the public domain because the copyright owners do not prefer for them to remain under copyright.[10]

In order to protect the public interest, the proposed legislation was amended by the Committee to provide a very strong inducement to file either an original term or renewal registration. If no registration occurs, users may use the copyrighted work without fear of paying monetary damages or attorneys fees.

A balanced approach—one that is typical for this Committee—is sought.

The framers of the United States Constitution assigned to Congress, as the most politically representative of the three branches of government, the role of defining the scope of the limited monopolies granted to authors in exchange for public access to their writings. The constitutional clause authorizing the Congress to enact a copyright statute reflects the understanding that property rights, properly limited, will benefit the public at large. The source of Congress' authority to enact copyright laws is Article I, section 8, clause 8, which empowers Congress "to Promote the Progress of Science * * * by securing for limited Times to Authors * * * the exclusive Right to their Writings.* * *"

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[8] See id. (appendix to statement of Ralph Oman, Register of Copyrights).
[9] Letter to Honorable William Hughes from Professor Peter Jaszi (dated Oct. 6, 1991).
[10] House Hearings, supra note 1 (statement of Professor L. Ray Patterson).

The U.S. Supreme Court has consistently confirmed the requirement of balance in the exercise of Congress' constitutional mandate. In 1984 the Court stated that the monopoly privileges that Congress may confer "* * * are neither unlimited nor primarily designed to provide a private special benefit. Rather, the limited grant is a means by which an important public purpose may be achieved." *Sony Corp.* v. *Universal City Studios, Inc.*, 464 U.S. 417, 429 (1984). The intellectual property clause, to quote from a unanimous Court, "* * * reflects a balance between the need to encourage innovation and the avoidance of monopolies, which stifle competition without any concomitant advance in the 'Progress of Science and [the] useful Arts' ". *Bonito Boats, Inc.* v. *Thunder Craft Boats, Inc.*, 489 U.S. 141, 146 (1989). Quite recently, the Court reiterated that "the primary objective of copyright is not to reward the labor of authors but '[t]o promote the Progress of Science and the useful Arts'." *Feist Publications, Inc.* v. *Rural Telephone Service Company, Inc.* U.S. (decided March 27, 1991).

Title I automatically renews all subsisting copyrights but, at the same time, provides a strong inducement to register. Copyright registration, not as a precondition for protection but as a prerequisite to lawsuit and invocation of rights, is relied upon. The subject of registration was recently considered by the Congress in the context of enactment of the Berne Convention Implementation Act of 1988.[11] This Committee wrestled with the issue of elimination of registration as a prerequisite to lawsuit and resolved the controversy in favor of registration. Resort to the language of this Committee's report is revealing, finding that registration is in the public interest:

> Copyright registration promotes efficient litigation practices, to the benefit of the courts and the public as well as to the parties in the lawsuit. Registration narrows the issues that must be litigated and, since it pertains to proof of ownership, assists the courts in resolving the underlying copyright dispute.
>
> The judicial impact of the legislation is only one factor to be considered on the public interest side of the equation. There are others. Registration is an important source of acquisitions for the Library of Congress.* * * Moreover, registration as a prerequisite to suit helps to ensure the existence of a central, public record of copyright claims. The publicly available depository of information is of benefit to both copyright owners and users.
>
> The Committee is also concerned that abolition of section 411(a) would result in attempts to use the legal system to exert control over materials that Congress intends to be in the public domain.[12]
>
> The Committee sees no reason to revise these findings. To the contrary, Title I of H.R. 2372 confirms them.

Title I, as amended, deletes the present provisions that require filing and registration of a renewal application in the 28th year to

[11] Pub. L. No. 100-568, 102 Stat. 2853 (Oct. 31, 1988).

[12] H. Rep. 100-609, 100th Cong., 2d Sess. 41-42 (Star Print).

secure the renewal term of copyright. The amendment provides that the 47 year renewal term will commence and vest automatically at the end of the original term of copyright.

Applications for renewal registration could be filed during the final year of the original term of copyright or anytime during the renewal term. Registration is voluntary and is not a condition of the renewal. Registration during the final year would assure the author or other claimant that his or her right to the renewal term vested on registration, even if he or she died later that year. Automatic renewal could vest the renewal term in the person or entity who would be entitled to claim the renewal term on the last day of the year in which the copyright was eligible to renewal. The statute continues to specify who would be entitled to the renewal term.

Title I provides three incentives for voluntary registration during the 28th year.

First, derivative works prepared under an authorization granted during the original term of copyright may be utilized during the renewal term but not new derivative works. Renewal copyrights would have the same legal effect with respect to grants made before the effective date of the amendments of a transfer or license of the further term as did renewal of the copyright under the law in effect when the grant was made and before this amendment.

Second, if registration is made during the last year of the first term, the certificate of renewal registration shall constitute prima facia evidence as to the validity of the facts stated in the certificate. The evidentiary weight to be given to the certificate of registrations made after the end of that one year period will be within the discretion of the court.

Title I also provides that registration for a work in which copyright was secured before January 1, 1978 can only be made during the first term of copyright; that there will be a fine of up to $2,500 for false representations in applications for renewal registration; that the current renewal fee applies to registrations made both before or after the expiration of the original term; that these amendments are effective on the date of enactment of this Act; that the Amendments apply only to those copyrights secured between January 1, 1963, and December 31, 1977; and that the amendments shall not affect any court proceedings pending on the effective date of this Act.

Third, copyright infringement remedies are narrowed for authors who fail to file a timely original term registration—that is, before the end of the first 28 year term of protection. Failure to file an original term registration would deny these authors the remedies of statutory and actual damages, attorneys fees and seizure and forfeiture (provided in section 504, 505 and 509 of the Copyright Act) for all infringements that commence before registration is made of a claim in the renewed and extended term of copyright, even if the infringing conduct continues after registration is made. However, these same authors would enjoy the automatic second term of protection of 47 years, whether or not they file an original term registration or a renewal term registration and the only other remedy under chapter 5 of the Copyright Act (that is, injunctive relief, as provided in section 502 of title 17, United States Code).

In addition, Title I, as amended, would allow these authors to "cure" their failure to register an original term registration by filing a renewal registration at any time during the second term. By filing a renewal registration, they would ensure themselves all of the remedies of copyright, including actual and statutory damages, attorneys fees, seizure and forfeiture for infringements which commence after the filing of the renewal registration. As stated above, prior infringements, even those that continue after the filing of a renewal registration, could only be met with a motion for injunctive relief (cease and desist).

The amendment continues existing Copyright Office practice, allowing a renewal registration during the first term of copyright only where an original term registration has been filed. Exceptions would be made for Berne Convention works, whose country of origin is not the United States, and for Universal Copyright Convention works (consistent with current practice and with current obligations under both of those treaties).

There are at least four justifications for Title I of H.R. 2372. First, the sanction for failure affirmatively to renew (that is, permanent and irretrievable loss of copyright protection) is unduly harsh. Second, there has been a showing that innocent parties inadvertently suffer such a loss. Third, the bill will not impair existing "expectancies" or contractual interests in the renewal term. Fourth, the bill will limit sanctions and facilitate socially beneficial activities involving copyrighted works prior to an original term or a renewal registration. Fifth, the bill promotes registration as a prerequisite to lawsuit as being in the public interest.

TITLE II—NATIONAL FILM PRESERVATION

A. The National Film Preservation Act of 1988

Congress originally enacted the National Film Preservation Act of 1988 (Pub. L. 100-446) as part of the Department of Interior and Related Agencies Appropriations Act for fiscal year 1989. The provisions of the Act expired September 27, 1991. As originally proposed, the film preservation legislation would have provided some protection for the moral rights of film makers.[13] The 1988 Act reflected a compromise reached between advocates and opponents of moral rights for film makers.[14]

The legislation created a 13 member National Film Preservation Board to recommend 25 films a year to the Librarian of Congress for placement on a National Film Registry.[15] It further directed

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[13] Moral Rights refers to the personal relationship of the author to his work, as opposed to the author's economic interest in the work. According to a report of the Register of Copyrights, "two of the most important moral rights are the author's interest in having his or her authorship of the work acknowledged ("the right of attribution"), and the author's interest in preventing unauthorized alterations in the work that are prejudicial to his or her reputation (the right of integrity)."

See "Technological Alterations to Motion Pictures," a Report of the Register of Copyrights, March 1989, for complete discussion of moral rights and motion picture alterations.

[14] Copyright owners have opposed moral rights because of the consequent restrictions on the distribution and marketing of films in various mediums and to a range of audiences.

See "Technological Alterations to Motion Pictures", a Report of the Register of Copyrights, March, 1989, for complete discussion of moral rights and motion picture alterations.

[15] The National Film Preservation Act of 1988 directed the Librarian of Congress to established guidelines and criteria to use in the selection of films for the Registry. The Librarian

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the Librarian to assume certain film preservation and labeling responsibilities with respect to films on the National Film Registry. In particular, the Librarian was instructed to obtain archival copies of films selected for the National Registry. These films were to be kept in a special collection in the Library of Congress. The legislation required each film named to the Registry to carry a label if material alterations were made or if the film was colorized. The legislation also authorized the placement of a seal on Registry films that were not materially altered.

The National Film Preservation Board recommended, and the Librarian of Congress has named, 75 films to the National Film Registry since the enactment of the Film Preservation Act.[16] Films named to date include "The Wizard of Oz," "Casablanca," "Citizen Kane," "Mr. Smith Goes to Washington," "The Godfather," "Rebel Without a Cause," "Duck Soup," "Lawrence of Arabia," and "It's a Wonderful Life." The Librarian has worked to obtain the best surviving materials of each of the films selected for the Registry, and has received numerous archival quality materials through donations from copyright owners.[17] The Librarian of Congress, the National Film Preservation Board, and representatives of various viewpoints in the film industry, all agreed that this aspect of the Film Preservation Act of 1988 was effective and enormously valuable in furthering preservation.[18]

The labeling provisions of the 1988 Act have proven more difficult for the Library of Congress to administer. In testimony before the Subcommittee on Intellectual Property and Judicial Administration, the Librarian of Congress, Dr. James Billington, stated that, while the Act has worked well with respect to the labeling of colorized films, "the labeling requirements with regard to material alterations other than colorization have generated a great deal of disagreement in Congress, in the industry, and among the Board members." [19] In particular, the Librarian had difficulty arriving at a definition for "material alteration", the term upon which the labeling requirements were based.[20] Proponents of moral rights favored a broad definition, while others sought to limit the scope of the definition and ultimately the labeling requirements. The Li-

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consulted with the National Film Preservation Board and subsequently published the guidelines in the Federal Register for public comment and in their final form. See 55 Fed. Reg. 32566 (August 9, 1990).

[16] For a complete description of the National Film Preservation Board's activities, see House Hearings, Supra note 1, statement of Faye Kanin.

[17] See id. (statement of Dr. James Billington, Librarian of Congress).

[18] See id. (statement of Elliot Silverstein, Directors Guild of America, and statement of J. Nicholas Counter, III, on behalf of the Alliance of Motion Picture and Television Producers and the Motion Picture Association of America).

[19] See id. (statement of Dr. Billington at 5).

[20] See Public Law 100-466, section 3(a)(2). See also 36 CFR Part 704, containing Librarian of Congress final rules on labeling and material alterations. (55 Fed. Reg. 32566) The Librarian defined "material alterations" to include colorization; fundamental changes in theme, plot and character; removal of materials for all purposes including broadcast time slots or for other marketing or aesthetic purposes of over 5 percent (with certain exceptions) of the total running time of the original theatrical release; time compression and time expansion which alters the running time of a particular scene or the overall running time of the original theatrical release version by 5 percent; and any other intentional mutilations or defacement sof the film. Examples of material alterations would include the insertion of commercials or public service announcements; the transfer of film onto videotape; and dubbing for foreign audiences or editing for foreign censors.

brarian concluded that the Library should not be required to continue to administer film labeling guidelines.[21]

B. The National Film Preservation Act of 1991

Based on the first three years of experience since enactment of the National Film Preservation Act, the Librarian recommended to Congress that the film preservation activities be continued, but with a shift in focus away from moral rights and labeling, and toward the universally supported mission of film preservation. The Committee agrees with this new approach, and accordingly the Film Preservation Act of 1991 eliminates the pre-existing labeling requirements, and emphasizes the need to mobilize efforts to preserve American movie classics.

The National Film Preservation Act of 1991 reflects the knowledge gained in the last three years about the proper role for the Library of Congress in preservation efforts, and of critical issues demanding the attention of the Librarian and of the National Film Preservation Board. The legislation, as originally introduced, was based on a proposal by the Library of Congress. The Subcommittee held one day of hearings on the National Film Preservation Act, contained in H.R. 2372, and subsequently modified the legislation, incorporating a number of changes suggested by witnesses and individuals and organizations involved in film preservation activities. Accordingly, the Film Preservation Act of 1991 assures that the following preservation activities will continue through Fiscal Year 1994:[22]

(1) *Library of Congress Film Preservation Activities.* Over half of the feature films made in the United States before 1951 have literally vanished. While a number of film archives around the country devote enormous resources to film preservation and restoration, there is no coordination of these activities nationwide.[23] The Library of Congress itself undertakes over half of the film preservation done in the United States and is thus in a position to provide leadership in promoting our nation's preservation efforts. Accordingly, the National Film Preservation Act of 1991 directs the Librarian of Congress to conduct a study on the status of film preservation and to develop a national plan for the preservation of films.

(2) *The National Film Preservation Board.* Title II authorizes the National Film Preservation Board for three years and expands the

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[21] See House Hearing, supra note 1 (statement of Dr. Billington at 7).

[22] H.R. 2732, as introduced, authorized the film preservation activities of the Library of Congress and the National Film Preservation Board through fiscal year 1997. However, the Committee determined that it is appropriate to review the activities after three years in order to determine whether the Librarian of Congress and the Board are implementing the Act in a manner consistent with the intent of Congress.

[23] There are ongoing film preservation efforts in the United States, carried out by the Library of Congress, the National Archives, private organizations, and universities, including for example, the Museum of Modern Art, the George Eastman House, and the University of California at Los Angeles. In addition, copyright owners such as Turner Boradcasting and other studios have ongoing film preservation programs. According to testimony before the Subcommittee on Intellectual Property and Judicial Administration, many of the films selected for the Registry had already been preserved by the copyright owner. According to the testimony of Mr. Counter, "[t]he copyright owners had cleaned them, restored them, improved damaged sections of the film within the limits of technology, transferred these films to safety stock, and safety tucked away a 'master copy' (or 'master negative') in a climate-controlled vault. New film prints can be made at any time from the preserved 'master copy'—so these films can be enjoyed by future generations" House Hearing, supra note 1 (statement of Mr. Counter at 3).

number of Board members from 13 to 18. A number of important organizations with a special interest and expertise in film making and film preservation will now join the Board.[24]

Members of the Subcommittee on Intellectual Property and Judicial Administration expressed concern about the specific identification of organizations eligible for Board membership in title II of H.R. 2372, as amended. Many witnesses that testified before the Subcommittee indicated, however, that the Board has been extremely productive over the last three years. Its members are true experts in film and have a high level of interest and commitment to fulfilling their Board responsibilities. Therefore, while it may be somewhat unusual to identify Board participants to the level of specificity as is the case in Title II, the Committee does agree that in this specific case, given the record of achievement of the National Film Preservation Board, such an approach should be continued. However, the Committee would not support the authorization of this Board's activities for a six year period, but determined instead to limit the authorization to three years.

Title II actually expands the size of the National Film Preservation Board from 13 members to a total of 18 members. The addition of the five members reflects the new emphasis on film preservation, and a broadening of the eligibility criteria for the National Film Registry. In particular, the Committee approved the addition of a cinematographer, a film archivist, and two members-at-large, with a preference for a commercial film archivist.

(3) *The National Film Registry.* Title II requires the National Film Preservation Board to continue to recommend, and the Librarian to continue to select, up to 25 films each year for inclusion on the National Film Registry.[25] Films will continue to be selected based on their historical, cultural, and aesthetic importance, provided that the films are at least 10 years old. However, films no longer must be of feature length or have had a theatrical release in order to qualify for inclusion on the Registry. Accordingly, in addition to feature films, the Registry can include shorts, cartoons, documentaries and other films.

In addition to selecting up to 25 films every year for the Registry, the Librarian of Congress will continue to obtain a copy of each film selected. These copies shall be preserved in a special National Film Registry in the Library of Congress.[26]

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[24] The original National Film Preservation Board included representatives from the following organizations: the Academy of Motion Picture Arts and Sciences; the Directors Guild of America; the Writers Guild of America; the National Society of Film Critics; the Society of Cinema Studies; the American Film Institute; the Department of Theater, Film and Television, the College of Fine Arts at the University of California, Los Angeles; the Department of Cinema Studies in the Graduate School of Arts and Science at New York University; the University Film and Video Association; the Motion Picture Association of America; the National Association of Broadcasters; the Association of Motion Picture and Television Producers; and the Screen Actors Guild of America. Title II of H.R. 2732, as amended, authorizes the Librarian to appoint the following Board members in addition to those listed above: the National Association of Theater Owners; the American Society of Cinematographers or the International Photographers Guild; the International Federation of Film Archives; and up to two at-large members—with preference for a commercial archivist.

[25] The Directors Guild advocated an increase in the number of films selected each year. However, because the Librarian must obtain an archival quality copy of each film selected, the Committee determined that it would be too burdensome to add more than 25 films each year to the Registry. See House Hearing, supra note 1. (statements of Mr. Silverstein and Dr. Billington).

[26] This Special Collection was established under the provisions of the National Film Preservation Act of 1988 and the 75 films selected to date are already contained in the special collection.

(4) *Use of Seal for National Registry Films:* Title II does not contain the provisions requiring labeling of materially altered or colorized films that were contained in the original National Film Preservation Act. Instead, it authorizes the placement of a seal on National Registry films when the films are shown in the "Registry version" approved by the Librarian of Congress.[27] Unlike the labeling provisions contained in the 1988 Act, the seal will be used on a voluntary basis. Moreover, the labeling provisions contained in the 1988 Act will no longer apply and therefore, labels placed on films pursuant to the requirements of that Act can now be removed.

Title II further prevents misuse of the seal and creates a cause of action in Federal Court when a seal has been improperly placed on a film. Under the provisions of this Act, it is improper to place a seal on a version of a film that is not the registry version.

SECTION-BY-SECTION

Section 1. Short Title

Section 1 provides that the short title of H.R. 2372 is the "Copyright Amendments Act of 1991."

TITLE I—RENEWAL OF COPYRIGHT

Section 101. Short Title

Section 101 sets forth the short title of Title I: the "Copyright Renewal Act of 1991."

Section 102. Copyright Renewal Provisions

Section 102(a) relates to the duration of copyright and subsisting copyrights. It amends section 304(a) of the Copyright Act, title 17 of the United States Code, by eliminating the current requirement that a renewal registration must be filed with the Copyright Office to get a second term of protection for pre-1978 copyrighted works. As amended, section 304(a) would continue to permit renewal registration to be made in the last year of the first term of copyright and retain the same statutory renewal claimants, but renewal registration would not be a condition of the renewal and extension of the copyright. If an application to register a claim to the second term of copyright is not made within one year before expiration of the original term of copyright in a work (essentially 28 years), the copyright in the renewal term will be vested automatically in the person or entity who would have been entitled to claim the renewal copyright on the last day of the first term of copyright. In addition, an application to register a claim to the renewed copyright may be made to the Copyright Office at any time during the renewal term by the person in whom the renewal copyright vested. Such a renewal registration is not a condition for the renewal and extension of the copyright.

The Committee intends to re-enact the renewal copyright provision of existing law regarding persons entitled to claim the renew-

[27] "Registry version" is defined in Sec. 211 of H.R. 2372 to mean "with respect to a film, the version of the film first published, or as complete a version as the bona fide preservation and restoration activities by the Librarian, an archivist other than the Librarian, or the copyright owner can compile in those cases where the original material has been irretrievably lost."

al. Several clauses encourage renewal registration at the election of the statutory renewal claimants, and the Committee expects that renewal registration will continue at approximately the same level as under the existing, mandatory registration system. The Copyright Office's registration statistics show an average renewal rate of 20 percent compared to original term registrations. The important change in the law is that, if renewal registration is not made timely, the copyright is automatically renewed by operation of law, and the right vests in the same persons who would have been entitled to obtain the renewal by registration.

Automatic renewal will apply to any work in which statutory copyright subsists, including works published with notice of copyright but never registered for the first term. Unregistered, unpublished works are not affected by this bill, since they are not subject to the renewal provisions. The term for works created before January 1, 1978 and never published or registered is governed by section 303 of the Copyright Act. These works enjoy the terms legislated by the 1976 Copyright Act: [28] life of the author plus fifty years or, if the work is anonymous, pseudonymous, or made for hire, a term of 75 years from publication or 100 years from creation, whichever is shorter. In no case, however, will such a work enjoy a term less than 25 years from 1977 if the work remains unpublished, or 50 years from 1977 if the work is published.

Like the existing law, the bill establishes two general categories of works and specifies the statutory renewal claimants for each category. The first category includes certain specialized types of works, as to which the proprietor of the copyright is entitled to the renewal: a posthumous work; a periodical, cyclopedia, or other composite work copyrighted by the proprietor; a work copyrighted by a corporate body otherwise than as an assignee or licensee of the individual author; and a work made for hire.

The second category encompasses all other works. The renewal copyright in these works (i.e., individual author works) is granted to the author, if living at the time the renewal is vested. If the author has died, the renewal copyright is granted to the author's heirs in accordance with the following priorities: the widow, widower, or children of the author; the author's executor, if the author, widow, widower, or children are not living and there is a will; the author's next of kin, in the absence of a will.

Under Title I of H.R. 2372, the renewal copyright will vest either by timely registration within the last year of the first term, or automatically by operation of law. If registration is timely made by the proper statutory claimant(s), the right to the renewal term is vested on the date of registration in the Copyright Office, and subsequent events (such as the death of the author or other claimant) will not divest the rights in the renewal term. If registration is not made, the right in the renewal term vests automatically in the proper statutory claimant(s) on the last day of the first term. In either case, the renewal term begins upon expiration of the first term of copyright.

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[28] Public Law 94-553, Stat. 2541 (Oct. 19, 1976).

Paragraph (4) section 102(a) provide incentives for making renewal registration within the last year of the first term. Paragraph (4)(A) permits the continued use during the renewal term of derivative works prepared under a grant of a transfer or license made before the expiration of the original term of copyright if renewal registration is not made during the last year of the first term. Currently such grants do not automatically extend into the second term. This provision does not authorize the preparation of other derivative works based upon the copyrighted work which is the subject of the grant. This incentive to make renewal registration parallels the derivative works clause of the termination provisions of section 203 (relating to post-1977 copyrighted works) and 304(c) (relating only to the nineteen year period at the end of the extend term for pre-1978 copyrighted works) of title 17, United States Code. The bill leaves undisturbed the decision of the Supreme Court in *Stewart et al* v. *Abend*, 110 S.Ct. 1750 (1990). Renewal registration is mandatory under existing law. If renewal registration is made under the amended section 304(a) in the last year of the original term, the derivative works clause of this bill will not be triggered. In any event, moreover, the bill makes no change in the persons entitled to claim the renewal copyright. Whoever is entitled under existing law, remains entitled to claim the renewal under the bill.

Paragraph (4)(B) provides that if registration of copyright in the renewal term is made during the last year of the first term, the certificate of renewal registration shall constitute prima facie evidence as to the validity of the copyright during its renewed term and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of renewal registration made after the end of that one year period will be within the discretion of the court. The possibility of making registration after the renewal term commences is a change in the law, which should provide an incentive to register works whose copyright is automatically extended under this bill. Works registered for the first time during the renewal term will enjoy statutory damages and attorney's fees, in accordance with section 412 of title 17, United States Code.

Paragraph (4)(C) provides that if an application to register a claim in the first term of copyright is not made before expiration of the first term, the remedies of actual and statutory damages, attorneys fees, and seizure and forfeiture (otherwise provided in sections 504, 505, and 509 of title 17, United States Code), shall not be available to the copyright owner for any act of infringement that starts before registration is made of a claim in the renewal, and extended, term of copyright, even if the infringing conduct continues after registration is made.

Section 102(b) provides guidance about the legal effect of automatic copyright renewal. It specifies that renewal copyrights made under these amendments have the same legal effect with respect to grants made before the effective date of the amendments of a transfer or license of the further term as did the renewal of a copyright under the law in effect when the grant was made and before this amendment. This section confirms that the bill makes no change in the law regarding the persons entitled to claim the re-

newal copyright and in no way affects or impairs existing contracts relating to the exercise of rights in the renewal term.

Section 102(c), which changes a subsection citation, is merely a conforming amendment.

Section 102(d) amends the current section 408(a) of title 17, United States Code, to make clear that for a work in which copyright was secured before January 1, 1978, registration of the first term of copyright can only be made during the first term.

Section 102(e) amends section 506(e) of title 17, United States Code, to provide for fines of up to $2500 for any false representations in applications for renewal registration.

Section 102(f) amends section 708(a)(2) to increase the fee for renewal registration to $20, which is the fee for original term registrations. The bill also makes clear that renewal registration may be made either before or after the expiration of the first term.

Section 102(g) makes the amendments effective on the date of enactment of this Act. It provides that the amendments will apply only to those copyrights secured between January 1, 1963, and December 31, 1977; and provides that the amendments shall not affect any court proceedings pending on the effective date of the Act.

TITLE II—NATIONAL FILM PRESERVATION

Section 201. Short Title

Section 201 of the bill sets forth the short title of title II, the "National Film Preservation Act of 1991."

Section 202. National Film Registry of the Library of Congress

Section 202 directs the Librarian of Congress to establish a National Film Registry for the purpose of recognizing and preserving films that are culturally, historically, or aesthetically significant.

Section 203. Duties of the Librarian of Congress

Section 203 sets forth the duties and powers of the Librarian of Congress. Subsection (a) directs the Librarian to conduct a study on the state of film preservation and restoration activities in the United States, to be completed and submitted to Congress within one year after the date of enactment.

Subsection (b) directs the Librarian to develop a comprehensive national film preservation program; establish criteria for the selection of films for the Registry; provide a seal for films that are named to the Registry and shown in their "registry versions"; establish procedures for the general public to participate in making recommendations of films to be included in the Registry; and publish in the Federal Register the standards for preservation or restoration that will qualify Registry films for use of the seal, and the films selected for inclusion in the National Film Registry.

Subsection (c) sets forth the requirements for use of a seal, indicating that a film has been selected for the Registry and is being shown in its Registry version. Before a seal may be used, the Library of Congress must have examined and approved the print from which the copy was made. When a Registry film is a copyrighted work, only the copyright owner or an authorized licensee of the copyright may place or authorize the placement of the seal on

an approved version of the film. In addition, the Librarian may place the seal on any print or copy of the Registry version of the film that is maintained in the National Film Registry Collection. Subsection (d) requires that the Librarian develop standards or guidelines by which to assess the preservation or restoration of films in order to determine whether the films can qualify for use of the seal.

Section 204. National Film Preservation Board

Section 204 directs the Librarian to establish the National Film Preservation Board. It specifies the composition of the Board and sets forth provisions relating to the appointment of Board members, as well as the functioning of the Board, including the selection of a chairperson, quorum requirements, meetings, basic pay, and terms of office.

Section 205. Responsibilities and Powers of the Board

Section 205 sets forth the powers of the Board, relating largely to its role in advising the Librarian of Congress on the selection of up to 25 films a year for inclusion in the National Film Registry.

Section 206. National Film Registry Collection of the Library of Congress

Section 206 directs the Librarian to try to obtain by gift from the owner, archival quality copies of films selected for the National Film Registry, together with related background materials. The Librarian shall also attempt to collect other materials relating to National Registry Films to be used for educational and research purposes. Films and other materials obtained under this section shall become the property of the United States, subject to the provisions of title 17 of the United States Code. All copies of National Registry Films that are received by the Librarian shall be kept in a special National Film Registry Collection in the Library of Congress.

Section 207. Seal of the National Film Registry

Section 207 makes clear who may or may not use the seal and when the use of the seal is inappropriate.

Section 208. Remedies

Section 208 sets forth the remedies that are available against persons who use the seal in contravention of section 207.

Section 209. Limitations of Remedies

Section 209 limits the remedies available under Title II, or any other Federal or State law, regarding the use of the seal to those remedies provided in section 208.

Section 210. Staff of Board; Experts and Consultants

Section 210 authorizes the Librarian to appoint such staff as he deems appropriate and to procure the services of experts and consultants.

Section 211. Definitions

Section 211 sets forth definitions of terms used throughout Title II.

Section 212. Authorization of Appropriations

Section 212 authorizes the appropriation of up to $300,000 for fiscal year 1992. For each of fiscal years 1993 and 1994, section 212 authorizes the appropriation of $300,000 plus an additional amount that reflects any increase in the Consumer Price Index since the beginning of fiscal year 1992.

Section 213. Effective Date

Section 213 makes the title apply to all copies of films selected for inclusion in the National Film Registry, including those selected pursuant to the provisions of the National Film Preservation Act of 1988. However, any film selected under the 1988 Act shall be considered to have been selected for the Registry under this title.

Section 214. Repeal

Section 214 repeals the 1988 Act.

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 the report.

Statement of the Committee on Government Operations

No findings or recommendations of the Committee on Government Operations 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 rule XI of the Rules of the House of Representatives is inapplicable because the proposed legislation does not provide new budget authority on increased tax expenditures.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the bill will have no significant inflationary impact on prices or costs in the national economy.

Congressional Budget Office Cost Estimate

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. XXXX, 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, November 25, 1991.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2372, the Copyright Amendments Act of 1991, as ordered reported by the House Committee on the Judiciary, on November 19, 1991.

Because enactment of H.R. 2372 would affect direct spending, pay-as-you-go procedures would apply to the bill. Therefore, we have attached the estimate required under clause 8 of House Rule XXI.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2372.

2. Bill title: The Copyright Amendments Act of 1991.

3. Bill status: As ordered reported by the House Committee on the Judiciary, on November 19, 1991.

4. Bill purpose: Title I of H.R. 2372, the Copyright Renewal Act of 1991, makes automatic a 47-year extension for any copyright secured between January 1, 1963 and December 31, 1977, extending the copyright to the person holding it on the last day of its original term. For those wanting to file for an extension before the last day of the copyright's original term, Title I increases copyright renewal fees from $12 to $20.

Title II, the National Film Preservation Act of 1991, requires the Librarian of Congress to establish a National Film Registry for the purpose of recognizing and preserving films that are culturally, historically, or aesthetically significant.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995	1996
Direct spending:					
Estimated budget authority	0.0	0.0	0.0	0.0	0.0
Estimated outlays	0.0	0.0	0.0	0.0	0.0
Authorizations:					
Authorization level	0.3	0.3	0.3	0.3	0.3
Estimated outlays	0.3	0.3	0.3	0.3	0.3

The costs of this bill fall within budget function 500.

Basis of estimate: Based on information provided by the Copyright Office, CBO estimates that raising the copyright renewal fee, while making renewals automatic, would have no significant net effect on fee collections. Raising the renewal fee would increase fee

revenue per renewal, but making renewals automatic would decrease the number of renewals. CBO estimates that these effects would roughly offset each other.

H.R. 2372 would authorize $300,000 for each of the fiscal years 1992 through 1994 and additional amounts in 1993 and 1994 to reflect increases in the Consumer Price Index for a National Film Registry of the Library of Congress, to be overseen by a National Film Preservation Board. We assume that the total authorization would be appropriated. Estimated outlays reflect the spending patterns of existing programs.

6. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. This bill would affect direct spending by raising the copyright renewal fee and by making renewal automatic, but we expect any change in fee collections to be negligible. H.R. 2372 would not affect federal revenues.

7. Estimated cost to State and local government: None.

8. Estimate comparison: None.

9. Previous CBO estimate: On September 4, 1991, CBO prepared a cost estimate for S. 756, a similar bill ordered reported by the Senate Committee on the Judiciary on July 31, 1991. S. 756 differs from H.R. 2372 in that S. 756 would authorize up to $250,000 annually through 1997 for the National Film Registry. S. 756 also would repeal a requirement for a quintennial report on library photocopying.

10. Estimate prepared by: John Webb.

11. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

CONGRESSIONAL BUDGET OFFICE ESTIMATE [1]

The applicable cost estimate of this act for all purposes of sections 252 and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be as follows:

[By fiscal year, in million of dollars]

	1992	1993	1994	1995
Change in outlays	0	0	0	0
Change in receipts	(1)	(1)	(1)	(1)

Not applicable.

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 in shown in roman):

[1] An estimate of H.R. 2372 as ordered reported by the House Committee on the Judiciary on November 19, 1991. This estimate was transmitted by the Congressional Budget Office on November 25, 1991.

TITLE 17, UNITED STATES CODE

* * * * * * *

CHAPTER 3—DURATION OF COPYRIGHT

* * * * * * *

§ 304. Duration of copyright: Subsisting copyrights

[(a) COPYRIGHTS IN THEIR FIRST TERM ON JANUARY 1, 1978.—Any copyright, the first term of which is subsisting on January 1, 1978, shall endure for twenty-eight years from the date it was originally secured: *Provided,* That in the case of any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyright by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of forty-seven years when application for such renewal and extension shall have been made to the Copyright Office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further,* That 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, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his or her next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of forty-seven years when application for such renewal and extension shall have been made to the Copyright Office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further,* That in default of the registration of such application for renewal and extension, the copyright in any work shall terminate at the expiration of twenty-eight years from the date copyright was originally secured.]

(a) COPYRIGHTS IN THEIR FIRST TERM ON JANUARY 1, 1978.—(1)(A) Any copyright, the first term of which is subsisting on January 1, 1978, shall endure for 28 years from the date it was originally secured.

(B) In the case of—

(i) any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or

(ii) any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom work is made for hire,

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 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) the author of such work, if the author is still living,

(ii) the widow, widower, or children of the author, if the author is not living,

(iii) the author's executors, if such author, widow, widower, or children are not living, or

(iv) the author's next of kin, in the absence of a will of the author,

shall be entitled to a renewal and extension of the copyright in such work for a further term of 47 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 years, which—

(i) if an application to register a claim to such further term has been made to the Copyright Office within 1 year before the expiration of the original term of copyright, and the claim is registered, shall vest, upon the beginning of such further term, in the proprietor of the copyright who is entitled to claim the renewal of copyright at the time the application is made; or

(ii) if no such application is made or the claim pursuant to such application is not registered, shall vest, upon the beginning of such further term, in the person or entity that was the proprietor of the copyright as of the last day of the original term of copyright.

(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 of a renewed and extended further term of 47 years, which—

(i) if an application to register a claim to such further term has been made to the Copyright Office within 1 year before the expiration of the original term of copyright, and the claim is registered, shall vest, upon the beginning of such further term, in any person who is entitled under paragraph (1)(C) to the renewal and extension of the copyright at the time the application is made; or

(ii) if no such application is made or the claim pursuant to such application is not registered, shall vest, upon the beginning of such further term, in any person entitled under paragraph (1)(C), as of the last day of the original term of copyright, to the renewal and extension of the copyright.

(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 years; and

(ii) at any time during the renewed and extended term by any person in whom such further term vested, under paragraph (2) (A) or (B), or by any successor or assign of such person, if the application is made in the name of such person.

In the case of applications made under clause (i) for works not originally registered, the Register may, in accordance with regulations,

require an original term registration as a condition to the registration for the renewed and extended term, except in the case of a Berne Convention work whose country of origin is not the United States.

(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 years.

(4)(A) If an application to register a claim to the renewed and extended term of copyright in a work is not made within 1 year before the expiration of the original term of copyright in a work, or if the claim pursuant to such application is not registered, then a derivative work prepared under authority of a grant of a transfer or license of copyright that is made before the expiration of the original term of copyright, may continue to be used under the terms of the grant during the renewed and extended term of copyright without infringing the copyright, except that such use does not extend to the preparation during such renewed and extended term of other derivative works based upon the copyrighted work covered by such grant.

(B) If an application to register a claim to the renewed and extended term of copyright in a work is made within 1 year before its expiration, and the claim is registered, the certificate of such registration shall constitute prima facie evidence as to the validity of the copyright during its renewed and extended term and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration of a renewed and extended term of copyright made after the end of that 1-year period shall be within the discretion of the court.

(C) If an application to register a claim in the first term of copyright is not made before expiration of the first term, the remedies of actual and statutory damages, attorney's fees, and seizure and forfeiture otherwise provided by sections 504, 505, and 509, respectively, shall not be available to the copyright owner for any act of infringement that commences before registration is made of a claim in the renewed and extended term of copyright, even if the infringing conduct continues after registration is made.

* * * * * * *

(c) TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM.—In the case of any copyright substituting 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 [the second proviso of subsection (a)] *subsection (a)(1)(C)* of this section, otherwise than by will, is subject to termination under the following conditions:

(1) In the case of a grant executed by a person or persons other than the author, termination of the grant may be effected by the surviving person or persons who executed it. In the case of a grant executed by one or more of the authors of the work, termination of the grant may be effected, to the extent of a particular author's share in the ownership of the renewal copyright, by the author who executed it or, if such author is dead, by the person or persons who, under clause (2) of this

subsection, own and are entitled to exercise a total of more than one-half of that author's termination interest.

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CHAPTER 4—COPYRIGHT NOTICE, DEPOSIT, AND REGISTRATION

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§ 408. Copyright registration in general

(a) REGISTRATION PERMISSIVE.—[At any time during the subsistence of copyright in any published or unpublished work,] *At any time during the subsistence of the first term of copyright in any published or unpublished work in which the copyright was secured before January 1, 1978, and during the subsistence of any copyright secured on or after that date,* the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim by delivering to the Copyright Office the deposit specified by this section, together with the application and fee specified by sections 409 and 708. Such registration is not a condition of copyright protection.

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CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

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§ 506. Criminal offenses

(a) * * *

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(e) FALSE REPRESENTATION.—Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, *in the application for a renewal registration,* or in any written statement filed in connection with the application, shall be fined not more than $2,500.

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CHAPTER 7—COPYRIGHT OFFICE

* * * * * * *

(a) The following fees shall be paid to the Register of Copyrights:

(1) on filing each application under section 408 for registration of a copyright claim or for a supplementary registration, including the issuance of a certificate of registration if registration is made, $20;

(2) on filing each application for registration of a claim for renewal of a subsisting copyright [in its first term] under section 304(a), including the issuance of a certificate of registration if registration is made, [$12;] *$20;*

* * * * * * *

NATIONAL FILM PRESERVATION ACT OF 1988

[NATIONAL FILM PRESERVATION BOARD

[SALARIES AND EXPENSES

[For necessary expenses of the National Film Preservation Board in the Library of Congress, $250,000: *Provided,* That the following may be cited as the "National Film Preservation Act of 1988":

[The Congress finds that—

[(1) motion pictures are an indigenous American art form that has been emulated throughout the world;

[(2) certain motion pictures represent an enduring part of our Nation's historical and cultural heritage; and

[(3) it is appropriate and necessary for the Federal Government to recognize motion pictures as a significant American art form deserving of protection.

[SEC. 2. NATIONAL FILM REGISTRY.

[The Librarian of Congress (hereafter in this Act referred to as the "Librarian") shall establish a National Film Registry pursuant to the provisions of this Act, for the purpose of registering films that are culturally, historically, or aesthetically significant.

[SEC. 3. DUTIES OF LIBRARIAN OF CONGRESS.

[(a) POWERS.—(1) The Librarian shall, after consultation with the Board established pursuant to section 8, and pursuant to the rulemaking procedures provided in subchapter II of chapter 5 of title 5, United States Code, known as the Administrative Procedures Act—

[(A) establish criteria for guidelines pursuant to which such films may be included in the National Film Registry, except that no film shall be eligible for inclusion in the National Film Registry until 10 years after such film's first theatrical release;

[(B) establish a procedure whereby the general public may make recommendations to the Board regarding the inclusion of films in such National Film Registry; and

[(C) establish general guidelines so that film owners and distributors are able to determine whether a version of a film registered on the National Film Registry which is in their possession has been materially altered.

[(2) In addition, the Librarian shall—

[(A) determine, from time to time, after consultation with the Board, which films satisfy the criteria developed pursuant to paragraph (1)(A) and qualify to be included in the National Film Registry, except that the Librarian shall not select more than 25 films per year for inclusion in such Registry;

[(B) convene, from time to time, a panel of experts, as provided in subsection (b), solely to advise the Board on whether it is necessary to petition Congress to revise the definition of "material alteration";

[(C) provide a seal to indicate that the film has been included in the National Film Registry as an enduring part of our national cultural heritage and such seal may then be used in

the promotion of any version of such film that has not been materially altered; and

[(D) have published in the Federal Register the name of each film that is selected for inclusion in the National Film Registry.

[(3)(A) The Librarian shall submit annual reports to the appropriate Committees of the Congress listing films included on the National Film Registry and describing the criteria used in determining why specific films were included in the National Film Registry.

[(B) The first such report shall be submitted within 12 months after the date of enactment of this Act.

[(b) COMPOSITION OF PANEL.—The panel provided for in subsection (a)(2)(B) shall be chosen by the Librarian. It shall be comprised of four persons, one representative each from the Motion Picture Association of America and the National Association of Broadcasters, and one representative of the Directors Guild of America and one representative of the Screen Actors Guild of America. The Presidents of these four organizations shall recommend three nominees to serve on such panel.

[(c) APPEALS TO THE LIBRARIAN.—(1) The owner, exhibitor, or distributor of a film may appeal to the Librarian—

[(A) objecting to the Board's recommendation of such film for inclusion in the National Film Registry; or

[(B) the determination that a version of a film which is included in the National Film Registry has been materially altered.

[(2) The Librarian shall refer such appeals to the Board for its recommendation.

[(c) REGISTRY COLLECTION.—The Librarian shall endeavor to obtain, by gift from the owner, an archival quality copy of an original version of each film included in the National Film Registry. All films so received by the Librarian shall be maintained in a special collection in the Library of Congress to be known as the "National Film Board Collection". The Librarian shall, by regulation, provide for reasonable access to films in such collection.

[SEC. 4. LABELING REQUIREMENTS.

[(a) LABEL REQUIRED.—Except as otherwise provided in this section, no person shall knowingly distribute or exhibit to the public a materially altered version of a film included in the National Film Registry unless the version is labeled as required by this section.

[(b) EFFECTIVE DATE OF LABEL.—Except as provided in subsection (c), any labeling requirement established pursuant to this section shall be effective 45 days after publication in the Federal Register indicating that a film has been selected for inclusion in the National Film Registry.

[(c) EXCEPTIONS.—With respect to films intended for home use through either retail purchase or rental, the provisions of subsection (b) shall apply, however no requirements imposed under this section shall apply to—

[(1) a film which has been packaged for distribution prior to the effective date of such requirement with respect to such film, except that the provisions of this paragraph shall not

apply if the packaging has been accelerated in contemplation of imposition of such requirement; or

[(2) a retail distributor of films for home use, other than a manufacturer or packager, who has in good faith relied on compliance with the provisions of this Act by the manufacturer, wholesaler, or packager of a film.

[(d) REQUIREMENTS OF THE LABEL.—(1)(A) A label for a materially altered version of a film, other than a colorized version, shall consist of a panel card immediately preceding the commencement of the film which bears the following statement:

["This is a materially altered version of the film originally marketed and distributed to the public. It has been altered without the participation of the principal director, screenwriter, and other creators of the original film.".

[(B) Such a label shall appear in a conspicuous and legible type.

[(2)(A) A label for a colorized version of a film shall consist of a panel card immediately preceding the commencement of the film which bears the following statement:

["This is a colorized version of a film originally marketed and distributed to the public in black and white. It has been altered without the participation of the principal director, screenwriter, and other creators of the original film.".

[(B) Such a label shall appear in a conspicuous and legible type.

[(3)(A) A label for a film package of a materially altered film, other than a colorized version, shall consist of—

[(i) an area of a rectangle on the front of the package which bears the following statement:

["This is a materially altered version of a film originally marketed and distributed to the public. It has been altered without the participation of the principal director, screenwriter, and other creators of the original film."; and

[(ii) an area of a rectangle on the side of the package which bears the following statement:

["This is a materially altered version of the film originally marketed and distributed to the public. See front panel.".

[(B) Such labels shall appear in a conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the package.

[(4)(A) A label for a film package of a colorized version of a film shall consist of—

[(i) an area of a rectangle on the front of the package which bears the following statement:

["This is a colorized version of a film originally marketed and distributed to the public in black and white. It has been altered without the participation of the principal director, screenwriter, and other creators of the original film", and

[(ii) an area of a rectangle on the side of the package which bears the following statement:

["This is a colorized version of original work. See front panel.".

[(B) Such labels shall appear in a conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the package.

[SEC. 5 MISUSE OF SEAL.

[No person shall knowingly distribute or exhibit to the public a version of a film which bears a seal as described by section 3(a)(2)(C) of this Act if such film—

[(1) is not included in the National Film Registry; or

[(2) is included in the National Film Registry, but such version has been materially altered.

[SEC. 6. REMEDIES.

[(a) JURISDICTION AND STANDING.—The several district courts of the United States shall have jurisdiction, for cause shown, to prevent and restrain violations of sections 4 and 5 of this Act upon the application of the Librarian to the Attorney General of the United States acting through the several United States Attorneys in their several districts.

[(b) RELIEF.—(1) Except as provided in paragraph (2), relief shall be limited to the prospective inclusion or application of, or removal of, a label as appropriate.

[(2) In the case in which the Librarian finds a pattern or practice of the willful violation of this Act, the United States District Courts may order civil fines of not more than $10,000 and appropriate injunctive relief.

[SEC. 7. LIMITATIONS OF REMEDIES.

[(a) The remedies provided in section 6 shall be the exclusive remedies under this Act or any other Federal or State law, regarding the use of a seal as described by section 3(a)(2)(C) or labeling of materially altered films.

[(b) No remedies under section 6 of this title shall be available with respect to any film which is exempted from the labeling requirements of this Act pursuant to section 4(c).

[SEC. 8. NATIONAL FILM PRESERVATION BOARD.

[(a) NUMBER AND APPOINTMENT.—(1) The Librarian shall establish in the Library of Congress a National Film Preservation Board to be comprised of thirteen members, selected by the Librarian in accordance with the provisions of this paragraph. Each organization listed in subparagraphs (A) through (M) shall submit a list of not less than 3 qualified candidates to the Librarian. The Librarian shall appoint one member from each such list, submitted by the following organizations, and shall designate from the list an alternate who may attend those meetings to which the individual appointed to the Board cannot attend.

[(A) the Academy of Motion Picture Arts and Sciences:

[(B) the Directors Guild of America;

[(C) the Writers Guild of America;

[(D) the National Society of Film Critics;

[(E) the Society for Cinema Studies;

[(F) the American Film Institute;

[(G) the Department of Theater, Film and Television, College of Fine Arts at the University of California, Los Angeles;

[(H) the Department of Cinema Studies in the Graduate School of Arts and Science at New York University;

[(I) the University Film and Video Association;

[(J) the Motion Picture Association of America;

[(K) the National Association of Broadcasters;

[(L) the Association of Motion Picture and Television Producers; and

[(M) the Screen Actors Guild of America.

[(2) Before the Librarian selects nominees for such Board, such Librarian shall request that each of the entities listed in paragraph (1) who do not currently have a nominee on such Board nominate three individuals to serve on such Board. No individual may serve on the Board for more than one term and each entity shall be represented a comparable number of times.

[(b) CHAIRPERSON.—The Librarian shall appoint one member to serve as Chairperson.

[(c) TERM OF OFFICE.—(1) The term of each member of the Board shall be 3 years.

[(2) A vacancy in the board shall be filled in the manner prescribed by the Librarian, except that no entity listed in subsection (a) may have more than one nominee on the Board at any one time. Appointments may be made under this subsection without regard to section 5311(b) of title 5, United States Code. Any member appointed to fill a vacancy before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

[(d) QUORUM.—Seven members of the Board shall constitute a quorum but a lesser number may hold hearings.

[(e) BASIC PAY.—Members of the Board shall serve without pay. While away from their homes or regular places of business in the performance of services for the Board, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

[(f) MEETINGS.—The Board shall meet at least twice each calendar year and the first such meeting shall be within 120 days after the effective date of this Act. Meetings shall be at the call of the Chairperson or a majority of its members.

[(g) CONFLICT OF INTERESTS.—The Librarian shall establish rules and procedures to address any potential conflict of interest between a member of the Board and responsibilities of the Board.

[SEC. 9. STAFF OF BOARD; EXPERTS AND CONSULTANTS.

[(a) STAFF.—The Chairperson of the Board may appoint and fix the pay of such personnel as the Chairperson considers appropriate.

[(b) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The staff of the Board may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS–16 of the General Schedule.

[(c) EXPERTS AND CONSULTANTS.—The Chairperson of the Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals

not to exceed the daily equivalent of the maximum rate of basic pay payable for GS–15 of the General Schedule, and in no case may a Board member be paid as an expert of consultant.

[SEC. 10. POWERS OF BOARD.

[(a) IN GENERAL.—The Board may, for the purpose of carrying out its duties, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Board considers appropriate. The Board shall review nominations of films submitted to it for inclusion in the National Film Registry and consult with the Librarian with respect to the inclusion in the Registry, and with respect to the powers defined in section 3.

[(b) NOMINATION OF FILMS.—The Board shall consider, for inclusion in the National Film Registry, nominations submitted by representatives of the film industry, such as the guilds and societies representing actors, directors, screenwriters, producers, and film critics, film preservation organizations and representatives of academic institutions with film study programs. The Board shall not nominate more than 25 films a year for inclusion in the Registry

[SEC. 11. DEFINITIONS.

[(a) DEFINITIONS FOR SECTIONS 1 THROUGH 13.—As used in sections 1 through 13:

[(1) The term "Librarian" means the Librarian of Congress.

[(2) The term "film" means a feature-length, theatrical motion picture after its first theatrical release.

[(3) The term "Film package" means the original box, carton or container of any kind in which a videotape or disc is offered for sale or rental.

[(4) The term "Board" means the National Film Preservation Board.

[(5) The term "material alteration" means to colorize or to make other fundamental post-production changes in a version of a film for marketing purposes but does not include changes made in accordance with customary practices and standards and reasonable requirements of preparing a work for distribution or broadcast.

[(6) The term "to colorize" means to add color, by whatever means, to versions of motion pictures originally produced, marketed, or distributed in black and white.

[(7) The term "colorization" means the process whereby a film is colorized.

[(b) EXCLUSION FROM DEFINITION OF "MATERIAL ALTERNATION".—Excluded from the definition of "material alteration" are practices such as the insertion of commercials and public service announcements for television broadcast.

[SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

[To carry out the purposes of this Act, there are authorized to be appropriated to the Librarian of Congress, such sums as may be necessary to carry out the purposes of this Act, but in no fiscal year shall such sum exceed $250,000.

[SEC. 13. EFFECTIVE DATE.

[The provisions of this Act shall be effective for three years beginning on the date of enactment of this Act. The provisions of this

Act shall not apply to any copy of a film materially altered prior to such effective date if such film is owned by an individual for his personal use, in the inventory of the manufacturer or packager of a videocassette or already distributed to retail or wholesale distributors of videocassettes.]

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