102D CONGRESS
1ST SESSION

H. R. 2372

To amend title 17, United States Code, with respect to fair use and copyright renewal, to reauthorize the National Film Registry Board, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 16, 1991

Mr. HUGHES (for himself and Mr. MOORHEAD) introduced the following bill; which was referred jointly to the Committees on the Judiciary and House Administration

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A BILL

To amend title 17, United States Code, with respect to fair use and copyright renewal, to reauthorize the National Film Registry Board, and for other purposes.

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

SECTION 1. SHORT TITLE.

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

TITLE I—FAIR USE

SECTION 101. FAIR USE REGARDING UNPUBLISHED WORKS.

Section 107 of title 17, United States Code, is amended by adding at the end the following: "The fact that a work is unpublished is an important element which tends to weigh against a finding of fair use, but shall not diminish the importance traditionally accorded to any other consideration under this section, and shall not bar a finding of fair use if such finding is made upon full consideration of all the factors set forth in paragraphs (1) through (4).".

TITLE II—RENEWAL OF COPYRIGHT

SEC. 201. SHORT TITLE.

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

SEC. 202. 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 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 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.

"(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.".

(b) LEGAL EFFECT OF RENEWAL OF COPYRIGHT IS 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 III—NATIONAL FILM PRESERVATION

SEC. 301. SHORT TITLE.

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

SEC. 302. FINDINGS.

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;

(3) less than half of the feature-length films produced in the United States before 1951, including only 20 percent of the silent films, still exist today because of deterioration or loss, and many of the films produced after 1951 are deteriorating at an alarming rate;

(4) it is appropriate and necessary for the Federal Government to recognize motion pictures as a significant American art form deserving of protection, including preservation and restoration, and to establish a registry of films that represent an enduring part of the national, historical, and cultural her-

(2) In addition to the Librarian's duties under paragraph (1), the Librarian shall do the following:

(A) The Librarian shall determine, after consultation with the Board, which films satisfy the criteria developed under paragraph (1)(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.

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

(C) The Librarian shall provide a seal to indicate that a film has been included in the National Film Registry as an enduring part of the national cultural heritage of the United States. Such seal may then be used on copies of such films that are original and complete versions as they were first published, after such copies have been examined and approved by the Librarian. In the case of copyrighted works, only the copyright owner, a duly authorized licensee, or the Librarian or an archive other than the Library of Congress may place a seal on a copy of a film selected for inclusion in the National Film Registry. Wherever appropriate, the Librarian may accompany the seal with language indicating

that a copy of a film was preserved and restored by the Librarian or by an archive acting under the standards issued under subparagraph (D).

(D) The Librarian shall publish in the Federal Register the standards for preservation or restoration that will qualify films for use of the seal under subparagraph (C).

(3) 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.

SEC. 305. 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 17 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 member-at-large appointed under paragraph (2), the Librarian shall appoint one member from each such list submitted by such organizations, and shall designate from that list an alternate who may attend those meetings to

(b) CHAIRPERSON.—The Librarian shall appoint one 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 prescribed by the Librarian, except that no entity listed in subsection (a) may have more than one nominee on the Board at any time. 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.—Nine 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 expenses 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. 306. 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 304, 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. 307. 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 an original version of each film included in the National Film Registry. Wherever 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, except that nothing in this

subsection shall affect the rights of owners of copyright under 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. 308. SEAL OF THE NATIONAL FILM REGISTRY.

(a) USE OF THE SEAL.—No person shall knowingly distribute or exhibit to the public a version of a film which bears a seal described in section 304(a)(2)(C) if such film—

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

(2) is included in the National Film Registry, but such copy was not examined and approved for the use of the seal by the Librarian under section 304(a)(2)(C).

(b) EFFECTIVE DATE OF THE SEAL.—The use of the seal described in section 304(a)(2)(C) 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. 309. 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 section 8(a) upon the application of the Librarian to the Attorney General of the United States.

(b) RELIEF.—(1) Except as provided in paragraph (2), relief for a violation of section 308(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 in which the Librarian finds a pattern or practice of the willful violation of section 308(a), the United States district courts may order a civil fine of not more than $10,000 and appropriate injunctive relief.

SEC. 310. LIMITATIONS OF REMEDIES.

The remedies provided in section 309 shall be the exclusive remedies under this Act, or any other Federal or State law, regarding the use of the seal described in section 304(a)(2)(C).

SEC. 311. STAFF OF BOARD; EXPERTS AND CONSULTANTS.

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

(b) EXPERTS AND CONSULTANTS.—The Librarian 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. In no case may a member of the Board be paid as an expert or consultant under such section.

SEC. 312. DEFINITIONS.

As used in this Act—

(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.

(5) The term "original and complete" 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 or an archive acting pursuant to section 304(a)(2)(D) can compile in those cases where the original material has been irretrievably lost.

SEC. 313. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Librarian such sums as may be necessary to carry out the purposes of this Act.

SEC. 314. STUDY BY THE LIBRARIAN.

(a) STUDY.—The Librarian, after consultation with the Board, shall 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, consult with film archivists, educators and historians, copyright owners, film industry representatives, including those involved in the preservation of film, and others involved in activities related to film preservation.

(b) REPORT.—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 subsection (a).

SEC. 315. EFFECTIVE DATE.

The provisions of this Act shall be effective until September 30, 1997. The provisions of this Act 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 Act.

SEC. 316. REPEAL.

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

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