Union Calendar No. 214

103D CONGRESS
1ST SESSION

H. R. 897

[Report No. 103–388]

To amend title 17, United States Code, to modify certain recordation and registration requirements, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 1993

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

NOVEMBER 20, 1993

Additional sponsors: Mr. CHAPMAN, Mr. MACHTLEY, Mr. OBERSTAR, and Ms. PELOSI

NOVEMBER 20, 1993

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 16, 1993]

A BILL

To amend title 17, United States Code, to modify certain recordation and registration requirements, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, 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 Reform Act of 1993".

SEC. 2. DEPOSIT OF COPIES OR PHONORECORDS FOR LIBRARY OF CONGRESS.

Section 407 of title 17, United States Code, is amended as follows:

(1) Subsection (a) is amended by striking "(a)" and all that follows through "publication—" and inserting the following:

"(a) REQUIRED DEPOSITS.—Except as provided in subsection (c), the owner of copyright in a work or of the exclusive right of publication of a work in the United States shall deposit, after the earliest date of such publication—".

(2) Subsection (b) is amended—

(A) by inserting "DEPOSIT IN COPYRIGHT OFFICE.—" after "(b)"; and

(B) by adding at the end the following: "A deposit made under this section may be used to satisfy the deposit requirements of section 408.".

(3) Subsection (c) is amended—

(A) by inserting "REGULATIONS.—" after "(c)"; and

(B) by striking "Register of Copyrights" and inserting "Librarian of Congress".

(4) Subsection (d) is amended—

(A) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(B) by striking "(d) At any time after publication of a work as provided by subsection (a)" and inserting the following:

"(d) PROCEDURES.—(1) During November of each year, the Librarian of Congress shall publish in the Federal Register a statement of the categories of works of which the Library of Congress wishes to acquire copies or phonorecords under this section during the next calendar year. The Librarian shall review such statement annually in light of the changes in the Library's policies and procedures, changes in technology, and changes in patterns of publication. The statement shall also describe—

"(A) the types of works of which only one copy or phonorecord need be deposited;

"(B) the types of works for which the deposit requirements may be fulfilled by placing the Library of Congress on a subscription list; and

"(C) the categories of works which are exempt under subsection (c) from the deposit requirements.

"(2) At any time after publication in the United States of a work or body of works";

(C) by striking "Register of Copyrights" and inserting "Librarian of Congress";

(D) by inserting after the first sentence the following: "Such demand shall specify a date for compliance with the demand.";

(E) by inserting "in a civil action" after "are liable";

(F) in subparagraph (B) (as redesignated by subparagraph (A) of this paragraph) by striking "cost of" and inserting "cost to";

(G) in subparagraph (C) (as redesignated by subparagraph (A) of this paragraph) by striking "clauses (1) and (2)" and inserting "subparagraphs (A) and (B)"; and

(H) by adding after subparagraph (C) (as so redesignated) the following:

"In addition to the penalties set forth in subparagraphs (A), (B), and (C), the person against whom an action is brought under this paragraph shall be liable in such action for all costs of the United States in pursuing the demand,

including an amount equivalent to a reasonable attorney's fee.".

(5) Subsection (e) is amended—

(A) by inserting "TRANSMISSION PROGRAMS.—" after "(e)";

(B) by striking "Register of Copyrights shall, after consulting with the Librarian of Congress and other interested organizations and officials," and inserting "Librarian of Congress shall, after consulting with interested organizations and officials,"; and

(C) in paragraph (2) by striking "Register of Copyrights" and inserting "Librarian of Congress".

(6) Section 407 of title 17, United States Code, is further amended by adding at the end the following:

"(f) OBLIGATION TO MAKE DEPOSITS.—Immediately upon the publication in the United States of any work in which copyright subsists under this title, it shall be the obligation of the persons identified in subsection (a) with respect to that work, subject to the requirements and exceptions specified in this section, to deposit, for the use or disposition of the Library of Congress, the copies or phonorecords specified in such subsection. The obligation to

make such deposit arises without any prior notification or demand for compliance with subsection (a).

"(g) RECORDS OF DEPOSITS.—The Librarian of Congress shall establish and maintain public records of the receipt of copies and phonorecords deposited under this section.

"(h) DATABASE OF DEPOSIT RECORDS.—The Librarian of Congress shall establish and maintain an electronic database containing its records of all deposits made under this section on and after October 1, 1995, and shall make such database available to the public through one or more international information networks.

"(i) DELEGATION AUTHORITY.—The Librarian of Congress may delegate to the Register of Copyrights or other officer or employee of the Library of Congress any of the Librarian's responsibilities under this section.".

SEC. 3. COPYRIGHT REGISTRATION IN GENERAL.

Section 408 of title 17, United States Code, is amended—

(1) in subsection (c)—

(A) in paragraph (1) by adding at the end the following: "The Register is also authorized to specify by regulation classes of material in which registration may be made without deposit of any copy or phonorecord, in cases in which the Reg-

ister determines that the purposes of examination, registration, and deposit can be adequately served by deposit of descriptive material only, or by a written obligation to deposit copies or phonorecords at a later date."; and

(B) in paragraph (2) by striking "periodicals, including newspapers" and all that follows through the end of subparagraph (B) and inserting "collective works, including periodicals, published within a 5-year period, on the basis of a single deposit and application and upon payment of any special registration fee imposed under section 708(a)(10), if the application identifies each work separately, including the collective work containing it and its date of first publication."; and

(2) by adding at the end the following:

"(f) COPYRIGHT OFFICE HEARINGS.—Not later than 1 year after the effective date of this subsection, and at 1-year intervals thereafter, the Register of Copyrights shall hold public hearings to consider proposals to amend the regulations and practices of the Copyright Office with respect to deposit of works in order to eliminate deposits that are unnecessary for copyright examination or the collections of

the Library of Congress, and in order to simplify the registration procedures.".

SEC. 4. APPLICATION FOR COPYRIGHT REGISTRATION.

(a) APPLICATIONS.—Section 409 of title 17, United States Code, is amended—

(1) by striking "The application" and inserting "(a) CONTENTS OF APPLICATION.—The application";

(2) in paragraph (5) by inserting before the semicolon the following: ", and if the document by which ownership was obtained has been recorded in the Copyright Office, the volume and page number of such recordation";

(3) by striking paragraphs (9) and (10) and inserting the following:

"(9) in the case of a compilation or derivative work, an identification of any preexisting work or works that it is substantially based on or substantially incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered;

"(10) at the option of the applicant, names, addresses, and telephone numbers of persons or organizations that potential users of the work should contact concerning permissions or licenses to use the work,

and any information with respect to the terms of such permissions or licenses; and"; and

(4) by adding at the end the following:

"(b) SHORT-FORM APPLICATION.—

"(1) USE OF SHORT-FORM.—The Register of Copyrights shall prescribe a short-form application which may be used whenever—

"(A) the work is by a living author;

"(B) the claimant is the author;

"(C) the work is not anonymous, pseudonymous, or made for hire; and

"(D) the work as a whole, or substantial portions of it, have not been previously published or registered.

"(2) CONTENTS OF SHORT-FORM.—The short-form application shall include—

"(A) the name and address of the author;

"(B) the title of the work;

"(C) the nationality or domicile of the author;

"(D) the year in which creation of the work was completed;

"(E) if the work has been published, the date and nation of its first publication;

"(F) any other information regarded by the Register of Copyrights as bearing upon the preparation or identification of the work or the existence, ownership, or duration of the copyright; and

"(G) at the option of the applicant, names, addresses, and telephone numbers of persons or organizations that potential users of the work should contact concerning permissions or licenses to use the work, and any information with respect to the terms of such permissions or licenses.".

(b) EFFECTIVE DATE.—The amendments made by this section take effect 6 months after the date of the enactment of this Act.

SEC. 5. REGISTRATION OF CLAIM AND ISSUANCE OF CERTIFICATE.

(a) DETERMINATION OF REGISTRATION.—Section 410 of title 17, United States Code, is amended by striking subsections (a) and (b) and inserting the following:

"(a) DETERMINATION OF REGISTER.—If, after examination, the Register of Copyrights determines, in accordance with the provisions of this title, that there is no reasonable possibility that a court would hold the work for which a deposit is made pursuant to section 408(c) to be copy-

rightable subject matter, or the Register determines that the claim is invalid for any other reason, the Register shall refuse registration and notify the applicant in writing of the reasons for such refusal. In all other cases, the Register shall register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office. A certificate of registration issued under this section extends only to those component parts of the work that both are the subject matter of copyright and the copyright owner has the right to claim. The certificate shall contain the information set forth in the application, together with the number and effective date of the registration.

"(b) APPEALS PROCEDURE.—The Register of Copyrights shall establish, and publish in the Federal Register, a formal procedure by which appeals may be taken from refusals under subsection (a) to register claims to copyright. Such procedure shall include a final appeal to the Register.".

(b) JUDICIAL PROCEEDINGS.—Subsection (c) of section 410 of title 17, United States Code, is amended—

(1) by inserting "EVIDENTIARY WEIGHT OF CERTIFICATE.—" after "(c)"; and

(2) by adding at the end the following: "Any error or omission made in good faith or upon reasonable reliance on counsel shall not affect the validity

of the registration. In no case shall an incorrect statement made in an application for copyright registration invalidate the copyright.".

(c) TECHNICAL AMENDMENT.—Subsection (d) of section 410 of title 17, United States Code, is amended by inserting "EFFECTIVE DATE OF REGISTRATION.—" after "(d)".

SEC. 6. COPYRIGHT REGISTRATION PROVISIONS.

(a) REGISTRATION AND INFRINGEMENT ACTIONS.—(1) Section 411 of title 17, United States Code, is amended—

(A) by amending the section caption to read as follows:

"§411. Registration and infringement actions for certain works";

(B) by striking subsection (a); and

(C) in subsection (b)—

(i) by striking "(b)"; and

(ii) by striking paragraphs (1) and (2) and inserting the following:

"(1) serves notice upon the infringer, not less than 10 or more than 30 days before such fixation, identifying the work and the specific time and source of its first transmission; and

"(2) submits an application for registration of the copyright claim in the work, in accordance with

this title, within 3 months after the first transmission of the work.".

(2) The item relating to section 411 in the table of sections at the beginning of chapter 4 of title 17, United States Code, is amended to read as follows:

"411. Registration and infringement actions for certain works.".

(b) REGISTRATION AS PREREQUISITE TO CERTAIN REMEDIES FOR INFRINGEMENT.—Section 412 of title 17, United States Code, and the item relating to section 412 in the table of sections at the beginning of chapter 4 of title 17, United States Code, are repealed.

SEC. 7. REMEDIES FOR INFRINGEMENT.

Section 504(c)(2) of title 17, United States Code, is amended in the second sentence—

(1) by striking "court it" and inserting "court in";

(2) by inserting "or eliminate" after "reduce"; and

(3) by striking "to a sum of not less than $200".

SEC. 8. NOTIFICATION OF FILING AND DETERMINATION OF ACTIONS.

Section 508 of title 17, United States Code, is amended—

(1) in subsection (a)—

(A) in the first sentence by inserting "and the party filing the action" after "United States"; and

(B) in the second sentence by inserting "and the party filing the action" after "clerk"; and

(2) in subsection (b) by inserting "and the party filing the action" after "clerk of the court".

SEC. 9. STUDY ON MANDATORY DEPOSIT.

(a) SUBJECT MATTER OF STUDY.—Upon the enactment of this Act, the Librarian of Congress shall conduct a study of the mandatory deposit provisions of section 407 of title 17, United States Code. Such study shall place particular emphasis on the implementation of section 407(e) of such title with respect to the deposit of transmission programs, as well as possible alternative methods of obtaining deposits if the mandatory deposit requirements of such section 407 are expanded to authorize the collection, archival preservation, and use by the Library of Congress of other publicly transmitted works, including unpublished works such as computer programs and online databases.

(b) CONDUCT OF STUDY.—The study under subsection (a) shall be conducted by the Register of Copyright, in consultation with any affected interests, and may include the

voluntary establishment, in collaboration with representatives of such interests, of practical tests and pilot projects.

(c) REPORT TO CONGRESS.—Not later than 18 months after the date of the enactment of this Act, the Librarian shall submit to the Congress a report on the results of the study conducted under this section, together with recommendations the Librarian has on—

(1) safeguarding the interests of copyright owners whose works are subject to the mandatory deposit provisions referred to in subsection (a);

(2) fulfilling the present and future needs of the Library of Congress with respect to archival and other collections development; and

(3) any legislation that may be necessary.

SEC. 10. STUDIES OF EFFECTS OF REGISTRATION AND DEPOSIT PROVISIONS.

Upon the enactment of this Act, the Librarian of Congress, after consultation with the Register of Copyrights and any affected interests, shall commence a study of the extent to which changes in the registration and deposit provisions of title 17, United States Code, that are made by this Act have affected the acquisitions of the Library of Congress and the operations of the copyright registration system, and any recommendations the Librarian may have with respect to such effects. Not later than 3 years after the date of the en-

actment of this Act, the Librarian shall submit to the Congress a report on such study. The Librarian may conduct further studies described in the first sentence, and report to the Congress on such studies.

SEC. 11. CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 101 of title 17, United States Code, is amended by striking the definition of the "country of origin" of a Berne Convention work.

(b) INFRINGEMENT OF COPYRIGHT.—Section 501(b) of title 17, United States Code, is amended in the first sentence by striking ", subject to the requirements of section 411,".

(c) REMEDIES FOR INFRINGEMENT.—Section 504(a) of title 17, United States Code, is amended by striking "Except as otherwise provided by this title, an" and inserting "An".

SEC. 12. ADDITIONAL TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 17, UNITED STATES CODE.—Title 17, United States Code, is amended as follows:

(1) The definition of "publicly" contained in section 101 is amended—

(A) by striking "clause" and inserting "paragraph"; and

(B) by striking "processs" and inserting "process".

(2) The definition of "registration" contained in section 101 is amended by striking "412,".

(3) Section 108(e) is amended in the matter preceding paragraph (1) by striking "pair" and inserting "fair".

(4) Section 109(b)(2)(B) is amended by striking "Copyright" and inserting "Copyrights".

(5) Section 304(c) is amended in the matter preceding paragraph (1) by striking "the subsection (a)(1)(C) and inserting "subsection (a)(1)(C)".

(6) Section 405(b) is amended by striking "condition or" and inserting "condition for".

(7) The item relating to section 504 in the table of sections at the beginning of chapter 5 is amended by striking "Damage" and inserting "Damages".

(8) Section 501(a) is amended by striking "sections 106 through 118" and inserting "section 106".

(9) Section 509(b) is amended by striking "merchandise; and baggage" and inserting "merchandise, and baggage".

(10) Section 601 of title 17, United States Code, is amended—

(A) in subsection (a) by striking "nondramtic" and inserting "nondramatic"; and

(B) in subsection (b)(1) by striking "subsustantial" and inserting "substantial".

(11) Section 801(b)(4) of title 17, United States Code, is amended by adding a period after "chapter 10".

(12) The item relating to section 903 in the table of sections at the beginning of chapter 9 is amended to read as follows:

"903. Ownership, transfer, licensing, and recordation.".

(13) Section 909(b)(1) is amended—

(A) by striking "force" and inserting "work"; and

(B) by striking "sumbol" and inserting "symbol".

(14) Section 910(a) is amended in the second sentence by striking "as used" and inserting "As used".

(15) Section 1006(b)(1) is amended by striking "Federation Television" and inserting "Federation of Television".

(16) Section 1007 is amended—

(A) in subsection (a)(1) by striking "the calendar year in which this chapter takes effect" and inserting "calendar year 1992"; and

(B) in subsection (b) by striking "the year in which this section takes effect" and inserting "1992".

(17) The table of chapters at the beginning of title 17, United States Code, is amended—

(A) by amending the item relating to chapter 6 to read as follows:

"6. Manufacturing Requirements and Importation ..... 601";

(B) by amending the item relating to chapter 9 to read as follows:

"9. Protection of Semiconductor Chip Products ..... 901";

and

(C) by adding at the end the following:

"10. Digital Audio Recording Devices and Media ..... 1001".

(b) OTHER PROVISIONS OF LAW.—(1) Section 2319(b)(1) of title 18, United States Code, is amended by striking "at last" and inserting "at least".

(2) Section 1(a)(1) of the Act entitled "An Act to amend chapter 9 of title 17, United States Code, regarding protection extended to semiconductor chip products of foreign entities", approved November 9, 1987 (17 U.S.C. 914 note), is amended by striking "orginating" and inserting "originating".

(3) Section 3(a)(1)(C) of the Audio Home Recording Act of 1992 is amended by striking "adding the following

new paragraph at the end" and inserting "inserting after paragraph (3) the following new paragraph".

SEC. 13. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in section 4(b), and subject to subsection (b) of this section, this Act and the amendments made by this Act take effect on the date of the enactment of this Act.

(b) PENDING ACTIONS.—The amendments and repeals made by section 6 shall not affect any action brought under title 17, United States Code, before the date of the enactment of this Act.

Amend the title so as to read: "A bill to amend title 17, United States Code, to modify certain registration requirements, and for other purposes.".

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