Public Law 101-553
101st Congress

An Act

To amend chapters 5 and 9 of title 17, United States Code, to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of copyright and infringement of exclusive rights in mask works, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private person or against other public entities.

Nov. 15, 1990
[H.R. 3045]

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

SECTION 1. SHORT TITLE.

Copyright Remedy Clarification Act.
17 USC 101 note.

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

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

(a) COPYRIGHT INFRINGEMENT.—(1) Section 501(a) of title 17, United States Code, is amended by adding at the end the following: "As used in this subsection, the term 'anyone' includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.".

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

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

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

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

statutory damages under section 504, costs and attorney's fees under section 505, and the remedies provided in section 510.".

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

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

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

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

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

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

17 USC 501 note.

SEC. 3. EFFECTIVE DATE.

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

Approved November 15, 1990.

LEGISLATIVE HISTORY—H.R. 3045 (S. 497):

HOUSE REPORTS: No. 101-282 (Comm. on the Judiciary) and No. 101-887 (Comm. of Conference).
SENATE REPORTS: No. 101-305 accompanying S. 497 (Comm. on the Judiciary).
CONGRESSIONAL RECORD:
Vol. 135 (1989): Oct. 16, considered and passed House.
Vol. 136 (1990): June 26, considered and passed Senate, amended, in lieu of S. 497.
Oct. 19, Senate agreed to conference report.
Oct. 26, House agreed to conference report.

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