105TH CONGRESS
1ST SESSION

S. 1121

To amend Title 17 to implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

IN THE SENATE OF THE UNITED STATES

JULY 31, 1997

Mr. HATCH (for himself, Mr. LEAHY, Mr. THOMPSON, and Mr. KOHL) (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend Title 17 to implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

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 ''WIPO Copyright and Performances and Phonograms Treaty Implementation Act of 1997''.

SEC. 2. TECHNICAL AMENDMENTS.

(a) Section 101 of title 17, United States Code, is amended—

(1) by deleting the definition of ''Berne Convention work'';

(2) in the definition of ''The 'country of origin' of a Berne Convention work'', by deleting ''The 'country of origin' of a Berne Convention work,'', capitalizing the first letter of the word ''for'', deleting ''is the United States'' after ''For purposes of section 411,'', and inserting ''a work is a 'United States work' only'' after ''For purposes of section 411,'';

(3) in subsection (1)(B) of the definition of ''The 'country of origin' of a Berne Convention work'', by inserting ''treaty party or parties'' and deleting ''nation or nations adhering to the Berne Convention'';

(4) in subsection (1)(C) of the definition of ''The 'country of origin' of a Berne Convention work'', by inserting ''is not a treaty party'' and deleting ''does not adhere to the Berne Convention'';

(5) in subsection (1)(D) of the definition of ''The 'country of origin' of a Berne Convention work'', by inserting ''is not a treaty party'' and deleting ''does not adhere to the Berne Convention'';

(6) in section (3) of the definition of ''The 'country of origin' of a Berne Convention work'', by

deleting ''For the purposes of section 411, the 'country of origin' of any other Berne Convention work is not the United States.'';

(7) after the definition for ''fixed'', by inserting ''The 'Geneva Phonograms Convention' is the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, concluded at Geneva, Switzerland on October 29, 1971.'';

(8) after the definition for ''including'', by inserting ''An 'international agreement' is—

''(1) the Universal Copyright Convention;

''(2) the Geneva Phonograms Convention;

''(3) the Berne Convention;

''(4) the WTO Agreement;

''(5) the WIPO Copyright Treaty;

''(6) the WIPO Performances and Phonograms Treaty; and

''(7) any other copyright treaty to which the United States is a party.'';

(9) after the definition for ''transmit'', by inserting ''A 'treaty party' is a country or intergovernmental organization other than the United States that is a party to an international agreement.'';

(10) after the definition for ''widow'', by inserting ''The 'WIPO Copyright Treaty' is the WIPO Copyright Treaty concluded at Geneva, Switzerland, on December 20, 1996.'';

(11) after the definition for ''The 'WIPO Copyright Treaty' '', by inserting ''The 'WIPO Performances and Phonograms Treaty' is the WIPO Performances and Phonograms Treaty concluded at Geneva, Switzerland on December 20, 1996.''; and

(12) by inserting, after the definition for ''work for hire'', ''The 'WTO Agreement' is the Agreement Establishing the World Trade Organization entered into on April 15, 1994. The terms 'WTO Agreement' and 'WTO member country' have the meanings given those terms in paragraphs (9) and (10) respectively of section 2 of the Uruguay Round Agreements Act.''.

(b) Section 104 of title 17, United States Code, is amended—

(1) in section (b)(1), by deleting ''foreign nation that is a party to a copyright treaty to which the United States is also a party'' and inserting ''treaty party'';

(2) in section (b)(2) by deleting ''party to the Universal Copyright Convention'' and inserting ''treaty party'';

(3) by renumbering the present section (b)(3) as (b)(5) and moving it to its proper sequential location and inserting a new section (b)(3) to read:

''(3) the work is a sound recording that was first fixed in a treaty party; or'';

(4) in section (b)(4) by deleting ''Berne Convention work'' and inserting ''pictorial, graphic or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party'';

(5) by renumbering present section (b)(5) as (b)(6);

(6) by inserting a new section (b)(7) to read:

''(7) For purposes of paragraph (2), a work that is published in the United States or a treaty party within thirty days of publication in a foreign nation that is not a treaty party shall be considered first published in the United States or such treaty party as the case may be.''; and

(7) by inserting a new section (d) to read:

''(d) EFFECT OF PHONOGRAMS TREATIES.—Notwithstanding the provisions of subsection (b), no works other than sound recordings shall be eligible for protection under this title solely by virtue of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.''.

(c) Section 104A(h) of title 17, United States Code, is amended—

(1) in paragraph (1), by deleting ''(A) a nation adhering to the Berne Convention or a WTO member country; or (B) subject to a Presidential proclamation under subsection (g),'' and inserting—

''(A) a nation adhering to the Berne Convention;

''(B) a WTO member country;

''(C) a nation adhering to the WIPO Copyright Treaty;

''(D) a nation adhering to the WIPO Performances and Phonograms Treaty; or

''(E) subject to a Presidential proclamation under subsection (g)'';

(2) paragraph (3) is amended to read as follows:

''(3) the term 'eligible country' means a nation, other than the United States that—

''(A) becomes a WTO member country after the date of enactment of the Uruguay Round Agreements Act;

''(B) on the date of enactment is, or after the date of enactment becomes, a nation adhering to the Berne Convention;

''(C) adheres to the WIPO Copyright Treaty;

''(D) adheres to the WIPO Performances and Phonograms Treaty; or

''(E) after such date of enactment becomes subject to a proclamation under subsection (g).'';

(3) in paragraph (6)(C)(iii), by deleting ''and'' after ''eligibility'';

(4) at the end of paragraph (6)(D), by deleting the period and inserting ''; and'';

(5) by adding the following new paragraph (6)(E):

''(E) if the source country for the work is an eligible country solely by virtue of its adherence to the WIPO Performances and Phonograms Treaty, is a sound recording.'';

(6) in paragraph (8)(B)(i), by inserting ''of which'' before ''the majority'' and striking ''of eligible countries''; and

(7) by deleting paragraph (9).

(d) Section 411 of title 17, United States Code, is amended—

(1) in subsection (a), by deleting ''actions for infringement of copyright in Berne Convention works whose country of origin is not the United States and''; and

(2) in subsection (a), by inserting ''United States'' after ''no action for infringement of the copyright in any''.

(e) Section 507(a) of title 17, United States Code, is amended by adding at the beginning, ''Except as expressly provided elsewhere in this title,''.

SEC. 3. COPYRIGHT PROTECTION SYSTEMS AND COPYRIGHT MANAGEMENT INFORMATION.

Title 17, United States Code, is amended by adding the following new chapter:

''CHAPTER 12—COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS

''Sec.
''1201. Circumvention of copyright protection systems.
''1202. Integrity of copyright management information.
''1203. Civil remedies.
''1204. Criminal offenses and penalties.

"§ 1201. Circumvention of copyright protection systems

''(a)(1) No person shall circumvent a technological protection measure that effectively controls access to a work protected under title 17.

''(2) No person shall manufacture, import, offer to the public, provide or otherwise traffic in any technology, product, service, device, component, or part thereof that—

''(A) is primarily designed or produced for the purpose of circumventing a technological protection measure that effectively controls access to a work protected under title 17,

''(B) has only limited commercially significant purpose or use other than to circumvent a technological protection measure that effectively controls access to a work protected under title 17, or

''(C) is marketed by that person or another acting in concert with that person for use in circumventing a technological protection measure that effectively controls access to a work protected under title 17.

''(3) As used in this subsection—

''(A) 'circumvent a technological protection measure' means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological

protection measure, without the authority of the copyright owner;

''(B) a technological protection measure 'effectively controls access to a work' if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

''(b)(1) No person shall manufacture, import, offer to the public, provide or otherwise traffic in any technology, product, service, device, component, or part thereof that—

''(A) is primarily designed or produced for the purpose of circumventing protection afforded by a technological protection measure that effectively protects a right of a copyright owner under title 17 in a work or a portion thereof;

''(B) has only limited commercially significant purpose or use other than to circumvent protection afforded by a technological protection measure that effectively protects a right of a copyright owner under title 17 in a work or a portion thereof; or

''(C) is marketed by that person or another acting in concert with that person for use in circumventing protection afforded by a technological

protection measure that effectively protects a right of a copyright owner under title 17 in a work or a portion thereof.

''(2) As used in this subsection—

''(A) 'circumvent protection afforded by a technological protection measure' means avoiding, bypassing, removing, deactivating, or otherwise impairing a technological protection measure;

''(B) a technological protection measure 'effectively protects a right of a copyright owner under title 17' if the measure, in the ordinary course of its operation, prevents, restricts, or otherwise limits the exercise of a right of a copyright owner under title 17.

''(c) The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer or consignee of any technology, product, service, device, component, or part thereof as described in this section shall be actionable under section 1337 of title 19.

''(d) Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under title 17.

''(e) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of

a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

"§ 1202. Integrity of copyright management information

''(a) FALSE COPYRIGHT MANAGEMENT INFORMATION.—No person shall knowingly—

''(1) provide copyright management information that is false, or

''(2) distribute or import for distribution copyright management information that is false, with the intent to induce, enable, facilitate or conceal an infringement of any right under title 17.

''(b) REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION.—No person shall, without the authority of the copyright owner or the law—

''(1) intentionally remove or alter any copyright management information,

''(2) distribute or import for distribution copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law, or

''(3) distribute, import for distribution, or publicly perform works, copies of works, or

phonorecords knowing that copyright management information has been removed or altered without authority of the copyright owner or the law,

knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right under title 17.

''(c) DEFINITION.—As used in this chapter, 'copyright management information' means the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form—

''(1) the title and other information identifying the work, including the information set forth on a notice of copyright;

''(2) the name of, and other identifying information about, the author of a work;

''(3) the name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright;

''(4) terms and conditions for use of the work;

''(5) identifying numbers of symbols referring to such information or links to such information; or

''(6) such other information as the Register of Copyrights may prescribe by regulation, except that the Register of Copyrights may not require the provision of any information concerning the user of a copyrighted work.

''(d) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

''§ 1203. Civil remedies

''(a) CIVIL ACTIONS.—Any person injured by a violation of section 1201 or 1202 may bring a civil action in an appropriate United States district court for such violation.

''(b) POWERS OF THE COURT.—In an action brought under subsection (a), the court—

''(1) may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain a violation;

''(2) at any time while an action is pending, may order the impounding, on such terms as it deems reasonable, of any device or product that is in the custody or control of the alleged violator and

that the court has reasonable cause to believe was involved in a violation;

''(3) may award damages under subsection (c);

''(4) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof;

''(5) in its discretion may award reasonable attorney's fees to the prevailing party; and

''(6) may, as part of a final judgment or decree finding a violation, order the remedial modification or the destruction of any device or product involved in the violation that is in the custody or control of the violator or has been impounded under subsection (2).

''(c) AWARD OF DAMAGES.—

''(1) IN GENERAL.—Except as otherwise provided in this chapter, a person committing a violation of section 1201 or 1202 is liable for either—

''(A) the actual damages and any additional profits of the violator, as provided by subsection (2), or

''(B) statutory damages, as provided by subsection (3).

''(2) ACTUAL DAMAGES.—The court shall award to the complaining party the actual damages

suffered by the party as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages, if the complaining party elects such damages at any time before final judgment is entered.

''(3) STATUTORY DAMAGES.—

''(A) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1201 in the sum of not less than $200 or more than $2,500 per act of circumvention, device, product, component, offer or performance of service, as the court considers just.

''(B) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1202 in the sum of not less than $2,500 or more than $25,000.

''(4) REPEATED VIOLATIONS.—In any case in which the injured party sustains the burden of proving, and the court finds, that a person has violated section 1201 or 1202 within three years after a final judgment was entered against the person for another

such violation, the court may increase the award of damages up to triple the amount that would otherwise be awarded, as the court considers just.

''(5) INNOCENT VIOLATIONS.—The court in its discretion may reduce or remit the total award of damages in any case in which the violator sustains the burden of proving, and the court finds, that the violator was not aware and had no reason to believe that its acts constituted a violation.

''§ 1204. Criminal offenses and penalties

''(a) Any person who violates section 1201 or 1202 willfully and for purposes of commercial advantage or private financial gain shall be fined not more than $500,000 or imprisoned for not more than 5 years, or both for the first offense and shall be fined not more than $1,000,000 or imprisoned for not more than 10 years, or both for any subsequent offense.

''(b) Notwithstanding section 507(a) of this title, no criminal proceeding shall be brought under section 1204 unless such proceeding is commenced within five years after the cause of action arose.''

SEC. 4. CONFORMING AMENDMENTS.

The table of chapters for Title 17, United States Code, is amended by adding at the end the following:

''12. Copyright Protection and Management Systems ..... 1201''

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the date of the enactment of this Act, except clause (5) of the definition of ''international agreement'' as amended by section 2(a)(8) of this Act, section 2(a)(10) of this Act, clause (C) of section 104(h)(1) of title 17 as amended by section 2(c)(1) of this Act and clause (C) of section 104(h)(3) of title 17 as amended by section 2(c)(2) of this Act shall take effect upon entry into force of the WIPO Copyright Treaty with respect to the United States, and clause (6) of the definition of ''international agreement'' as amended by section 2(a)(8) of this Act, section 2(a)(11) of this Act, section 2(b)(7) of this Act, clause (D) of section 104A(h)(1) of title 17 as amended by section 2(c)(2) of this Act, and sections 2(c)(4) and 2(c)(5) of this Act shall take effect upon entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States.

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