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COPYRIGHT ACT AMENDMENTS AND REAUTHORIZATION OF THE NATIONAL FILM PRESERVATION ACT OF 1988

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

REPORT

[To accompany S. 756, as amended]

The Committee on the Judiciary, to which was referred the bill (S. 756) to amend the Copyright Act and to reauthorize the National Film Preservation Act, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

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I. PURPOSE OF THE LEGISLATION

Title I of S. 756 will amend the Copyright Act, 17 U.S.C. 101 et seq. Section 101 of the bill will modify the act's registration renewal requirements by automatically granting a second, 47-year term of protection to copyrighted works created before January 1, 1978. Section 102 will repeal a requirement for the Register of Copyright

to report to Congress every 5 years on library and archive photocopying of copyrighted materials.

Title II of S. 756 reauthorizes the National Film Preservation Act of 1988 for 6 years. Title II reauthorizes the 1988 act for the purpose of recognizing and preserving films that are culturally, historically, or aesthetically significant. The National Film Preservation Board, under the direction of the Librarian of Congress, will continue to select 25 films each year for inclusion in the National Film Registry and will promote and coordinate the film preservation activities of the Library of Congress and other institutions working in the field of film preservation.

II. Legislative History

On March 21, 1991, Senators DeConcini and Hatch introduced S. 756, which amends the registration renewal requirement in section 304(a) of the Copyright Act (17 U.S.C. § 304) and related provisions and repeals a requirement for the Register of Copyrights to report to Congress every 5 years on library and archive photocopying of copyrighted materials (17 U.S.C. § 108(i)). Senators Leahy, Grassley, and Simon were added as cosponsors on the bill, which was referred to the Committee on the Judiciary.

Senator DeConcini, the chairman of the Judiciary Committee's Subcommittee on Patents, Copyrights and Trademarks, conducted a hearing on the registration renewal provisions of S. 756 on June 12, 1991. Ralph Oman, the Register of Copyrights, and Burton Lane, the noted songwriter who appeared on behalf of the American Society of Composers, Authors and Publishers (ASCAP), testified in favor of the bill. No opposition witnesses appeared at the June 12 hearing, but the Subcommittee later received written submissions from Gregory Luce, the operator of a small mail-order video business, and from L. Ray Patterson, a professor of law at the University of Georgia in Athens, both of whom oppose the bill. The subcommittee also received additional written testimony from Barbara Ringer, the former Register of Copyrights, John M. Kernochan, Nash Professor Emeritus of Law and director of the Center for Law and the Arts at Columbia University School of Law, Irwin Karp of the Committee for Literary Property Studies, Frances W. Preston, the president of Broadcast Music, Inc., and Jacqueline Byrd, the widow of songwriter Robert Byrd, all of whom support the bill.

S. 756 was polled out of the Subcommittee on Patents, Copyrights and Trademarks on June 17, 1991, and placed on the Judiciary Committee's calendar. On June 20, 1991, Senators Leahy, Pell, Stevens, and DeConcini introduced S. 1345, the National Film Preservation Act of 1991, which reauthorizes the National Film Preservation Act of 1988. S. 1345 was referred to the Rules Committee. The Judiciary Committee added the 1991 Act as title II to S. 756 in its August 1, 1991, markup of S. 756.

The substitute to S. 756, containing the amendments to the Copyright Act in title I, and the National Film Preservation Act of 1991 in title II, was favorably reported by the Judiciary Committee by unanimous consent on August 1, 1991.

Two House bills encompassing the provisions of S. 756, H.R. 1612 and H.R. 2372, were introduced on March 22 and May 16, 1991, respectively by Congressman Hughes. The House bills were referred to the Judiciary Committee's Subcommittee on Intellectual Property and Judicial Administration, which Congressman Hughes chairs. H.R. 1612, which was favorably reported by the Judiciary Committee on August 2, 1991, repeals the library photocopying report requirement. H.R. 2372, containing the registration renewal provisions in title I and the National Film Preservation Act reauthorization in title II, is similar to S. 756 and was reported favorably by the subcommittee on October 1, 1991.

III. Discussion

A. COPYRIGHT REGISTRATION RENEWAL

Under the 1909 Copyright Act, a copyrighted work received a 28-year term of protection from the year it was first published with notice of copyright or registered with the Copyright Office. The copyright holder could secure an additional 28-year term of protection for the work after filing a renewal registration with the Register of Copyrights in the 28th year of the first term of protection. The major justification for a copyright renewal provision in the 1909 and previous acts was to give authors a "second chance" to negotiate more favorable terms for the exploitation of their work at the expiration of the first term, when the economic value of the work may be better evaluated.

In 1976, Congress concluded years of debate and study on all aspects of the Copyright Act by passing a comprehensive revision to the 1909 law. The copyright renewal provision was identified as a major shortcoming in the former law and was described by Congress as:

> (O)ne 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 work. In a number of cases it is the cause of inadvertent and unjust loss of copyright.[1]

Congress abolished the renewal requirement for works created on or after the January 1, 1978, effective date of the 1976 Copyright Act (Public Law 94-533). For most works, the act established a single term of protection for the life of the author plus 50 years. For anonymous works, pseudonymous works and works made for hire, the 1976 law established a single term of protection of 75 years from the date of publication or 100 years from the date of creation, whichever expired first. The "second chance" concept of the renewal term was retained in modified form, by section 203 of the act (17 U.S.C. 203). This provision empowers authors to terminate transfers or licenses of exclusive rights in copyrighted works under specified circumstances.

However, Congress retained the existing renewal registration requirement for works still in their first term of protection before the

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

act's effective date. Although section 304(a) modified the renewal provisions in section 24 of the 1909 act by extending the second term to 47 years, Congress was concerned that eliminating the renewal requirement for these works altogether could potentially disrupt existing expectancies or contractual interests.[2]

Since the 1976 Copyright Act created different categories of works, some of which are subject to the registration renewal requirements, problems with the provision have become manifest. Section 304(a) remains a highly technical provision which is too difficult for most lawyers to understand. It creates considerable uncertainty in the orderly exploitation of intellectual property because it is inherently unclear who will own the copyright during the renewal period until their interest vests with a timely registration. In addition, transferees who secure a renewal interest during the first term of copyright may take nothing if the author dies before copyright renewal vests. The renewal provision has often been the subject of litigation as uncertainties have arisen over rights in highly valuable works.

Future litigation should be reduced because the legislation eliminates the requirement of renewal in section 304(a). The legislation should also avoid future litigation because it reenacts the first two provisos of section 304(a) that determine the statutory renewal claimants for each of the two general categories of works. The legislation makes clear that a timely registration by the proper statutory claimant vests the right to the renewal term on the date of registration in the Copyright Office and, if a registration is not made, the right in the renewal term vests automatically in the proper statutory claimant on the last day of the first term.

Because of its complexities, the Copyright Office, book and music publishers, authors, filmmakers and other copyright organizations criticized the registration renewal provision for being burdensome and unfair to thousands of copyright holders and their heirs. Last year, Barbara Ringer, the former Register of Copyrights, Irwin Karp and John Kernochen, all of whom are members of an informal organization of authors, academics, and copyright experts known as the Committee for Literary Property Studies (CLPS), approached the current Register of Copyrights, Ralph Oman, with a proposal to modify the provision. The Register convened a meeting of affected copyright-based industries and representatives of copyright owners and users and found that support for modifying the renewal requirement was enthusiastic. The CLPS proposal called for an automatic renewal system, with incentives for authors to voluntarily renew registrations for their works. It evolved into the bill Senators DeConcini and Hatch introduced on March 22, 1991.

At the June 12 hearing and in the written statements submitted for the hearing record, witnesses contended that the effects of the section 304(a) requirement are felt most harshly by the holders of copyrights in less noted works. These copyright holders typically lack the sophisticated resources—detailed recordkeeping procedures to keep track of renewal dates or the services of lawyers, agents, and large publishing houses—to assist them in complying

[2] H. Rept. 94-1476, 94th Cong., 2d sess. 139 (1976).

with the intricacies of the renewal provision. These works often supply a valuable source, sometimes the sole source of income for authors and their families. Unfortunately, through inadvertence or neglect, authors, their families or agents fail to file timely renewal registrations, and the works fall irretrievably into the public domain. Witnesses also maintained that the present renewal provisions are even more puzzling for foreign authors, who are even less familiar with this formality because it is unique to U.S. law.

During her four decades at the Copyright Office, which included several years in charge of the section that handled renewals, former Register of Copyrights Barbara Ringer saw thousands of works lose protection because of the failure of copyright holders to comply with the renewal formality and witnessed the harsh consequences of inadvertent forfeiture. In her testimony for the June 12 hearing, Ms. Ringer explained that the reasons for a failure to renew varied:

> * * * often there was simply no knowledge that such a requirement existed, or there was the all-to-common procrastination involved in undertaking to deal with government red tape. A great many authors or their heirs assumed that their original publishers or producers would take care of the matter, but during an era of corporate mergers, mass transfers of copyright ownership, and dazzling changes in the media and their control, compliance with a formality connected with a 28-year old work could easily get lost in the shuffle. Even where the original publisher or other original copyright owner had established a procedure for submitting timely renewal applications on behalf of their authors, there were frequent slip-ups: misfiled tickler cards, changes in personnel, mistakes and negligence of all kinds. As for potential renewal claimants from other countries, their total ignorance of the requirement was matched by their total amazement when it was explained to them.

The dilemma facing foreign authors of copyrighted works is additional justification for modifying the renewal requirement. The domestic laws of most developed countries contain very few formalities conditioning copyright protection. Compliance with formalities is antithetical to the major international treaty on copyright relations, the Berne Convention for the Protection of Literary and Artistic Works.[3] In the 1976 general revision, Congress dispensed with many of the formalities contained in the 1909 copyright law, and in 1988, the United States adhered to the Berne Convention (Paris, 1971). However, Congress declined to modify the renewal provision in the Berne Convention Implementation Act (public Law 100-568) because it felt that the cutting off or altering existing expectancies at that time would be unfair and the safer course would be to allow the renewal provisions to phase out by the year 2005. At the time, there were no legislative proposals offered, such as the one in S. 756, that would eliminate the renewal provisions without

[3] "* * * the enjoyment and exercise of * * * rights shall not be subject to any formality." Berne Convention (Paris text) Art. 5(2).

upsetting existing expectancies.[4] Although Congress' action in the Implementation Act was consistent with its desire to make the minimum alterations necessary under domestic law to conform to international agreements,[5] the continued existence of the renewal provision remains troubling to other countries with whom we have or are negotiating for better copyright relations. The Copyright Office has reported that Mexico, the Union of Soviet Socialist Republics, and other countries have raised problems their authors face with United States renewal provisions to counter United States complaints about their domestic copyright laws.

Opponents of the bill argue that mandatory registration renewal should be retained because it is a minor administrative burden and the works that would benefit by modifying it, those created between 1963 and December 31, 1978, are few in number and of little value to their creators or to the public. This argument is disputed by former Register of Copyrights Barbara Ringer, who was in an ideal position to observe how this minor administrative burden could be disastrous to thousands of copyright holders. In her testimony, Ms. Ringer revealed that proposals to notify copyright holders to alert them to the need to renew before the first term of copyright protection expired were discussed from time to time in the Copyright Office. However, the Office concluded that the sheer number of copyright holders that would have to be notified would have made this an impossible task. The Copyright Office reports that, in fact, thousands upon thousands of copyrighted works are eligible for renewal each year, and could benefit from the bill.

Opponents also argue that mandatory registration renewal serves an important public purpose: increasing the volume of works that fall into the public domain, free of copyright protection. This argument is contrary to the real public purpose for copyright protection: our copyright law grants authors exclusive, limited rights to exploit their creations for a sufficient time so they will be encouraged to continue creating works that entertain, educate, and fire our imaginations.

The committee believes that the public domain should consist of works which have enjoyed a full and fair term of protection and should not be enlarged because of an author's error in recordkeeping, or any other innocent failure to comply with overly technical formalities in the copyright law. All of the works that are affected by this bill, in some way, enrich our culture. Their creators do not want to withhold them from the public. They simply want to retain rights enjoyed by authors of more recent works and to reap the full benefit of their investment of time and creative skills.

Title I has been soundly drafted to address the concerns Congress had in 1976, when it retained registration renewal for pre-1978 works solely to avoid disrupting existing expectancies and contractual interests. To be sure, there is some value to a registration renewal system: it provides a useful public record for users of copyright material so they may locate the copyright holder and arrange to license a work, or determine when copyright material falls into

[4] H. Rept. 100-609, 100th Cong., 2d sess. 46 (1988).
[5] S. Rept. 100-352, 100th Cong., 2d sess. 10 (1988); 134 Cong. Rec. H10322 (May 10, 1988, remarks of Mr. Kastenmeier).

the public domain. Title I offers incentives to authors, composers, and other artists to continue to voluntarily renew their copyright in a timely manner, while it eliminates the harsh consequences of failing to renew. Registration renewal entitles the author to prima facile evidence of the validity of the copyright, and greater control, in the renewal term, of the use of derivative works which the copyright holder authorized to be made in the first term.

The automatic renewal provisions will apply only to those works that are still in their first, 28-year term of protection on the date this bill becomes law. Under the bill, works that acquired a first-term of copyright protection between 1963 and December 31, 1977, and that are eligible for registration renewal between 1991 and 2005, will benefit from the automatic renewal provisions. Consequently, the bill provides only prospective protection; it does not restore protection to works that have already fallen into the public domain, nor extend the term of protection to qualifying works beyond what they are already entitled to receive if a renewal registration is made.

The committee concludes that these amendments to the registration renewal provisions will restore a measure of equity and fairness to the copyright law.

B. LIBRARY PHOTOCOPYING REPORT

Section 102 of S. 756 repeals a report to Congress requirement that the Copyright Office and the copyright community feel is no longer necessary. That report, prepared every 5 years by the Register of Copyrights, examines how the practice of photocopying copyrighted works in libraries affects the rights of copyright holders. After preparing two massive reports in 1983 and 1988, the Register has concluded that photocopying by researchers, scholars and other library users has not had an adverse effect on the rights of copyright holders and that reasonable guidelines for reproduction are being followed. The committee acknowledges that repealing the report requirement will save a small sum of money and Copyright Office resources, but at Congress' request or on the Register's initiative, these resources can be directed to more pressing studies and reports.

C. NATIONAL PRESERVATION BOARD

Motion pictures are central to the American experience. For decades, generations around the world have learned about America and the American dream from watching American movies. Today, more than ever, the world's moviegoers flock to Hollywood's creations. Movies are the indigenous American art form.

Film, however, is a fragile medium. Half the feature-length films produced in the United States before 1951 and 80 percent of our silent films have been lost. And many of the films produced after 1951 are deteriorating at an alarming rate.

It is important culturally, artistically, and historically that we preserve our film heritage for future generations. The preservation problem has many facets. For example, older nitrate-based films created before 1951 face outright disintegration, while some prints made only a decade ago are at risk of fading color. More work

needs to be done to save remaining collections. Every day, films are lost. Consequently, it is appropriate to do all we can to focus attention on the importance of film preservation.

As Senator Leahy said in his statement introducing S. 1345, "* * * the need to preserve our films has become increasingly clear in recent years to professionals and filmgoers alike * * *. For moviegoers, the pleasure of seeing a sparkling, restored version of "Lawrence of Arabia" or "Spartacus" is reason enough for the work preservation." [6] Senator DeConcini said in his introductory statement, "American motion pictures are a significant part of our cultural heritage, and we must promote efforts, both by the government and by private interests, to honor them as an art form and to preserve them" [7]

The National Film Preservation Act of 1988

In 1988, Congress enacted the National Film Preservation Act of 1988 as an amendment to the Department of Interior and Related Agencies Appropriations Act, fiscal year 1989. (Pub. L. 100-446.) The National Film Preservation Act of 1988 established a 13-member National Film Preservation Board within the Library of Congress. The Board was made up of film and television industry and academic representatives. In accordance with the provisions of the act, each of the 13 designated organizations submitted nominations to the Librarian of Congress, who appointed one member from each organization. The National Film Preservation Board held its first meeting on January 23, 1989, in the Library of Congress.

The Board's primary activity under the 1988 act was the selection of 25 films each year for inclusion in the National Film Registry. Films were eligible for selection if they were over 10 years old, feature-length, had a theatrical release, and were of cultural, historical, or aesthetic significance. In accordance with the mandate of the 1988 act, and with advice from the Board, the Librarian of Congress established guidelines and criteria for the selection of films for the National Film Registry. These guidelines were first submitted to the Board and then to the public for comments and were published in final form in the Federal Register.[8]

The films selected were placed in the National Film Registry in the Library of Congress. In its first 3 years, the Librarian, in consultation with the Board, selected 75 films for inclusion in the National Film Registry. The annual announcement of the 25 films selected—including titles such as "Casablanca," "Citizen Kane," "High Noon," "It's A Wonderful Life," and "Sunset Boulevard"—was favorably received by the public, film critics and the popular press. These announcements focused public attention on America's film heritage and the importance of preserving it.

In addition to choosing and collecting copies of films, the 1988 act required the Librarian of Congress to administer a film labeling system. All copies of selected films that were colorized or otherwise "materially altered" had to be labeled in accordance with section 4

[6] 137 Cong. Rec., S8346 (June 20, 1991).
[7] 137 Cong. Rec., S8349 (June 20, 1991).
[8] 55 Fed. Reg. 32566 (Aug. 9, 1990).

of the act. Films selected for inclusion in the Film Registry were authorized to carry a seal of the Library of Congress indicating their selection—but only if they were not colorized or otherwise "materially altered." The 1988 act provided enforcement provisions to prevent misuse of the seal and to ensure proper labeling when required.

The implementation of the labeling requirements generated considerable controversey among copyright owners, creative artists, the film industry, and members of the Board. The disagreement focused primarily on what Congress meant by "material alteration," as defined in section 11 of the act. Some argued that the term should be read broadly to require labeling of films selected for the Registry in all cases where such films were adapted in order to be exhibited on television or in a videocassette format. Others argued that the term was meant to exempt most such alterations because they are considered the "reasonable requirements" of distributing a work. (Section 11(a)(5).)

In November 1989, after many meetings and communications with film owners, distributors, broadcasters, and creative artists, the Librarian of Congress proposed film labeling guidelines and published them in the Federal Register.[9] The proposed guidelines elicited 11 public comments. In response to the comments, the Librarian of Congress made some changes and issued final labeling guidelines.[10] The published guidelines went into effect on September 24, 1990, for the first selection of 25 films and on February 7, 1991, for the second and third selections of 25 films.[11]

National Film Preservation Act of 1991

Title II of S. 756 will enact the National Film Preservation Act of 1991. The 1991 act authorizes the activities of the Library and the National Film Preservation Board through September 1997.

The emphasis in the 1991 act shifts away from labeling to an expanded focus on preservation. There are many ongoing film preservation efforts in this country, carried out by the Library of Congress, the National Archives, smaller archives such as the Museum of Modern Art, the George Eastman House, and UCLA, and by some copyright owners such as Turner Broadcasting, the Hollywood studios, and others. But there is little coordination among these groups.

The Library of Congress itself undertakes over half the film preservation done in the United States and is thus in a position to provide national leadership in developing a national film preservation plan. Members of the Board will be able to provide leadership within their own organizations or associations, and will help stimulate public awareness of, and support for, these activities.

Under section 204(a)(1) of the bill, the primary mission of the Librarian and the Board will be to develop and coordinate a National Film Preservation Program, in conjunction with the other major archives. This effort will begin with a year-long study to ascertain the current state of film preservation in the United States.

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[9] 54 Fed. Reg. 49310 (Nov. 30, 1989).
[10] 55 Fed. Reg. 32567 (Aug. 9, 1990).
[11] 55 Fed. Reg. 52844 (Dec. 24, 1990).

The Librarian and the Board will also continue to select as many as 25 classic films for inclusion in the National Film Registry. Section 206 directs the Board to consider nominations from the general public and from film industry representatives and to consult with the librarian in order to recommend films for inclusion in the National Film Registry. The Librarian is directed to make the final selection of the films.

Films will continue to be selected on the basis of their cultural, historical, or aesthetic importance. Under section 204(a)(2), the 10-year requirement of the 1988 act is carried over into the 1991 act, but the theatrical release and feature-length requirements have been eliminated. The elimination of these requirements will open the way for the inclusion of short subjects, experimental films, cartoons, and documentaries.

Under section 204(a)(8), the Librarian is directed to ensure, to the extent practicable, that a "Registry version" of each selected film exists or, if not, that the necessary preservation and restoration work is done on the best surviving materials, including preprint materials, to create a "Registry version." A "Registry version," under section 211(6), is defined as the version of the film first published or as complete a version as can be assembled through bona fide preservation and restoration work by the Library or another archive acting in accordance with the standards established by the Librarian after public notice and comment period, under section 204(a)(9).

Under section 204(b), films selected for the National Film Registry will be permitted to carry a seal of the Library of Congress on those film copies that are "Registry versions." Before the seal may be used, the Library of Congress must have examined and approved the print of the film or the print from which the particular copy was made. "Copy" is defined under section 211(2) to mean a copy fixed on film stock, not on other media such as videotapes. The seal may be affixed only by the copyright owner or his licensee, or by the Librarian if the film is no longer protected by copyright.

Section 205 provides that the Librarian of Congress shall select a 17-member National Film Preservation Board, made up of representatives of designated organizations from the film and television industry and the academic community. Each organization submits a list of three nominees to the Librarian, who then chooses from the list one member of the Board and one alternate. The Board includes representatives from the same organizations designated in the 1988 act, plus a cinematographer, a representative of the theater owners, a film archivist, and an at-large member. Members serve 3-year terms on the Board and may be reappointed.

The 1991 act also eliminates the labeling requirements of the 1988 act. These requirements will no longer apply to any film selected for inclusion in the National Film Registry, whether selected under the 1988 act or the 1991 act.

As the Librarian of Congress has expressly recognized, the difficult and contentious determinations required in administering a labeling regime—such as what constitutes a "material alteration," when such an alteration has been made and what kind of label

should be applied—are not the sort that the Librarian is best suited to make.

> It is not useful for the Library of Congress to use its resources to try to perfect or administer a labeling system. That is not appropriate for the nation's library. The Library should be charged with securing original copies of important films against which others can judge alterations, preserving films, and promoting film as an American art form. If Congress decides to create a labeling system, individual parties, such as the creative artists who have rights in the system, should be charged with protecting and enforcing those rights in the courts.[12]

Furthermore, the important contribution this bill can make to film preservation should not be put at risk by linkage to the controversial labeling question. As Senator DeConcini said, "* * * one of the centerpieces of the present [1988] law is a labeling requirement that has been the source of a great deal of controversy and misunderstanding * * *. The 1991 amendments will eliminate the disputes that emerged over the interpretation of that vague term." [13]

The National Film Preservation Act of 1991 will provide a much needed spark to film preservation and restoration efforts throughout the country. Underscoring the importance of these efforts, Senator Leahy said, our film heritage "is a heritage admired and envied the world over, a heritage that tells us about who we are and who we were. But it is also a perishable heritage that will not endure unless we take steps to save it." [14]

IV. Vote of the Committee

On August 1, 1991, with a quorum present, by unanimous consent the Committee on the Judiciary ordered the bill, S. 756, with an amendment in the nature of a substitute, favorably reported.

V. Text of S. 756, as Amended

[102d Cong., 1st sess.]

A BILL To amend title 17, United States Code, the copyright renewal provisions, and for other purposes

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

TITLE I—COPYRIGHT RENEWAL PROVISIONS

SECTION 101. 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 Janu-

[12] Statement of Librarian of Congress, to Subcommittee on Intellectual Property and Judicial Administration, Committee on the Judiciary, House of Representatives, June 12, 1991, p.11.
[13] 137 Cong. Rec. S8349 (June 20, 1991).
[14] 137 Cong. Rec. S8346 (June 20, 1991).

ary 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 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, if the proprietor of the copyright who is entitled to claim the renewal of 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 para-

graph (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) with 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 (20)(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 copyright 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) CONFIRMING 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 Janu-

ary 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.

SEC. 102. REPEAL OF COPYRIGHT REPORT TO CONGRESS.

Section 108(i) of title 17, United States Code, is repealed.

TITLE II—FILM PESERVATION

SEC. 201 SHORT TITLE.

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

SEC. 202. 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) because of deterioration or loss, less than one-half of the feature-length films produced in the United States before 1951, including only 20 percent of the silent films, still exist and many of the films produced after 1951 are deteriorating at an alarming rate; and

(4) it is appropriate and necessary for the Federal Government to—

(A) recognize motion pictures as a significant American art form deserving of protection, including preservation and restoration; and

(B) establish a National Film Registry of films that represent an enduring part of our national, historical, and cultural heritage, which Registry should be established and maintained in the Library of Congress; and

(5) to the extent possible, and with the permission of the copyright owners, films selected for inclusion in the National

film Registry should be made widely available to the American public in their Registry versions.

SEC. 203. NATIONAL FILM REGISTRY OF THE LIBRARY OF CONGRESS.

The Librarian of Congress (hereafter in this title referred to as the "Librarian") shall establish a National Film Registry under the provisions of this Act, for the purposes of recognizing and preserving films that are culturally, historically, or aesthetically significant.

SEC. 204. DUTIES OF THE LIBRARIAN OF CONGRESS.

(a) DUTIES.—The Librarian shall, after consultation with the Board established under section 205—

(1) after completion of the study required under section 212, establish a comprehensive national film preservation program for films, in conjunction with other major film archives, with the objectives of—

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

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

(C) increasing accessibility of films for educational purposes; and

(D) improving nationwide activities in the preservation of works in other media such as videotape;

(2) establish criteria and procedures pursuant to 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;

(3) establish procedures whereby the general public may make recommendations to the Board regarding the inclusion of films in such National Film Registry;

(4) establish procedures for the examination by the Library of Congress of copies of films named for inclusion in the National Film Registry to determine eligibility for the use of the seal of the National Film Registry;

(5) determine which films satisfy the criteria developed under paragraph (2) and qualify to be included in the National Film Registry, except that the Librarian shall not select more than 25 films each year for inclusion in such Registry;

(6) publish in the Federal Register the name of each film that is selected for inclusion in the National Film Registry;

(7) provide a seal to indicate that a film is included in the National Film Registry;

(8) to the extent practicable, ensure, subject to the rights of copyright owners, that there is a Registry version of each film selected for the National Film Registry;

(9) publish in the Federal Register the standards for preservation or restoration that shall qualify films for use of the seal; and

(10) submit an annual report to the appropriate committees of the Congress, listing films included in the National Film Registry and describing the activities of the Board.

(b) SEAL.—A seal provided for a film under subsection (a)(7) may be used on any copy of the Registry version of such film as defined in section 211(6). Before such seal may be used, the Library of Congress shall have examined and approved the print from which the copy was made. In the case of copyrighted works, only the copyright owner or his duly authorized licensee may place or authorize the placement of a seal on a copy of a film selected for inclusion in the National Film Registry. In the case of works no longer protected by copyright, the Library may affix a seal. The persons authorized by this subsection to place a 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 Film Preservation Act of 1991."

SEC. 205. 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 17 members, selected by the Librarian in accordance with the provisions of this section. Each organization listed in subparagraphs (A) through (P) shall submit a list of not less than three qualified candidates to the Librarian. With the exception of the member listed in subparagraph (Q), the Librarian shall appoint 1 member from each such list submitted by the following organizations, and shall designate from that list an alternate who may attend those meetings to which the individual appointed to the Board cannot attend. Such organizations shall include—

(A) the Academy of Motion Picture Arts and Sciences;

(B) the Directors Guild of America;

(C) the Writers Guild of America East and West, appointed in accordance with paragraph (2);

(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 Film and Television at New York University Tisch School of the Arts;

(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, appointed in accordance with paragraph (2)(B);

(P) the United States Members of the International Federation of Film Archives; and

(Q) a member at large.

(2)(A) Each organization under paragraph (1)(C) shall nominate three candidates. The Librarian shall appoint a candidate from 1

organization as a member of the Board, and shall select a candidate from the other organization as an alternate.

(B) The American Society of Cinematographers shall nominate three candidates, each of whom shall be a member of the International Photographers Guild.

(3) The member at large listed in paragraph (1)(Q) shall be chosen by the Librarian from names submitted by organizations in the film industry, creative artists, producers, film critics, film preservation organizations, academic institutions with film study programs, and others with knowledge of copyright law and of the importance, use, and dissemination of films. The Librarian shall also select from the names submitted in this paragraph an alternate member at large who may attend those meetings which the member at large cannot attend.

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

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

(2) A vacancy on the Board shall be filled in the manner prescribed by the Librarian, except that no entity listed in subsection (a) may have more than 1 nominee on the Board at any time.

(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 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 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 responsibilities of the Board.

SEC. 206. POWERS OF THE 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 Librarian and Board considers appropriate.

(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 for academic institutions with film study programs.

(c) SELECTION OF FILMS.—The Board shall review nominations of films submitted to it for inclusion in the National Film Registry and consult with the Librarian and make recommendations with respect to the selection of films for the Registry and the preservation of these and other films that are culturally, historically, or

aesthetically significant. The Board shall recommend and the Librarian shall select not more than 25 films a year for inclusion in the Registry.

SEC. 207. NATIONAL FILM REGISTRY COLLECTION OF THE LIBRARY OF CONGRESS.

(a) COPY OF FILM.—The Librarian shall endeavor to obtain, by gift from the owner, an archival quality copy of a 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.—In addition, the Librarian shall endeavor to obtain, for educational and research purposes, additional materials related to each film, such as background materials, production reports, shooting scripts (including continuity scripts) and other similar materials. Such materials shall become a part of the collection described in subsection (d).

(c) PROPERTY OF THE UNITED STATES.—All copies of films, and other materials, received by the Librarian shall become the property of the United States Government, except that nothing in this title shall infringe on the copyright owners' rights under title 17, United States Code.

(d) REGISTRY COLLECTION.—All copies of films received by the Librarian 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, subject to the limitations of title 17, United States Code—

(1) provide for reasonable access to films in such collection for scholarly and research purposes; and

(2) to the extent practicable, and with the permission of the copyright owners, endeavor to exhibit or encourage the exhibition of such films to the public.

SEC. 208. SEAL OF THE NATIONAL FILM REGISTRY.

(a) USE OF THE SEAL.—No person shall knowingly distribute or exhibit to the public a copy of a film which bears a seal as described under section 204(a)(7) if such film—

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

(2) is included in the National Film Registry, but the print from which such copy was made was not examined and approved for use of the seal by the Library of Congress pursuant to section 204(b).

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

SEC. 209. REMEDIES.

(a) JURISDICTION.—The several district courts of the United States shall have jurisdiction, for cause shown, to prevent and restrain violations of section 208 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 removal of the seal of the National Film Registry.

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

(c) EXCLUSIVE REMEDIES.—The remedies provided under this section shall be the exclusive remedies under this title or any other Federal or State law, regarding the use of the seal as described by section 204(a)(7).

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.

(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, and in no case may a Board member be paid as an expert or consultant.

SEC. 211. DEFINITIONS.

For purposes of this title:

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

(2) The term "copy" used in reference to a film means a copy fixed on film stock, not on other media such as videotapes or laser disks.

(3) The term "film" means a motion picture as defined in section 101 of title 17, United States Code, except that such term excludes any works not originally fixed on film stock, such as videotapes or laser disks.

(4) The term "Librarian" means the Librarian of Congress.

(5) The term "publication" means a publication as defined in section 101 of title 17, United States Code.

(6) The term "Registry version" means, with respect to a film, the version of the film first published or as complete a version as bona fide preservation and restoration activities by the Library of Congress or another archive acting pursuant to section 204 can compile.

SEC. 212. STUDY BY THE LIBRARIAN OF CONGRESS.

The Librarian, after consultation with the Board, shall conduct a study on the state of film preservation and restoration, including the activities of the Library of Congress and the other major film archives in the United States. The Librarian shall 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. No later than 1 year after the date of enactment of this section, the Librarian shall submit to the Congress a report containing the results of the study conducted under this section.

SEC. 213. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Library of Congress, such sums as are necessary to carry out the provisions of this title, but in no fiscal year shall such sum exceed $250,000.

SEC. 214. EFFECTIVE DATE.

The provisions of this title shall be effective on the date of the enactment of this Act through September 30, 1997. The provisions of this title shall apply to any copy of any film, including films selected for inclusion in the National Film Registry under the National Film Preservation Act of 1988. Films selected for the National Film Registry of 1988 shall be deemed to have been selected under this title.

SEC. 215. REPEAL.

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

VI. Section-by-Section Analysis of S. 756

TITLE—COPYRIGHT RENEWAL PROVISIONS

Sec. 101. Copyright Renewal Provisions.

Section 101(a) 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 1 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 reenact the renewal copyright provision of existing law regarding persons entitled to claim the renewal. 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 sec-

tion 303 of the Copyright Act. These works enjoy the terms legislated by the Copyright Act of 1976, Public Law 94-553, 90 Stat. 2541 (Oct. 19, 1976): life of the author plus 50 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 remains unpublished, or 50 years from 1977 if the work is published on or before December 31, 2002.

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 priorities of the copyright is entitled to the renewal: a posthumous work; a periodical, cyclopedic, 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 proprieties: 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 the bill, 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.

Paragraphs (4)(A) and (B) of Section 101(a) provide incentives for making a 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 of copyright made before the expiration of the original term of copyright if a 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 amendment 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 a 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 19-year period at the end of the extended term for pre-1978 copyrighted works). 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 1-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.

Section 101(b) provides 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 renewal copyright and in no way affects or impairs existing contracts relating to the exercise of rights in the renewal term.

Section 101(c), which changes a subsection citation, is merely a conforming amendment.

Section 101(d) amends the current section 408(a) of title 17 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 101(e) amends section 506(e) of title 17 to provide for fines of up to $2,500 for any false representations in applications for renewal registration.

Section 101(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 made may be either before or after the expiration of the first term.

Section 101(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.

Section 102 repeals section 108(i) of the Copyright Act, which requires the Register of Copyrights to report to Congress every 5 years on library and archive photocopying of copyrighted material.

TTLE II—FILM PRESERVATION

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

Section 202 sets forth Congress' findings that motion pictures are an indigenous American art form that represent an enduring part of our historical and cultural heritage; that less than half of feature length films produced before 1951 and only some 20 percent of silent films still exist, while many films produced after 1951 are rapidly deterioriating; that it is appropriate for the Federal Government to recognize the importance of film preservation and to establish a National Film Registry of films that represent an enduring part of our national, historical, and cultural heritage; that films selected for the National Film Registry should be made as widely available to the American public as possible.

Section 203 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 204(a) sets forth the duties of the Librarian of Congress, which include developing a comprehensive national film preservation program; establishing criteria for the selection of films for the Registry; providing a seal to indicate that film has been selected for the Registry; ensuring, to the extent practicable, that a properly preserved and restored version exists of each Registry film; and publishing in the Federal Register the standards for preservation or restoration that will qualify Registry films for use of the seal.

Section 204(b) sets forth the requirements for the use of a seal indicating that a film has been selected for the Registry. Before a seal may be used, the Library of Congress must have examined and approved the film print from which the copy in question was made. The seal may be affixed only by the copyright owner of his licensee, or by the Librarian of Congress if the film is no longer protected by copyright.

Section 205 directs the Librarian to establish the National Film Preservation Board, describes the composition of the Board and sets forth provisions relating to the Board's functioning, including quorum requirements, meetings, and terms of office.

Section 206 sets forth the powers of the Board, pertaining largely to its role in advising the Librarian of Congress on the selection of films for inclusion in the National Film Registry.

Section 207 directs the Librarian to endeavor to obtain by gift from the owner archival quality copies of the films selected for the National Film Registry, together with related background materials, except that nothing in the bill shall infringe on the copyright owners' rights under title 17 of the United States Code.

Section 208 makes clear who may and who may not use the seal.

Section 209 sets forth remedies available against persons who use the seal in contravention of section 8.

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

Section 211 sets forth definitions.

Section 212 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 1 year after the date of enactment.

Section 213 authorizes the appropriation of up to $250,000 per year to the Library of Congress, the same amount as in the 1988 act.

Section 214 makes the act effective from the date of enactment through September 30, 1997, and makes clear that films selected under the National Film Preservation Act of 1988 shall be deemed to have been selected for inclusion in the National Film Registry under the 1991 act.

Section 215 repeals the 1988 act.

VII. Agency Views

The Register of Copyrights testified that title I of the bill is meritorious and in the interest of copyright holders and the public. The Register also affirmed that the registration renewal provisions of the bill are soundly drafted to address the concerns Congress had in 1976, when it retained mandatory renewal requirements for pre-1978 works solely to avoid impairing existing expectancies and contractual interests in these works.

The Register of Copyrights and the Librarian of Congress both testified in support of title III of H.R. 2372, companion legislation to title II of S. 756. The Register of Copyrights expressed his support of title III of H.R. 2372 at a hearing held on June 6, 1991, before the Subcommittee on Intellectual Property and Judicial Administration of the House Committee on the Judiciary. The Librarian of Congress expressed his support of title III of H.R. 2372 at a hearing held on June 12, 1991, before the same House subcommittee.

VIII. Cost Estimate

In accordance with paragraph 11(a), rule XXVI, of the Standing Rules of the Senate, the committee offers the report of the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office;
Washington, DC, September 4, 1991.

Hon. Joseph R. Biden, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman. As requested, the Congressional Budget Office has prepared the enclosed cost estimate for S. 756, a bill to amend title 17, United States Code, the copyright renewal provisions, and for other purposes, as ordered reported by the Committee on the Judiciary on August 1, 1991.

Enactment of S. 756 would not affect direct spending on receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

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

Sincerely,

Robert D. Reischauer,
Director.

1. Bill number: S. 756.

2. Bill title: A bill to amend title 17, United States Code, the copyright renewal provisions, and for other purposes.

3. Bill status: As ordered reported by the Senate Committee on the Judiciary on July 31, 1991.

4. Bill purpose: Title I of S. 756 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. Finally, Title I removes the requirement for a quintennial report on library photocopying.

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:

	1992	1993	1994	1995	1996
Estimated authorization level	0.3	0.3	0.1	0.3	0.3
Estimated outlays	0.3	0.3	0.1	0.3	0.3

The costs of this bill fall within budget functions 370 and 500.

Basis of estimate: Based on information provided by the Copyright Office, CBO estimates that elimination of the report on library photocopying will save $150,000 in 1994. We also estimate that raising the copyright renewal fee, while making renewals automatic, will have no significant net effect on fee collections. Raising the renewal fee will increase fee revenue, but making renewals automatic will decrease the number of renewals. CBO estimates that these effects will roughly offset each other.

S. 756 authorizes up to $250,000 a year through 1997 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 will be appropriated. Total 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. Because this bill would not affect direct spending or receipts, there are no pay-as-you-go implications.

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

8. Estimate comparison: None.

9. Previous CBO estimate: On June 21, 1991, CBO prepared an estimate on H.R. 1612, a bill to eliminate the library reproduction reporting requirement, as ordered reported by the House Committee on the Judiciary. A similar provision is included in S. 756, and in both cases CBO has estimated the savings to be $150,000 in fiscal year 1994.

10. Estimate prepared by: John Webb and Karen Watkins.

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

IX. Regulatory Impact Statement

In accordance with paragraph 11(b), Rule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concludes that the act will not have a direct regulatory impact.

X. Changes in Existing Law

In accordance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 756, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new material is printed in italic; existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * * * *

TITLE 2—THE CONGRESS

* * * * * * *

[Sec. 178. Repealed.]

TITLE 17—COPYRIGHTS

§ 108. Limitations on exclusive rights: Reproduction by libraries and archives

* * * * * * *

[(i) Five years from the effective date of this Act, and at five-year intervals thereafter, the Register of Copyrights, after consulting with representatives of authors, book and periodical publishers, and other owners of copyrighted materials, and with representatives of library users and librarians, shall submit to the Congress a report setting forth the extent to which this section has achieved the intended statutory balancing of the rights of creators, and the needs of users. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.]

* * * * * * *

§ 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 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 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 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 words 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.

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(C) TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM.—In the case of any copyright subsisting 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:

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§ 408. Copyright registration in general

(a) REGISTRATION PERMISSIVE.—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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§ 506. Criminal offenses

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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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§ 708. Copyright Office fees

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

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(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;*

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