

WORK MADE FOR HIRE AND COPYRIGHT CORRECTIONS
ACT OF 2000

SEPTEMBER 18, 2000.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 5107]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill
(H.R. 5107) making certain corrections in copyright law, having
considered the same, reports favorably thereon without amendment
and recommends that the bill do pass.

TABLE OF CONTENTS

	<i>Page</i>
Purpose and Summary	1
Background and Need for the Legislation	2
Hearings	2
Committee Consideration	3
Committee Oversight Findings	3
Committee on Government Reform Findings	3
New Budget Authority and Tax Expenditures	3
Congressional Budget Office Cost Estimate	3
Constitutional Authority Statement	4
Section-by-Section Analysis and Discussion	4
Changes in Existing Law Made by the Bill, as Reported	6

PURPOSE AND SUMMARY

The purpose of H.R. 5107, the “Work Made for Hire and Copy-
right Corrections Act of 2000”, is to restore the status quo as it ex-
isted before November 29, 1999, as to the issue of whether a sound
recording can qualify as a “work made for hire” under the second
part of the definition of that term in section 101 of the Copyright
Act, and to do so in a manner that does not prejudice any person
or entity that might have interests concerning this question.

H.R. 5107 also makes other non-controversial corrections to the Copyright Act. These amendments remove expired sections and clarify miscellaneous provisions governing fees and record keeping procedures. These are necessary amendments which will improve the operations of the Copyright Office and clarify U.S. Copyright law.

BACKGROUND AND NEED FOR THE LEGISLATION

Effective as of November 29, 1999, section 1101(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999 (IPCORA) added “sound recording” to the list of types of commissioned or specially ordered works enumerated in paragraph (2) of the definition of “work made for hire” in section 101 of the Copyright Act that can qualify for work made for hire treatment when the parties so agree in writing. Whereas some regarded this amendment as a technical and clarifying change (see H.R. Conf. Rep. No. 106-464, 145 Cong. Rec. H11769, H11796 (Nov. 9, 1999)), others believed that the amendment effected a substantive change in the law (see Oversight Hearing on the United States Copyright Office and Sound Recordings as Works Made for Hire, May 25, 2000, House of Representatives, Committee on the Judiciary, Subcommittee on Courts and Intellectual Property). This bill addresses—without resolving—the controversy that has arisen since the enactment of section 1101(d) as to the nature and effects of that amendment.

The purpose of this bill is to restore the status quo as it existed prior to November 29, 1999, without expressing or implying any view as to the proper interpretation of the “work made for hire” definition. Thus, the bill undoes the amendment made by section 1101(d), but also makes clear with new language in the definition of the term “work made for hire” that neither the enactment of section 1101(d) nor this bill’s deletion of the language added by that amendment are to be considered in any way or otherwise given any effect by a court or the Copyright Office when interpreting paragraph (2) of the “work made for hire” definition. To be absolutely clear, it is the committee’s intention that paragraph (2) of the “work made for hire” definition be interpreted as if section 1101(d) and this bill’s deletion of the language added by section 1101(d) were never considered and enacted. To ensure that the status quo is restored, the effective date of section 2 of H.R. 5107 is made expressly retroactive to November 29, 1999.

HEARINGS

The committee’s Subcommittee on Courts and Intellectual Property held an oversight hearing on the issue of sound recordings as works made for hire on Thursday, May 25, 2000. Testimony was received from: The Honorable Marybeth Peters, Register of the United States Copyright Office; Hilary Rosen, President and CEO of the Recording Industry Association of America; Paul Goldstein, Lillick Professor of Law, Stanford Law School; Michael Greene, President and CEO of the National Academy of Recording Arts and Sciences; Marci Hamilton, Thomas H. Lee Chair in Public Law, Cardozo School of Law; and Sheryl Crow, recording artist.

COMMITTEE CONSIDERATION

On September 13, 2000, the committee met in open session and ordered favorably reported the bill H.R. 5107 without amendment by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of the House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the committee sets forth, with respect to the bill, H.R. 5107, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 15, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5107, the Work Made for Hire and Copyright Corrections Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Ken Johnson, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Democratic Member

H.R. 5107—Work Made for Hire and Copyright Corrections Act of 2000.

CBO estimates that enacting H.R. 5107 would have no significant impact on the federal budget. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 5107 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

H.R. 5107 would amend copyright law so that employers would no longer automatically own the copyrights to audio recordings created by employees as part of their jobs. Under current law, the federal government cannot obtain the copyrights to its employees' work unless it purchases those rights. Therefore, CBO estimates that this provision would not result in additional costs for the federal government.

H.R. 5107 also would allow the Copyright Office, under certain circumstances, to lower the rates on certain administrative fees that offset the agency's appropriation. Currently, the agency is only allowed to adjust these fee rates upward. Based on information from the Copyright Office, CBO estimates that enacting this provision would not cause the agency to reduce its fee rates over the next five years. Therefore, CBO expects that this provision would not have a significant impact on spending for the operations of the Copyright Office.

The CBO staff contact is Ken Johnson, who can be reached at 226-2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, section 8, clause 8 the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title. This section states that the act may be cited as the "Work Made for Hire and Copyright Corrections Act of 2000".

Sec. 2. Work Made for Hire. Paragraph (a)(1) undoes the amendment to the "work made for hire" definition in section 101 of title 17 made by section 1101(d) of IPCORA which was enacted on November 29, 1999, by deleting the words "as a sound recording" that were added by that amendment.

Paragraph (a)(2) adds language to the definition of "work made for hire" to make clear that paragraph (2) of the definition is to be interpreted as if neither section 101(d) of IPCORA nor this bill had ever been considered or enacted by Congress. This provision is intended to ensure that the facts and substance of consideration and enactment of section 1101(d) of this bill are not used to support any particular interpretation of paragraph (2) of the definition of "work made for hire." The committee wishes to make clear that neither section 1101(d) nor this bill are to be construed as express-

ing or implying any view as to the proper interpretation of paragraph (2) of the “work made for hire” definition before November 29, 1999 or after enactment of this bill. The language makes clear that, notwithstanding any principles of statutory construction or cases (such as *American Automobile Association v. United States*, 367 U.S. 687 (1961)), that might suggest otherwise, when interpreting paragraph (2) of the “work made for hire” definition, courts and the Copyright Office are not to consider or otherwise attribute any meaning to section 1101(d) or this bill’s deletion from the Copyright Act of the language added by section 1101(d). Moreover, courts and the Copyright Office are not to consider the enactment of either section 1101(d) or of this bill as an indication of Congressional awareness, approval, disapproval, acquiescence or non-acquiescence in any past judicial determinations concerning this issue.

Paragraph (b)(1) restores the status quo prior to November 29, 1999, by expressly making the bill retroactive to November 29, 1999.

Paragraph (b)(2) states that if the provisions of paragraph (b)(1), or any application of such provisions to any person or circumstance, is held to be invalid, the remainder of this section, the amendments made by this section, and the application of this section to any other person or circumstance shall not be affected by such invalidation. This paragraph is a savings clause to preserve this section’s effectiveness in other circumstances if it is determined that retroactive application would be unconstitutional when applied to a particular person or circumstance.

Sec. 3. Other Amendments to Title 17, United States Code. Paragraph (a)(1) amends title 17 by repealing section 710 and the item relating to that section in the table of contents for chapter 7. Section 710, as enacted by the Copyright Act of 1976, is now redundant due to the enactment of section 121 in 1997. Section 710 authorizes the Copyright Office to establish forms and procedures to permit copyright owners to voluntarily grant the Library of Congress a license to produce copyrighted works in the form of Braille or as books on tape, for example, to be distributed solely to blind and handicapped persons. Section 121 grants the same right as an exception to the exclusive rights of copyright but extends the right of reproduction more broadly to the general public. Section 121 does not require an owner’s permission so long as certain requirements for distribution are satisfied.

Paragraph (a)(2) amends section 705(a) of title 17 to read as follows: “(a) The Register of Copyrights shall ensure that records of deposits, registrations, recordations, and other actions taken under this title are maintained, and that indexes of such records are prepared.” Section 705(a) addresses the Copyright Office’s records of deposits, registration, recordations and other actions taken under title 17. The Copyright Office, as part of the Library of Congress, administers the mandatory deposit provision of section 407 of title 17 for the benefit of the Library. For purposes of efficiency and administrative convenience, the responsibility for keeping records of deposits of serials under this provision has been shifted to the Serials Record Division of the library. Section 705(a) currently requires that “The Register of Copyrights shall provide and keep in the Copyright Office” such records, among others, a requirement that could be inconsistent with the practice of having such records made

and maintained by another division of the library. No purpose is served by forbidding the maintenance of such records by the division of the Library that is responsible for keeping records of Library acquisitions.

Also, section 705(a) currently requires the Copyright Office to keep records of “all deposits . . . and other actions taken under this title, and . . . prepare indexes of all such records.” The requirement that records of “all” deposits be kept could be construed as requiring that the Office keep records stating how many copies of a particular work have been deposited. This was the Office’s practice when such records were hand-written. However, the record-keeping purposes of the Library and the Copyright Office do not require such information, and the Library is shifting to a record-keeping database that cannot easily accommodate such information. Because the needs of the Library and the Office would be served by maintaining records that simply indicate the fact that the required deposit has been received, the “all” is stricken. Removing the word “all” gives the Register some discretion in determining what records need to be kept.

Paragraph (a)(3) clarifies the copyright fees procedures. It amends section 708(a) of title 17 to clarify that the Copyright Office fees shall be in the amounts in effect on the date of the enactment of this act, as adjusted by the procedures in 708(b). Section 708(a) prescribes the fees that individuals must pay to the Copyright Office for various services. Prior to the amendments made by Public Law 105–80, subsection (a) prescribed both the type of services for which fees must be paid and the amounts. However, Public Law 105–80 amended section 708(b) to allow the Register of Copyrights to increase the fees that appear in title 17, through regulation. This amendment removes the fee amounts and alerts the reader that fees may be different.

Paragraph (a)(3)(B) amends section 708(b) of title 17 by deleting the matter preceding paragraph (1) and inserting, “(b) Adjustment of Fees.—The Register of Copyrights may, by regulation, adjust the fees for the actions specified in paragraphs (1) through (9) of subsection (a) in the following manner:”. This amendment changes the word “increase” to “adjust”. This takes into account the possibility that innovations such as electronic registration may result in decreased costs, which could be passed onto users in the form of decreased fees.

Paragraph (b) is a conforming amendment. Section 121 of title 17 references section 710. Due to the repeal of section 710, the words “and 710” are deleted from section 121.

Paragraph (c) states that the effective date for the amendments made by section 3 shall take effect on the date of enactment of this act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 17, UNITED STATES CODE

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CHAPTER 1—SUBJECT MATTER AND SCOPE OF
COPYRIGHT

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§ 101. Definitions

Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

* * * * *

A “work made for hire” is—

(1) a work prepared by an employee within the scope of his or her employment; or

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work [as a sound recording.], as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

In determining whether any work is eligible to be considered a work made for hire under paragraph (2), neither the amendment contained in section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106–113, nor the deletion of the words added by that amendment—

(A) shall be considered or otherwise given any legal significance, or

(B) shall be interpreted to indicate congressional approval or disapproval of, or acquiescence in, any judicial determination,

by the courts or the Copyright Office. Paragraph (2) shall be interpreted as if both section 2(a)(1) of the Work Made For Hire and Copyright Corrections Act of 2000 and section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106–113, were never enacted, and without regard to any inaction or

awareness by the Congress at any time of any judicial determinations.

* * * * *

§ 121. Limitations on exclusive rights: reproduction for blind or other people with disabilities

(a) Notwithstanding the provisions of [sections 106 and 710] *section 106*, it is not an infringement of copyright for an authorized entity to reproduce or to distribute copies or phonorecords of a previously published, nondramatic literary work if such copies or phonorecords are reproduced or distributed in specialized formats exclusively for use by blind or other persons with disabilities.

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CHAPTER 7—COPYRIGHT OFFICE

Sec.

701. The Copyright Office: General responsibilities and organization.

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[710. Reproduction for use of the blind and physically handicapped: Voluntary licensing forms and procedures.]

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§ 705. Copyright Office records: Preparation, maintenance, public inspection, and searching

[(a) The Register of Copyrights shall provide and keep in the Copyright Office records of all deposits, registrations, recordations, and other actions taken under this title, and shall prepare indexes of all such records.]

(a) The Register of Copyrights shall ensure that records of deposits, registrations, recordations, and other actions taken under this title are maintained, and that indexes of such records are prepared.

* * * * *

§ 708. Copyright Office fees

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

[(1) on filing each application under section 408 for registration of a copyright claim or for a supplementary registration, including the issuance of a certificate of registration if registration is made, \$20;

[(2) on filing each application for registration of a claim for renewal of a subsisting copyright under section 304(a), including the issuance of a certificate of registration if registration is made, \$20;

[(3) for the issuance of a receipt for a deposit under section 407, \$4;

[(4) for the recordation, as provided by section 205, of a transfer of copyright ownership or other document covering not more than one title, \$20; for additional titles, \$10 for each group of not more than 10 titles;

[(5) for the filing, under section 115(b), of a notice of intention to obtain a compulsory license, \$12;

[(6) for the recordation, under section 302(c), of a statement revealing the identity of an author of an anonymous or pseudonymous work, or for the recordation, under section 302(d), of a statement relating to the death of an author, \$20 for a document covering not more than one title; for each additional title, \$2;

[(7) for the issuance, under section 706, of an additional certificate of registration, \$8;

[(8) for the issuance of any other certification, \$20 for each hour or fraction of an hour consumed with respect thereto;

[(9) for the making and reporting of a search as provided by section 705, and for any related services, \$20 for each hour or fraction of an hour consumed with respect thereto; and

[(10) for any other special services requiring a substantial amount of time or expense, such fees as the Register of Copyrights may fix on the basis of the cost of providing the service.

The Register of Copyrights is authorized to fix the fees for preparing copies of Copyright Office records, whether or not such copies are certified, on the basis of the cost of such preparation.】

(a) FEES.—Fees shall be paid to the Register of Copyrights, in the amounts in effect on the date of enactment of the Work Made For Hire and Copyright Corrections Act of 2000, as adjusted under subsection (b)—

(1) on filing each application under section 408 for registration of a copyright claim or for a supplementary registration, including the issuance of a certificate of registration if registration is made;

(2) on filing each application for registration of a claim for renewal of a subsisting copyright under section 304(a), including the issuance of a certificate of registration if registration is made;

(3) for the issuance of a receipt for a deposit under section 407;

(4) for the recordation, as provided by section 205, of a transfer of copyright ownership or other document;

(5) for the filing, under section 115(b), of a notice of intention to obtain a compulsory license;

(6) for the recordation, under section 302(c), of a statement revealing the identity of an author of an anonymous or pseudonymous work, or for the recordation, under section 302(d), of a statement relating to the death of an author;

(7) for the issuance, under section 706, of an additional certificate of registration;

(8) for the issuance of any other certification; and

(9) for the making and reporting of a search as provided by section 705, and for any related services.

The Register is authorized to fix fees for other services, including the cost of preparing copies of Copyright Office records, whether or not such copies are certified, based on the cost of providing the service.

【(b) In calendar year 1997 and in any subsequent calendar year, the Register of Copyrights, by regulation, may increase the fees specified in subsection (a) in the following manner:】

(b) ADJUSTMENT OF FEES.—The Register of Copyrights may, by regulation, adjust the fees for the actions specified in paragraphs (1) through (9) of subsection (a) in the following manner:

(1) The Register shall conduct a study of the costs incurred by the Copyright Office for the registration of claims, the rec- ordation of documents, and the provision of services. The study shall also consider the timing of any increase in fees and the authority to use such fees consistent with the budget.

* * * * *

【§ 710. Reproduction for use of the blind and physically handicapped: Voluntary licensing forms and proce- dures

【The Register of Copyrights shall, after consultation with the Chief of the Division for the Blind and Physically Handicapped and other appropriate officials of the Library of Congress, establish by regulation standardized forms and procedures by which, at the time applications covering certain specified categories of nondra- matic literary works are submitted for registration under section 408 of this title, the copyright owner may voluntarily grant to the Library of Congress a license to reproduce the copyrighted work by means of Braille or similar tactile symbols, or by fixation of a read- ing of the work in a phonorecord, or both, and to distribute the re- sulting copies or phonorecords solely for the use of the blind and physically handicapped and under limited conditions to be specified in the standardized forms.】

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