

Calendar No. 40

105TH CONGRESS
1ST Session

S. 506

A BILL

To clarify certain copyright provisions, and for
other purposes.

APRIL 17, 1997

Reported without amendment

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105TH CONGRESS
1ST SESSION**S. 506**

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IN THE SENATE OF THE UNITED STATES

MARCH 20, 1997

Mr. HATCH introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

APRIL 17, 1997

Reported by Mr. HATCH, without amendment

A BILL

To clarify certain copyright provisions, and for other
purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Copyright Clarifica-
5 tions Act of 1997”.

6 **SEC. 2. SATELLITE HOME VIEWER ACT OF 1994.**

7 The Satellite Home Viewer Act of 1994 (Public Law
8 103–369) is amended as follows:

1 (1) Section 2(3)(A) is amended to read as fol-
2 lows:

3 “(A) in clause (i) by striking ‘12 cents’
4 and inserting ‘17.5 cents per subscriber in the
5 case of superstations that as retransmitted by
6 the satellite carrier include any program which,
7 if delivered by any cable system in the United
8 States, would be subject to the syndicated ex-
9 clusivity rules of the Federal Communications
10 Commission, and 14 cents per subscriber in the
11 case of superstations that are syndex-proof as
12 defined in section 258.2 of title 37, Code of
13 Federal Regulations’; and”.

14 (2) Section 2(4) is amended to read as follows:

15 “(4) Subsection (c) is amended—

16 “(A) in paragraph (1)—

17 “(i) by striking ‘until December 31,
18 1992,’;

19 “(ii) by striking ‘(2), (3) or (4)’ and
20 inserting ‘(2) or (3)’; and

21 “(iii) by striking the second sentence;

22 “(B) in paragraph (2)—

23 “(i) in subparagraph (A) by striking
24 ‘July 1, 1991’ and inserting ‘July 1,
25 1996’; and

1 “(ii) in subparagraph (D) by striking
 2 ‘December 31, 1994’ and inserting ‘De-
 3 cember 31, 1999, or in accordance with
 4 the terms of the agreement, whichever is
 5 later’; and

6 “(C) in paragraph (3)—

7 “(i) in subparagraph (A) by striking
 8 ‘December 31, 1991’ and inserting ‘Janu-
 9 ary 1, 1997’;

10 “(ii) by amending subparagraph (B)
 11 to read as follows:

12 ‘(B) ESTABLISHMENT OF ROYALTY
 13 FEES.—In determining royalty fees under this
 14 paragraph, the copyright arbitration royalty
 15 panel appointed under chapter 8 shall establish
 16 fees for the retransmission of network stations
 17 and superstations that most clearly represent
 18 the fair market value of secondary trans-
 19 missions. In determining the fair market value,
 20 the panel shall base its decision on economic,
 21 competitive, and programming information pre-
 22 sented by the parties, including—

23 ‘(i) the competitive environment in
 24 which such programming is distributed,
 25 the cost of similar signals in similar pri-

vate and compulsory license marketplaces,
and any special features and conditions of
the retransmission marketplace;

‘(ii) the economic impact of such fees
on copyright owners and satellite carriers;
and

‘(iii) the impact on the continued
availability of secondary transmissions to
the public.’; and

“(iii) in subparagraph (C), by insert-
ing ‘or July 1, 1997, whichever is later’
after ‘section 802(g)’.”.

(3) Section 2(5)(A) is amended to read as fol-
lows:

“(A) in paragraph (5)(C) by striking ‘the
date of the enactment of the Satellite Home
Viewer Act of 1988’ and inserting ‘November
16, 1988’; and”.

SEC. 3. COPYRIGHT IN RESTORED WORKS.

Section 104A of title 17, United States Code, is
amended as follows:

(1) Subsection (d)(3)(A) is amended to read as
follows:

1 “(3) EXISTING DERIVATIVE WORKS.—(A) In
2 the case of a derivative work that is based upon a
3 restored work and is created—

4 “(i) before the date of the enactment of
5 the Uruguay Round Agreements Act, if the
6 source country of the restored work is an eligi-
7 ble country on such date, or

8 “(ii) before the date on which the source
9 country of the restored work becomes an eligi-
10 ble country, if that country is not an eligible
11 country on such date of enactment,

12 a reliance party may continue to exploit that deriva-
13 tive work for the duration of the restored copyright
14 if the reliance party pays to the owner of the re-
15 stored copyright reasonable compensation for con-
16 duct which would be subject to a remedy for in-
17 fringement but for the provisions of this para-
18 graph.”.

19 (2) Subsection (e)(1)(B)(ii) is amended by
20 striking the last sentence.

21 (3) Subsection (h)(2) is amended to read as fol-
22 lows:

23 “(2) The ‘date of restoration’ of a restored
24 copyright is—

1 “(A) January 1, 1996, if the source coun-
 2 try of the restored work is a nation adhering to
 3 the Berne Convention or a WTO member coun-
 4 try on such date; or

5 “(B) the date of adherence or proclama-
 6 tion, in the case of any other source country of
 7 the restored work.”.

8 (4) Subsection (h)(3) is amended to read as fol-
 9 lows:

10 “(3) The term ‘eligible country’ means a nation,
 11 other than the United States, that—

12 “(A) becomes a WTO member country
 13 after the date of the enactment of the Uruguay
 14 Round Agreements Act;

15 “(B) on such date of enactment is, or after
 16 such date of enactment becomes, a member of
 17 the Berne Convention; or

18 “(C) after such date of enactment becomes
 19 subject to a proclamation under subsection (g).

20 For purposes of this paragraph, a nation that is a
 21 member of the Berne Convention on the date of the
 22 enactment of the Uruguay Round Agreements Act
 23 shall be construed to become an eligible country on
 24 such date of enactment.”.

1 **SEC. 4. LICENSES FOR NONEXEMPT SUBSCRIPTION TRANS-**
 2 **MISSIONS.**

3 Section 114(f) of title 17, United States Code, is
 4 amended—

5 (1) in paragraph (1), by inserting “, or, if a
 6 copyright arbitration royalty panel is convened, end-
 7 ing 30 days after the Librarian issues and publishes
 8 in the Federal Register an order adopting the deter-
 9 mination of the copyright arbitration royalty panel
 10 or an order setting the terms and rates (if the Li-
 11 brarian rejects the panel’s determination)” after
 12 “December 31, 2000”; and

13 (2) in paragraph (2), by striking “and publish
 14 in the Federal Register”.

15 **SEC. 5. ROYALTY PAYABLE UNDER COMPULSORY LICENSE.**

16 Section 115(c)(3)(D) of title 17, United States Code,
 17 is amended by striking “and publish in the Federal Reg-
 18 ister”.

19 **SEC. 6. NEGOTIATED LICENSE FOR JUKEBOXES.**

20 Section 116 of title 17, United States Code, is
 21 amended—

22 (1) by amending subsection (b)(2) to read as
 23 follows:

24 “(2) **ARBITRATION.**—Parties not subject to
 25 such a negotiation may determine, by arbitration in
 26 accordance with the provisions of chapter 8, the

1 terms and rates and the division of fees described in
 2 paragraph (1).”; and

3 (2) by adding at the end the following new sub-
 4 section:

5 “(d) DEFINITIONS.—As used in this section, the fol-
 6 lowing terms mean the following:

7 “(1) A ‘coin-operated phonorecord player’ is a
 8 machine or device that—

9 “(A) is employed solely for the perform-
 10 ance of nondramatic musical works by means of
 11 phonorecords upon being activated by the inser-
 12 tion of coins, currency, tokens, or other mone-
 13 tary units or their equivalent;

14 “(B) is located in an establishment making
 15 no direct or indirect charge for admission;

16 “(C) is accompanied by a list which is
 17 comprised of the titles of all the musical works
 18 available for performance on it, and is affixed
 19 to the phonorecord player or posted in the es-
 20 tablishment in a prominent position where it
 21 can be readily examined by the public; and

22 “(D) affords a choice of works available
 23 for performance and permits the choice to be
 24 made by the patrons of the establishment in
 25 which it is located.

1 “(2) An ‘operator’ is any person who, alone or
2 jointly with others—

3 “(A) owns a coin-operated phonorecord
4 player;

5 “(B) has the power to make a coin-oper-
6 ated phonorecord player available for placement
7 in an establishment for purposes of public per-
8 formance; or

9 “(C) has the power to exercise primary
10 control over the selection of the musical works
11 made available for public performance on a
12 coin-operated phonorecord player.”.

13 **SEC. 7. REGISTRATION AND INFRINGEMENT ACTIONS.**

14 Section 411(b)(1) of title 17, United States Code, is
15 amended to read as follows:

16 “(1) serves notice upon the infringer, not less
17 than 48 hours before such fixation, identifying the
18 work and the specific time and source of its first
19 transmission, and declaring an intention to secure
20 copyright in the work; and”.

21 **SEC. 8. COPYRIGHT OFFICE FEES.**

22 (a) **FEE INCREASES.**—Section 708(b) of title 17,
23 United States Code, is amended to read as follows:

24 “(b) In calendar year 1997 and in any subsequent
25 calendar year, the Register of Copyrights, by regulation,

1 may increase the fees specified in subsection (a) in the
2 following manner:

3 “(1) The Register shall conduct a study of the
4 costs incurred by the Copyright Office for the reg-
5 istration of claims, the recordation of documents,
6 and the provision of services. The study shall also
7 consider the timing of any increase in fees and the
8 authority to use such fees consistent with the
9 budget.

10 “(2) The Register may, on the basis of the
11 study under paragraph (1), and subject to para-
12 graph (5), increase fees to not more than that nec-
13 essary to cover the reasonable costs incurred by the
14 Copyright Office for the services described in para-
15 graph (1), plus a reasonable inflation adjustment to
16 account for any estimated increase in costs.

17 “(3) Any newly established fee under paragraph
18 (2) shall be rounded off to the nearest dollar, or for
19 a fee less than \$12, rounded off to the nearest 50
20 cents.

21 “(4) The fees established under this subsection
22 shall be fair and equitable and give due consider-
23 ation to the objectives of the copyright system.

24 “(5) If the Register determines under para-
25 graph (2) that fees should be increased, the Register

1 shall prepare a proposed fee schedule and submit the
2 schedule with the accompanying economic analysis to
3 the Congress. The fees proposed by the Register
4 may be instituted after the end of 120 days after the
5 schedule is submitted to the Congress unless, within
6 that 120-day period, a law is enacted stating in sub-
7 stance that the Congress does not approve the
8 schedule.”.

9 (b) DEPOSIT OF FEES.—Section 708(d) of such title
10 is amended to read as follows:

11 “(d)(1) Except as provided in paragraph (2), all fees
12 received under this section shall be deposited by the Reg-
13 ister of Copyrights in the Treasury of the United States
14 and shall be credited to the appropriations for necessary
15 expenses of the Copyright Office. Such fees that are col-
16 lected shall remain available until expended. The Register
17 may, in accordance with regulations that he or she shall
18 prescribe, refund any sum paid by mistake or in excess
19 of the fee required by this section.

20 “(2) In the case of fees deposited against future serv-
21 ices, the Register of Copyrights shall request the Secretary
22 of the Treasury to invest in interest-bearing securities in
23 the United States Treasury any portion of the fees that,
24 as determined by the Register, is not required to meet cur-
25 rent deposit account demands. Funds from such portion

1 of fees shall be invested in securities that permit funds
 2 to be available to the Copyright Office at all times if they
 3 are determined to be necessary to meet current deposit
 4 account demands. Such investments shall be in public debt
 5 securities with maturities suitable to the needs of the
 6 Copyright Office, as determined by the Register of Copy-
 7 rights, and bearing interest at rates determined by the
 8 Secretary of the Treasury, taking into consideration cur-
 9 rent market yields on outstanding marketable obligations
 10 of the United States of comparable maturities.

11 “(3) The income on such investments shall be depos-
 12 ited in the Treasury of the United States and shall be
 13 credited to the appropriations for necessary expenses of
 14 the Copyright Office.”.

15 **SEC. 9. COPYRIGHT ARBITRATION ROYALTY PANELS.**

16 (a) ESTABLISHMENT AND PURPOSE.—Section 801 of
 17 title 17, United States Code, is amended—

18 (1) in subsection (b)(1) by striking “and 116”
 19 in the first sentence and inserting “116, and 119”;

20 (2) in subsection (c) by inserting after “panel”
 21 at the end of the sentence the following:

22 “, including—

23 “(1) authorizing the distribution of those roy-
 24 alty fees collected under sections 111, 119, and

1 1005 that the Librarian has found are not subject
2 to controversy; and

3 “(2) accepting or rejecting royalty claims filed
4 under sections 111, 119, and 1007 on the basis of
5 timeliness or the failure to establish the basis for a
6 claim”; and

7 (3) by amending subsection (d) to read as fol-
8 lows:

9 “(d) SUPPORT AND REIMBURSEMENT OF ARBITRA-
10 TION PANELS.—The Librarian of Congress, upon the rec-
11 ommendation of the Register of Copyrights, shall provide
12 the copyright arbitration royalty panels with the necessary
13 administrative services related to proceedings under this
14 chapter, and shall reimburse the arbitrators presiding in
15 distribution proceedings at such intervals and in such
16 manner as the Librarian shall provide by regulation. Each
17 such arbitrator is an independent contractor acting on be-
18 half of the United States, and shall be hired pursuant to
19 a signed agreement between the Library of Congress and
20 the arbitrator. Payments to the arbitrators shall be consid-
21 ered costs incurred by the Library of Congress and the
22 Copyright Office for purposes of section 802(h)(1).”.

23 (b) PROCEEDINGS.—Section 802 of title 17, United
24 States Code, is amended—

1 (1) in subsection (c) by striking the last sen-
2 tence; and

3 (2) in subsection (h) by amending paragraph
4 (1) to read as follows:

5 “(1) DEDUCTION OF COSTS OF LIBRARY OF
6 CONGRESS AND COPYRIGHT OFFICE FROM ROYALTY
7 FEES.—The Librarian of Congress and the Register
8 of Copyrights may, to the extent not otherwise pro-
9 vided under this title, deduct from royalty fees de-
10 posited or collected under this title the reasonable
11 costs incurred by the Library of Congress and the
12 Copyright Office under this chapter. Such deduction
13 may be made before the fees are distributed to any
14 copyright claimants. In addition, all funds made
15 available by an appropriations Act as offsetting col-
16 lections and available for deductions under this sub-
17 section shall remain available until expended. In
18 ratemaking proceedings, the Librarian of Congress
19 and the Copyright Office may assess their reason-
20 able costs directly to the parties to the most recent
21 relevant arbitration proceeding, 50 percent of the
22 costs to the parties who would receive royalties from
23 the royalty rate adopted in the proceeding and 50
24 percent of the costs to the parties who would pay the
25 royalty rate so adopted.”.

1 **SEC. 10. DIGITAL AUDIO RECORDING DEVICES AND MEDIA.**

2 Section 1007(b) of title 17, United States Code, is
3 amended by striking “Within 30 days after” in the first
4 sentence and inserting “After”.

5 **SEC. 11. CONFORMING AMENDMENT.**

6 Section 4 of the Digital Performance Right in Sound
7 Recordings Act of 1995 (Public Law 104–39) is amended
8 by redesignating paragraph (5) as paragraph (4).

9 **SEC. 12. MISCELLANEOUS TECHNICAL AMENDMENTS.**

10 (a) AMENDMENTS TO TITLE 17, UNITED STATES
11 CODE.—Title 17, United States Code, is amended as fol-
12 lows:

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

15 (A) in the item relating to chapter 6, by
16 striking “**Requirement**” and inserting “**Re-**
17 **quirements**”;

18 (B) in the item relating to chapter 8, by
19 striking “**Royalty Tribunal**” and inserting
20 “**Arbitration Royalty Panels**”;

21 (C) in the item relating to chapter 9, by
22 striking “**semiconductor chip products**”
23 and inserting “**Semiconductor Chip**
24 **Products**”; and

1 (D) by inserting after the item relating to
2 chapter 9 the following:

“10. Digital Audio Recording Devices and Media 1001”.

3 (2) The item relating to section 117 in the table
4 of sections at the beginning of chapter 1 is amended
5 to read as follows:

“117. Limitations on exclusive rights: Computer programs.”.

6 (3) Section 101 is amended in the definition of
7 to perform or display a work “publicly” by striking
8 “processs” and inserting “process”.

9 (4) Section 108(e) is amended by striking
10 “pair” and inserting “fair”.

11 (5) Section 109(a)(2)(B) is amended by strik-
12 ing “Copyright” and inserting “Copyrights”.

13 (6) Section 110 is amended—

14 (A) in paragraph (8) by striking the period
15 at the end and inserting a semicolon;

16 (B) in paragraph (9) by striking the period
17 at the end and inserting “; and”; and

18 (C) in paragraph (10) by striking “4
19 above” and inserting “(4)”.

20 (7) Section 115(c)(3)(E) is amended—

21 (A) in clause (i) by striking “section
22 106(1) and (3)” each place it appears and in-
23 serting “paragraphs (1) and (3) of section
24 106”; and

1 (B) in clause (ii)(II) by striking “sections
2 106(1) and 106(3)” and inserting “paragraphs
3 (1) and (3) of section 106”.

4 (8) Section 119(c)(1) is amended by striking
5 “unless until” and inserting “unless”.

6 (9) Section 304(c) is amended in the matter
7 preceding paragraph (1) by striking “the subsection
8 (a)(1)(C)” and inserting “subsection (a)(1)(C)”.

9 (10) Section 405(b) is amended by striking
10 “condition or” and inserting “condition for”.

11 (11) Section 407(d)(2) is amended by striking
12 “cost of” and inserting “cost to”.

13 (12) The item relating to section 504 in the
14 table of sections at the beginning of chapter 5 is
15 amended by striking “Damage” and inserting
16 “Damages”.

17 (13) Section 504(c)(2) is amended by striking
18 “court it” and inserting “court in”.

19 (14) Section 509(b) is amended by striking
20 “merchandise; and baggage” and inserting “mer-
21 chandise, and baggage”.

22 (15) Section 601(a) is amended by striking
23 “nondramtic” and inserting “nondramatic”.

24 (16) Section 601(b)(1) is amended by striking
25 “subsustantial” and inserting “substantial”.

1 (17) The item relating to section 710 in the
2 table of sections at the beginning of chapter 7 is
3 amended by striking “Reproductions” and inserting
4 “Reproduction”.

5 (18) The item relating to section 801 in the
6 table of sections at the beginning of chapter 8 is
7 amended by striking “establishment” and inserting
8 “Establishment”.

9 (19) Section 801(b) is amended—

10 (A) by striking “shal be—” and inserting
11 “shall be as follows.”;

12 (B) in paragraph (1) by striking “to
13 make” and inserting “To make”;

14 (C) in paragraph (2)—

15 (i) by striking “to make” and insert-
16 ing “To make”; and

17 (ii) in subparagraph (D) by striking
18 “adjustment; and” and inserting “adjust-
19 ment.”; and

20 (D) in paragraph (3) by striking “to dis-
21 tribute” and inserting “To distribute”.

22 (20) Section 803(b) is amended in the second
23 sentence by striking “subsection subsection” and in-
24 serting “subsection”.

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

“903. Ownership, transfer, licensure, and recordation.”.

4 (22) Section 909(b)(1) is amended—

5 (A) by striking “force” and inserting
 6 “work”; and

7 (B) by striking “sumbol” and inserting
 8 “symbol”.

9 (23) Section 910(a) is amended in the second
 10 sentence by striking “as used” and inserting “As
 11 used”.

12 (24) Section 1006(b)(1) is amended by striking
 13 “Federation Television” and inserting “Federation
 14 of Television”.

15 (25) Section 1007 is amended—

16 (A) in subsection (a)(1) by striking “The
 17 calendar year in which this chapter takes ef-
 18 fect” and inserting “calendar year 1992”; and

19 (B) in subsection (b) by striking “the year
 20 in which this section takes effect” and inserting
 21 “1992”.

22 (b) RELATED PROVISIONS.—

23 (1) Section 1(a)(1) of the Act entitled “An Act
 24 to amend chapter 9 of title 17, United States Code,
 25 regarding protection extended to semiconductor chip

1 products of foreign entities”, approved November 9,
 2 1987 (17 U.S.C. 914 note), is amended by striking
 3 “orginating” and inserting “originating”.

4 (2) Section 2319(b)(1) of title 18, United
 5 States Code, is amended by striking “last 10” and
 6 inserting “least 10”.

7 **SEC. 13. EFFECTIVE DATES.**

8 (a) IN GENERAL.—Except as provided in subsections
 9 (b) and (c), the amendments made by this title shall take
 10 effect on the date of the enactment of this Act.

11 (b) SATELLITE HOME VIEWER ACT OF 1994.—The
 12 amendments made by section 2 shall be effective as if en-
 13 acted as part of the Satellite Home Viewer Act of 1994
 14 (Public Law 103–369).

15 (c) TECHNICAL AMENDMENT.—The amendment
 16 made by section 12(b)(1) shall be effective as if enacted
 17 on November 9, 1987.

○