

109TH CONGRESS
1ST SESSION

H. R. 2408

To amend title 17, United States Code, to allow abandoned copyrighted works to enter the public domain after 50 years.

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 2005

Ms. ZOE LOFGREN of California (for herself and Mr. DOOLITTLE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, to allow abandoned copyrighted works to enter the public domain after 50 years.

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 “Public Domain En-
5 hancement Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

8 (1) The copyright clause, as set forth in article
9 I, section 8 of the United States Constitution,
10 grants Congress the power to “promote the Progress

1 of Science and useful Arts, by securing for limited
2 Times to Authors . . . the exclusive Right to their
3 respective Writings . . .”.

4 (2) The copyright clause serves two purposes.
5 First, it gives authors an economic incentive to cre-
6 ate new works. “By establishing a marketable right
7 to the use of one’s expression, copyright supplies the
8 economic incentive to create and disseminate ideas.”
9 *Harper & Row Publications, Inc. v. Nation Enters.*,
10 471 U.S. 539, 558 (1985). Second, it promotes soci-
11 ety’s interest in the “free flow of ideas, information
12 and commerce.” *Sony Corp. v. Universal City Stu-*
13 *dios, Inc.*, 464 U.S. 417, 429 (1984). “The copy-
14 right term is limited so that the public will not be
15 permanently deprived of the fruits of an artist’s la-
16 bors.” *Stewart v. Abend*, 495 U.S. 207, 228 (1990).

17 (3) Both commercial and noncommercial cre-
18 ators depend on a healthy public domain. For exam-
19 ple, book publishers print titles from the public do-
20 main and make them available to the public at re-
21 duced prices. See Edward Rappaport, CRS Report
22 for Congress, Copyright Term Extension: Esti-
23 mating the Economic Values, 3 (May 11, 1998).
24 Others depend on the public domain as a source of
25 raw material for new productions, such as a movie

1 based on an old book or a theme song based on old
2 musical arrangements. *Id.* Schools, museums, and li-
3 braries use works in the public domain to create pic-
4 torial and textual materials for educational and cul-
5 tural purposes. *Id.* at 4. In addition, media sources
6 like the World Wide Web benefit from the freedom
7 of public domain content, such as historical mate-
8 rials placed on the Web by the Library of Congress.
9 *Id.*

10 (4) Current law continues to grant copyright
11 protection to works published as early as 1923. See
12 17 U.S.C. 304. Yet the vast majority of older works
13 are no longer commercially available. One study indi-
14 cates that only 2 percent of works between 55 and
15 75 years old continue to retain commercial value.
16 *Eldred v. Ashcroft*, 123 S. Ct. 769, 804 (2003)
17 (Breyer, J., dissenting). Nevertheless, under current
18 law, these abandoned works will not enter the public
19 domain for many years. This prevents commercial
20 and noncommercial entities from building upon, cul-
21 tivating, and preserving abandoned works. Indeed,
22 while older works are less likely to retain commercial
23 value, they are more likely to “prove useful to the
24 historian, artist, or teacher.” *Eldred v. Ashcroft*,
25 123 S. Ct. 769, 805 (2003) (Breyer, J., dissenting).

1 (5) Thus, the existing copyright system func-
 2 tions contrary to the intent of the Framers of the
 3 Constitution in adopting the copyright clause and
 4 the intent of Congress in enacting the Copyright
 5 Act. Neither is intended to deprive the public of
 6 works when there is no commercial or copyright pur-
 7 pose behind their continued protection. It is, there-
 8 fore, necessary to establish a mechanism by which
 9 abandoned American copyrights can enter the public
 10 domain.

11 **SEC. 3. MAINTENANCE FEE FOR PUBLISHED UNITED**
 12 **STATES WORKS.**

13 (a) DEFINITION OF UNITED STATES WORK.—The
 14 definition of “United States work” contained in section
 15 101 of title 17, United States Code, is amended by strik-
 16 ing “For purposes of section 411” and inserting “For pur-
 17 poses of sections 306 and 411”.

18 (b) DURATION OF COPYRIGHT.—

19 (1) WORKS CREATED ON OR AFTER JANUARY 1,
 20 1978.—Section 302 of title 17, United States Code,
 21 is amended—

22 (A) in subsection (a), by striking “Copy-
 23 right” and inserting “Subject to section 306,
 24 copyright”;

1 (B) in subsection (b), by striking “In” and
2 inserting “Subject to section 306, in”; and

3 (C) in subsection (c), in the first sentence,
4 by striking “In” and inserting “Subject to sec-
5 tion 306, in”.

6 (2) WORKS CREATED BUT NOT PUBLISHED OR
7 COPYRIGHTED BEFORE JANUARY 1, 1978.—Section
8 303(a) of title 17, United States Code, is amend-
9 ed—

10 (A) by striking “Copyright” and inserting
11 “Subject to section 306, copyright”;

12 (B) by striking “. In no case, however,”
13 and inserting “; except that, subject to section
14 306, in no case”; and

15 (C) by striking “and, if” and inserting
16 “and, subject to section 306, if”.

17 (3) SUBSISTING COPYRIGHTS.—Section 304 of
18 title 17, United States Code, is amended—

19 (A) in subsection (a)—

20 (i) in paragraph (1)—

21 (I) in subparagraph (B), by
22 striking “In” and inserting “Subject
23 to section 306, in”; and

1 (II) in subparagraph (C), by
 2 striking “In” and inserting “Subject
 3 to section 306, in”; and

4 (ii) in paragraph (2)—

5 (I) in subparagraph (A), by in-
 6 serting “other than a copyright that
 7 expires under section 306,” after
 8 “(1)(B) of this subsection,”; and

9 (II) in subparagraph (B), by in-
 10 serting “other than a copyright that
 11 expires under section 306,” after
 12 “(1)(C) of this subsection,”; and

13 (B) in subsection (b), by striking “Any”
 14 and inserting “Subject to section 306, any”.

15 (c) MAINTENANCE FEE.—

16 (1) IN GENERAL.—Chapter 3 of title 17, United
 17 States Code, is amended by inserting after section
 18 305 the following new section:

19 **“§ 306. Maintenance fee for published United States**
 20 **works**

21 “(a) FEE.—The Register of Copyrights shall charge
 22 a fee of \$1 for maintaining in force the copyright in any
 23 published United States work. The fee shall be due 50
 24 years after the date of first publication or on December
 25 31, 2006, whichever occurs later, and every 10 years

1 thereafter until the end of the copyright term. Unless pay-
 2 ment of the applicable maintenance fee is received in the
 3 Copyright Office on or before the date the fee is due or
 4 within a grace period of 6 months thereafter, the copyright
 5 shall expire as of the end of that grace period.

6 “(b) ANCILLARY AND PROMOTIONAL WORKS.—If the
 7 copyright in a work is maintained in force under sub-
 8 section (a), then any ancillary or promotional work used
 9 in connection with the work so maintained, such as an
 10 advertisement for a motion picture, shall be deemed also
 11 to be maintained in force under subsection (a).

12 “(c) FORM.—The maintenance fee required by sub-
 13 section (a) shall be accompanied by a form prescribed by
 14 the Register of Copyrights that conforms with section 409.
 15 The form may be used to satisfy the registration provi-
 16 sions of sections 408 and 409, if it is accompanied by the
 17 prescribed deposit and fee, and by any additional identi-
 18 fying material that the Register may, by regulation, re-
 19 quire.”.

20 (2) CONFORMING AMENDMENT.—The table of
 21 sections for chapter 3 of title 17, United States
 22 Code, is amended by adding at the end the fol-
 23 lowing:

“306. Maintenance fee for published United States works.”.

24 (d) COPYRIGHT OFFICE FEES.—Section 708(a) of
 25 title 17, United States Code, is amended—

1 (1) in paragraph (8), by striking “and” after
2 the semicolon;

3 (2) in paragraph (9), by striking the period and
4 inserting “; and”; and

5 (3) by adding after paragraph (9) the following:

6 “(10) the maintenance fee under section 306.”.

7 **SEC. 4. DUTIES OF REGISTER.**

8 Not later than 12 months after the date of the enact-
9 ment of this Act, the Register of Copyrights shall—

10 (1) establish procedures to minimize the burden
11 of submitting the form prescribed under section
12 306(c) of title 17, United States Code, including
13 procedures to allow the electronic submission of the
14 form to the Copyright Office; and

15 (2) establish procedures to make the informa-
16 tion contained in forms submitted under section
17 306(c) of such title easily accessible to the public.

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