

Union Calendar No. 214

103D CONGRESS
1ST SESSION

H. R. 897

[Report No. 103-388]

A BILL

To amend title 17, United States Code, to modify certain recordation and registration requirements, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, and for other purposes.

NOVEMBER 20, 1993

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 1993

Mr. HUGHES (for himself and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on the Judiciary

NOVEMBER 20, 1993

Additional sponsors: Mr. CHAPMAN, Mr. MACHTLEY, Mr. OBERSTAR, and Ms. PELOSI

NOVEMBER 20, 1993

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 16, 1993]

A BILL

To amend title 17, United States Code, to modify certain recordation and registration requirements, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, 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 Reform Act*
5 *of 1993”.*

6 **SEC. 2. DEPOSIT OF COPIES OR PHONORECORDS FOR LI-**
7 **BRARY OF CONGRESS.**

8 *Section 407 of title 17, United States Code, is amended*
9 *as follows:*

10 (1) *Subsection (a) is amended by striking “(a)”*
11 *and all that follows through “publication—” and in-*
12 *serting the following:*

13 “(a) *REQUIRED DEPOSITS.—Except as provided in*
14 *subsection (c), the owner of copyright in a work or of the*
15 *exclusive right of publication of a work in the United States*
16 *shall deposit, after the earliest date of such publica-*
17 *tion—”.*

18 (2) *Subsection (b) is amended—*

19 (A) *by inserting “DEPOSIT IN COPYRIGHT*
20 *OFFICE.—” after “(b)”;* and

21 (B) *by adding at the end the following: “A*
22 *deposit made under this section may be used to*
23 *satisfy the deposit requirements of section 408.”.*

24 (3) *Subsection (c) is amended—*

1 (A) by inserting “REGULATIONS.—” after
2 “(c)”; and

3 (B) by striking “Register of Copyrights”
4 and inserting “Librarian of Congress”.

5 (4) Subsection (d) is amended—

6 (A) by redesignating paragraphs (1), (2),
7 and (3) as subparagraphs (A), (B), and (C), re-
8 spectively;

9 (B) by striking “(d) At any time after pub-
10 lication of a work as provided by subsection (a)”
11 and inserting the following:

12 “(d) PROCEDURES.—(1) During November of each
13 year, the Librarian of Congress shall publish in the Federal
14 Register a statement of the categories of works of which the
15 Library of Congress wishes to acquire copies or
16 phonorecords under this section during the next calendar
17 year. The Librarian shall review such statement annually
18 in light of the changes in the Library’s policies and proce-
19 dures, changes in technology, and changes in patterns of
20 publication. The statement shall also describe—

21 “(A) the types of works of which only one copy
22 or phonorecord need be deposited;

23 “(B) the types of works for which the deposit re-
24 quirements may be fulfilled by placing the Library of
25 Congress on a subscription list; and

1 “(C) the categories of works which are exempt
2 under subsection (c) from the deposit requirements.

3 “(2) At any time after publication in the United
4 States of a work or body of works”;

5 (C) by striking “Register of Copyrights”
6 and inserting “Librarian of Congress”;

7 (D) by inserting after the first sentence the
8 following: “Such demand shall specify a date for
9 compliance with the demand.”;

10 (E) by inserting “in a civil action” after
11 “are liable”;

12 (F) in subparagraph (B) (as redesignated
13 by subparagraph (A) of this paragraph) by strik-
14 ing “cost of” and inserting “cost to”;

15 (G) in subparagraph (C) (as redesignated
16 by subparagraph (A) of this paragraph) by strik-
17 ing “clauses (1) and (2)” and inserting “sub-
18 paragraphs (A) and (B)”;

19 (H) by adding after subparagraph (C) (as
20 so redesignated) the following:

21 *“In addition to the penalties set forth in subparagraphs*
22 *(A), (B), and (C), the person against whom an action is*
23 *brought under this paragraph shall be liable in such action*
24 *for all costs of the United States in pursuing the demand,*

1 *including an amount equivalent to a reasonable attorney's*
2 *fee."*

3 (5) *Subsection (e) is amended—*

4 (A) *by inserting "TRANSMISSION PRO-*
5 *GRAMS.—" after "(e)";*

6 (B) *by striking "Register of Copyrights*
7 *shall, after consulting with the Librarian of Con-*
8 *gress and other interested organizations and offi-*
9 *cial," and inserting "Librarian of Congress*
10 *shall, after consulting with interested organiza-*
11 *tions and officials,"; and*

12 (C) *in paragraph (2) by striking "Register*
13 *of Copyrights" and inserting "Librarian of Con-*
14 *gress".*

15 (6) *Section 407 of title 17, United States Code,*
16 *is further amended by adding at the end the follow-*
17 *ing:*

18 *"(f) OBLIGATION TO MAKE DEPOSITS.—Immediately*
19 *upon the publication in the United States of any work in*
20 *which copyright subsists under this title, it shall be the obli-*
21 *gation of the persons identified in subsection (a) with re-*
22 *spect to that work, subject to the requirements and excep-*
23 *tions specified in this section, to deposit, for the use or dis-*
24 *position of the Library of Congress, the copies or*
25 *phonorecords specified in such subsection. The obligation to*

1 *make such deposit arises without any prior notification or*
2 *demand for compliance with subsection (a).*

3 “(g) *RECORDS OF DEPOSITS.*—*The Librarian of Con-*
4 *gress shall establish and maintain public records of the re-*
5 *ceipt of copies and phonorecords deposited under this sec-*
6 *tion.*

7 “(h) *DATABASE OF DEPOSIT RECORDS.*—*The Librar-*
8 *ian of Congress shall establish and maintain an electronic*
9 *database containing its records of all deposits made under*
10 *this section on and after October 1, 1995, and shall make*
11 *such database available to the public through one or more*
12 *international information networks.*

13 “(i) *DELEGATION AUTHORITY.*—*The Librarian of*
14 *Congress may delegate to the Register of Copyrights or other*
15 *officer or employee of the Library of Congress any of the*
16 *Librarian’s responsibilities under this section.”.*

17 **SEC. 3. COPYRIGHT REGISTRATION IN GENERAL.**

18 *Section 408 of title 17, United States Code, is amend-*
19 *ed—*

20 (1) *in subsection (c)—*

21 (A) *in paragraph (1) by adding at the end*
22 *the following: “The Register is also authorized to*
23 *specify by regulation classes of material in which*
24 *registration may be made without deposit of any*
25 *copy or phonorecord, in cases in which the Reg-*

1 *ister determines that the purposes of examina-*
2 *tion, registration, and deposit can be adequately*
3 *served by deposit of descriptive material only, or*
4 *by a written obligation to deposit copies or*
5 *phonorecords at a later date.”; and*

6 *(B) in paragraph (2) by striking “periodi-*
7 *icals, including newspapers” and all that follows*
8 *through the end of subparagraph (B) and insert-*
9 *ing “collective works, including periodicals, pub-*
10 *lished within a 5-year period, on the basis of a*
11 *single deposit and application and upon pay-*
12 *ment of any special registration fee imposed*
13 *under section 708(a)(10), if the application iden-*
14 *tifies each work separately, including the collec-*
15 *tive work containing it and its date of first pub-*
16 *lication.”; and*

17 *(2) by adding at the end the following:*

18 *“(f) COPYRIGHT OFFICE HEARINGS.—Not later than*
19 *1 year after the effective date of this subsection, and at 1-*
20 *year intervals thereafter, the Register of Copyrights shall*
21 *hold public hearings to consider proposals to amend the reg-*
22 *ulations and practices of the Copyright Office with respect*
23 *to deposit of works in order to eliminate deposits that are*
24 *unnecessary for copyright examination or the collections of*

1 *the Library of Congress, and in order to simplify the reg-*
2 *istration procedures.”.*

3 **SEC. 4. APPLICATION FOR COPYRIGHT REGISTRATION.**

4 (a) *APPLICATIONS.*—Section 409 of title 17, United
5 *States Code, is amended—*

6 (1) *by striking “The application” and inserting*
7 *“(a) CONTENTS OF APPLICATION.—The application”;*

8 (2) *in paragraph (5) by inserting before the*
9 *semicolon the following: “, and if the document by*
10 *which ownership was obtained has been recorded in*
11 *the Copyright Office, the volume and page number of*
12 *such recordation”;*

13 (3) *by striking paragraphs (9) and (10) and in-*
14 *serting the following:*

15 “(9) *in the case of a compilation or derivative*
16 *work, an identification of any preexisting work or*
17 *works that it is substantially based on or substan-*
18 *tially incorporates, and a brief, general statement of*
19 *the additional material covered by the copyright*
20 *claim being registered;*

21 “(10) *at the option of the applicant, names, ad-*
22 *dresses, and telephone numbers of persons or organi-*
23 *zations that potential users of the work should contact*
24 *concerning permissions or licenses to use the work,*

1 *and any information with respect to the terms of such*
2 *permissions or licenses; and”;* and

3 *(4) by adding at the end the following:*

4 “(b) *SHORT-FORM APPLICATION.*—

5 “(1) *USE OF SHORT-FORM.*—*The Register of*
6 *Copyrights shall prescribe a short-form application*
7 *which may be used whenever—*

8 “(A) *the work is by a living author;*

9 “(B) *the claimant is the author;*

10 “(C) *the work is not anonymous, pseudony-*
11 *mous, or made for hire; and*

12 “(D) *the work as a whole, or substantial*
13 *portions of it, have not been previously published*
14 *or registered.*

15 “(2) *CONTENTS OF SHORT-FORM.*—*The short-*
16 *form application shall include—*

17 “(A) *the name and address of the author;*

18 “(B) *the title of the work;*

19 “(C) *the nationality or domicile of the au-*
20 *thor;*

21 “(D) *the year in which creation of the work*
22 *was completed;*

23 “(E) *if the work has been published, the*
24 *date and nation of its first publication;*

1 “(F) any other information regarded by the
2 Register of Copyrights as bearing upon the prep-
3 aration or identification of the work or the exist-
4 ence, ownership, or duration of the copyright;
5 and

6 “(G) at the option of the applicant, names,
7 addresses, and telephone numbers of persons or
8 organizations that potential users of the work
9 should contact concerning permissions or licenses
10 to use the work, and any information with re-
11 spect to the terms of such permissions or li-
12 censes.”.

13 (b) *EFFECTIVE DATE.*—The amendments made by this
14 section take effect 6 months after the date of the enactment
15 of this Act.

16 **SEC. 5. REGISTRATION OF CLAIM AND ISSUANCE OF CER-**
17 **TIFICATE.**

18 (a) *DETERMINATION OF REGISTRATION.*—Section 410
19 of title 17, United States Code, is amended by striking sub-
20 sections (a) and (b) and inserting the following:

21 “(a) *DETERMINATION OF REGISTER.*—If, after exam-
22 ination, the Register of Copyrights determines, in accord-
23 ance with the provisions of this title, that there is no reason-
24 able possibility that a court would hold the work for which
25 a deposit is made pursuant to section 408(c) to be copy-

1 *rightable subject matter, or the Register determines that the*
2 *claim is invalid for any other reason, the Register shall*
3 *refuse registration and notify the applicant in writing of*
4 *the reasons for such refusal. In all other cases, the Register*
5 *shall register the claim and issue to the applicant a certifi-*
6 *cate of registration under the seal of the Copyright Office.*
7 *A certificate of registration issued under this section extends*
8 *only to those component parts of the work that both are*
9 *the subject matter of copyright and the copyright owner has*
10 *the right to claim. The certificate shall contain the informa-*
11 *tion set forth in the application, together with the number*
12 *and effective date of the registration.*

13 “(b) *APPEALS PROCEDURE.*—*The Register of Copy-*
14 *rights shall establish, and publish in the Federal Register,*
15 *a formal procedure by which appeals may be taken from*
16 *refusals under subsection (a) to register claims to copyright.*
17 *Such procedure shall include a final appeal to the Reg-*
18 *ister.”.*

19 (b) *JUDICIAL PROCEEDINGS.*—*Subsection (c) of section*
20 *410 of title 17, United States Code, is amended—*

21 (1) *by inserting “EVIDENTIARY WEIGHT OF*
22 *CERTIFICATE.—” after “(c)”;* and

23 (2) *by adding at the end the following: “Any*
24 *error or omission made in good faith or upon reason-*
25 *able reliance on counsel shall not affect the validity*

1 of the registration. In no case shall an incorrect state-
2 ment made in an application for copyright registra-
3 tion invalidate the copyright.”.

4 (c) *TECHNICAL AMENDMENT.*—Subsection (d) of sec-
5 tion 410 of title 17, United States Code, is amended by in-
6 serting “*EFFECTIVE DATE OF REGISTRATION.*—” after
7 “(d)”.

8 **SEC. 6. COPYRIGHT REGISTRATION PROVISIONS.**

9 (a) *REGISTRATION AND INFRINGEMENT ACTIONS.*—(1)
10 Section 411 of title 17, United States Code, is amended—

11 (A) by amending the section caption to read as
12 follows:

13 **“§411. Registration and infringement actions for cer-**
14 **tain works”;**

15 (B) by striking subsection (a); and

16 (C) in subsection (b)—

17 (i) by striking “(b)”; and

18 (ii) by striking paragraphs (1) and (2) and
19 inserting the following:

20 “(1) serves notice upon the infringer, not less
21 than 10 or more than 30 days before such fixation,
22 identifying the work and the specific time and source
23 of its first transmission; and

24 “(2) submits an application for registration of
25 the copyright claim in the work, in accordance with

1 (A) in the first sentence by inserting “and
2 the party filing the action” after “United
3 States”; and

4 (B) in the second sentence by inserting
5 “and the party filing the action” after “clerk”;
6 and

7 (2) in subsection (b) by inserting “and the party
8 filing the action” after “clerk of the court”.

9 **SEC. 9. STUDY ON MANDATORY DEPOSIT.**

10 (a) *SUBJECT MATTER OF STUDY.*—Upon the enact-
11 ment of this Act, the Librarian of Congress shall conduct
12 a study of the mandatory deposit provisions of section 407
13 of title 17, United States Code. Such study shall place par-
14 ticular emphasis on the implementation of section 407(e)
15 of such title with respect to the deposit of transmission pro-
16 grams, as well as possible alternative methods of obtaining
17 deposits if the mandatory deposit requirements of such sec-
18 tion 407 are expanded to authorize the collection, archival
19 preservation, and use by the Library of Congress of other
20 publicly transmitted works, including unpublished works
21 such as computer programs and online databases.

22 (b) *CONDUCT OF STUDY.*—The study under subsection
23 (a) shall be conducted by the Register of Copyright, in con-
24 sultation with any affected interests, and may include the

1 *voluntary establishment, in collaboration with representa-*
2 *tives of such interests, of practical tests and pilot projects.*

3 (c) *REPORT TO CONGRESS.*—*Not later than 18 months*
4 *after the date of the enactment of this Act, the Librarian*
5 *shall submit to the Congress a report on the results of the*
6 *study conducted under this section, together with rec-*
7 *ommendations the Librarian has on—*

8 (1) *safeguarding the interests of copyright own-*
9 *ers whose works are subject to the mandatory deposit*
10 *provisions referred to in subsection (a);*

11 (2) *fulfilling the present and future needs of the*
12 *Library of Congress with respect to archival and*
13 *other collections development; and*

14 (3) *any legislation that may be necessary.*

15 **SEC. 10. STUDIES OF EFFECTS OF REGISTRATION AND DE-**
16 **POSIT PROVISIONS.**

17 *Upon the enactment of this Act, the Librarian of Con-*
18 *gress, after consultation with the Register of Copyrights and*
19 *any affected interests, shall commence a study of the extent*
20 *to which changes in the registration and deposit provisions*
21 *of title 17, United States Code, that are made by this Act*
22 *have affected the acquisitions of the Library of Congress and*
23 *the operations of the copyright registration system, and any*
24 *recommendations the Librarian may have with respect to*
25 *such effects. Not later than 3 years after the date of the en-*

1 *actment of this Act, the Librarian shall submit to the Con-*
2 *gress a report on such study. The Librarian may conduct*
3 *further studies described in the first sentence, and report*
4 *to the Congress on such studies.*

5 **SEC. 11. CONFORMING AMENDMENTS.**

6 (a) *DEFINITIONS.*—Section 101 of title 17, United
7 States Code, is amended by striking the definition of the
8 “country of origin” of a Berne Convention work.

9 (b) *INFRINGEMENT OF COPYRIGHT.*—Section 501(b) of
10 title 17, United States Code, is amended in the first sen-
11 tence by striking “, subject to the requirements of section
12 411,”.

13 (c) *REMEDIES FOR INFRINGEMENT.*—Section 504(a) of
14 title 17, United States Code, is amended by striking “Ex-
15 cept as otherwise provided by this title, an” and inserting
16 “An”.

17 **SEC. 12. ADDITIONAL TECHNICAL AMENDMENTS.**

18 (a) *AMENDMENTS TO TITLE 17, UNITED STATES*
19 *CODE.*—Title 17, United States Code, is amended as fol-
20 lows:

21 (1) The definition of “publicly” contained in sec-
22 tion 101 is amended—

23 (A) by striking “clause” and inserting
24 “paragraph”; and

1 (B) by striking “process” and inserting
2 “process”.

3 (2) The definition of “registration” contained in
4 section 101 is amended by striking “412.”.

5 (3) Section 108(e) is amended in the matter pre-
6 ceding paragraph (1) by striking “pair” and insert-
7 ing “fair”.

8 (4) Section 109(b)(2)(B) is amended by striking
9 “Copyright” and inserting “Copyrights”.

10 (5) Section 304(c) is amended in the matter pre-
11 ceding paragraph (1) by striking “the subsection
12 (a)(1)(C) and inserting “subsection (a)(1)(C)”.

13 (6) Section 405(b) is amended by striking “con-
14 dition or” and inserting “condition for”.

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

18 (8) Section 501(a) is amended by striking “sec-
19 tions 106 through 118” and inserting “section 106”.

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

23 (10) Section 601 of title 17, United States Code,
24 is amended—

1 (A) in subsection (a) by striking
2 “nondramtic” and inserting “nondramatic”; and

3 (B) in subsection (b)(1) by striking
4 “subsustantial” and inserting “substantial”.

5 (11) Section 801(b)(4) of title 17, United States
6 Code, is amended by adding a period after “chapter
7 10”.

8 (12) The item relating to section 903 in the table
9 of sections at the beginning of chapter 9 is amended
10 to read as follows:

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

11 (13) Section 909(b)(1) is amended—

12 (A) by striking “force” and inserting
13 “work”; and

14 (B) by striking “sumbol” and inserting
15 “symbol”.

16 (14) Section 910(a) is amended in the second
17 sentence by striking “as used” and inserting “As
18 used”.

19 (15) Section 1006(b)(1) is amended by striking
20 “Federation Television” and inserting “Federation of
21 Television”.

22 (16) Section 1007 is amended—

23 (A) in subsection (a)(1) by striking “the
24 calendar year in which this chapter takes effect”
25 and inserting “calendar year 1992”; and

1 (B) in subsection (b) by striking “the year
2 in which this section takes effect” and inserting
3 “1992”.

4 (17) The table of chapters at the beginning of
5 title 17, United States Code, is amended—

6 (A) by amending the item relating to chap-
7 ter 6 to read as follows:

“6. Manufacturing Requirements and Importation 601”;

8 (B) by amending the item relating to chap-
9 ter 9 to read as follows:

“9. Protection of Semiconductor Chip Products 901”;

10 and

11 (C) by adding at the end the following:

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

12 (b) OTHER PROVISIONS OF LAW.—(1) Section
13 2319(b)(1) of title 18, United States Code, is amended by
14 striking “at last” and inserting “at least”.

15 (2) Section 1(a)(1) of the Act entitled “An Act to
16 amend chapter 9 of title 17, United States Code, regarding
17 protection extended to semiconductor chip products of for-
18 eign entities”, approved November 9, 1987 (17 U.S.C. 914
19 note), is amended by striking “originating” and inserting
20 “originating”.

21 (3) Section 3(a)(1)(C) of the Audio Home Recording
22 Act of 1992 is amended by striking “adding the following

1 *new paragraph at the end” and inserting “inserting after*
2 *paragraph (3) the following new paragraph”.*

3 **SEC. 13. EFFECTIVE DATE.**

4 *(a) IN GENERAL.—Except as provided in section 4(b),*
5 *and subject to subsection (b) of this section, this Act and*
6 *the amendments made by this Act take effect on the date*
7 *of the enactment of this Act.*

8 *(b) PENDING ACTIONS.—The amendments and repeals*
9 *made by section 6 shall not affect any action brought under*
10 *title 17, United States Code, before the date of the enactment*
11 *of this Act.*

Amend the title so as to read: “A bill to amend title
17, United States Code, to modify certain registration re-
quirements, and for other purposes.”.

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