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104TH CONGRESS
1ST SESSION

S. 1284

To amend title 17 to adapt the copyright law to the digital, networked environment of the National Information Infrastructure, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28 (legislative day, SEPTEMBER 25), 1995

Mr. HATCH (for himself and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Judiciary

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A BILL

To amend title 17 to adapt the copyright law to the digital, networked environment of the National Information Infrastructure, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "NII Copyright Protection Act of 1995".

SEC. 2. TRANSMISSION OF COPIES.

(a) DISTRIBUTION.—Section 106(3) of title 17, United States Code, is amended by striking "or by rental,

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lease, or lending" and inserting "by rental, lease, or lending, or by transmission".

(b) DEFINITIONS.—Section 101 of title 17, United States Code, is amended—

(1) in the definition of "publication" by striking "or by rental, lease, or lending" in the first sentence and insert "by rental, lease, or lending, or by transmission"; and

(2) in the definition of "transmit" by inserting at the end thereof the following: "To 'transmit' a reproduction is to distribute it by any device or process whereby a copy or phonorecord of the work is fixed beyond the place from which it was sent.".

(c) IMPORTATION.—Section 602 of title 17, United States Code, is amended by inserting "whether by carriage of tangible goods or by transmission," after "importation into the United States,".

SEC. 3. EXEMPTIONS FOR LIBRARIES AND THE VISUALLY IMPAIRED.

(a) LIBRARIES.—Section 108 of title 17, United States Code, is amended—

(1) in subsection (a) by deleting "one copy or phonorecord" and inserting in lieu thereof "three copies or phonorecords";

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(2) in subsection (a) by deleting "such copy or phonorecord" and inserting in lieu thereof "no more than one of such copies or phonorecords";

(3) by inserting at the end of subsection (a)(3) "if such notice appears on the copy or phonorecord that is reproduced under the provisions of this section";

(4) in subsection (b) by inserting "or digital" after "facsimile" and by inserting "in facsimile form" before "for deposit for research use"; and

(5) in subsection (c) by inserting "or digital" after "facsimile".

(b) VISUALLY IMPAIRED.—Title 17, United States Code, is amended by adding the following new section:

"§ 108A. Limitations on exclusive rights: Reproduction for the Visually Impaired

"Notwithstanding the provision of section 106, it is not an infringement of copyright for a non-profit organization to reproduce and distribute to the visually impaired, at cost, a Braille, large type, audio or other edition of a previously published literary work in a form intended to be perceived by the visually impaired, provided that, during a period of at least one year after the first publication of a standard edition of such work in the United States, the owner of the exclusive right to distribute such work

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in the United States has not entered the market for editions intended to be perceived by the visually impaired.".

SEC. 4. COPYRIGHT PROTECTION SYSTEMS AND COPYRIGHT MANAGEMENT INFORMATION.

Title 17, United States Code, is amended by adding the following new chapter:

"CHAPTER 12.—COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS

"Sec.
"1201. Circumvention of copyright protection systems.
"1202. Integrity of copyright management information.
"1203. Civil remedies.
"1204. Criminal offenses and penalties.

"§ 1201. Circumvention of copyright protection systems

"No person shall import, manufacture or distribute any device, product, or component incorporated into a device or product, or offer or perform any service, the primary purpose or effect of which is to avoid, bypass, remove, deactivate, or otherwise circumvent, without the authority of the copyright owner or the law, any process, treatment, mechanism or system which prevents or inhibits the violation of any of the exclusive rights of the copyright owner under section 106.

"§ 1202. Integrity of copyright management information

"(a) FALSE COPYRIGHT MANAGEMENT INFORMATION.—No person shall knowingly provide copyright management information that is false, or knowingly publicly

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distribute or import for public distribution copyright management information that is false.

"(b) REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION.—No person shall, without authority of the copyright owner or the law, (i) knowingly remove or alter any copyright management information, (ii) knowingly distribute or import for distribution copyright management information that has been altered without authority of the copyright owner or the law, or (iii) knowingly distribute or import for distribution copies or phonorecords from which copyright management information has been removed without authority of the copyright owner or the law.

"(c) DEFINITION.—As used in this chapter, "copyright management information" means the name and other identifying information of the author of a work, the name and other identifying information of the copyright owner, terms and conditions for uses of the work, and such other information as the Register of Copyrights may prescribe by regulation.

"§ 1203. Civil remedies

"(a) CIVIL ACTIONS.—Any person injured by a violation of Sec. 1201 or 1202 may bring a civil action in an appropriate United States district court for such violation.

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"(b) POWERS OF THE COURT.—In an action brought under subsection (a), the court—

"(1) may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain a violation;

"(2) at any time while an action is pending, may order the impounding, on such terms as it deems reasonable, of any device or product that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation;

"(3) may award damages under subsection (c);

"(4) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof;

"(5) in its discretion may award reasonable attorney's fees to the prevailing party; and

"(6) may, as part of a final judgment or decree finding a violation, order the remedial modification or the destruction of any device or product involved in the violation that is in the custody or control of the violator or has been impounded under subsection (2).

"(c) AWARD OF DAMAGES.—

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"(1) IN GENERAL.—Except as otherwise provided in this chapter, a violator is liable for either (i) the actual damages and any additional profits of the violator, as provided by subsection (2) or (ii) statutory damages, as provided by subsection (3).

"(2) ACTUAL DAMAGES.—The court shall award to the complaining party the actual damages suffered by him or her as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages, if the complaining party elects such damages at any time before final judgment is entered.

"(3) STATUTORY DAMAGES.—

"(A) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1201 in the sum of not less than $200 or more than $2,500 per device, product, offer or performance of service, as the court considers just.

"(B) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each

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violation of section 1202 in the sum of not less than $2,500 or more than $25,000.

"(4) REPEATED VIOLATIONS.—In any case in which the injured party sustains the burden of proving, and the court finds, that a person has violated section 1201 or 1202 within three years after a final judgment was entered against that person for another such violation, the court may increase the award of damages up to triple the amount that would otherwise be awarded, as the court considers just.

"(5) INNOCENT VIOLATIONS.—The court in its discretion may reduce or remit altogether the total award of damages in any case in which the violator sustains the burden of proving, and the court finds, that the violator was not aware and had no reason to believe that its acts constituted a violation.

"§ 1204. Criminal offenses and penalties

"Any person who violates section 1202 with intent to defraud shall be fined not more than $500,000 or imprisoned for not more than 5 years, or both.".

SEC. 5. CONFORMING AMENDMENTS.

(a) TABLE OF SECTIONS.—The table of sections for chapter 1 of title 17, United States Code, is amended by

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inserting after the item relating to section 108 the following:

"108A. Limitations on exclusive rights: Reproduction for the Visually Impaired."

(b) TABLE OF CHAPTERS.—The table of chapters for title 17, United States Code, is amended by adding at the end the following:

"12. Copyright Protection and Management Systems ..... 1201".

SEC. 6. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on the date of the enactment of this Act.

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