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105TH CONGRESS
1ST SESSION

S. 505

To amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 20, 1997

Mr. HATCH (for himself, Mr. LEAHY, Mr. D'AMATO, Mr. THOMPSON, Mr. ABRAHAM, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend the provisions of title 17, United States Code, with respect to the duration of copyright, 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 "Copyright Term Extension Act of 1997".

SEC. 2. DURATION OF COPYRIGHT PROVISIONS.

(a) PREEMPTION WITH RESPECT TO OTHER LAWS.—Section 301(c) of title 17, United States Code,

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is amended by striking "February 15, 2047" each place it appears and inserting "February 15, 2067".

(b) DURATION OF COPYRIGHT: WORKS CREATED ON OR AFTER JANUARY 1, 1978.—Section 302 of title 17, United States Code, is amended—

(1) in subsection (a) by striking "fifty" and inserting "70";

(2) in subsection (b) by striking "fifty" and inserting "70";

(3) in subsection (c) in the first sentence—

(A) by striking "seventy-five" and inserting "95"; and

(B) by striking "one hundred" and inserting "120"; and

(4) in subsection (e) in the first sentence—

(A) by striking "seventy-five" and inserting "95";

(B) by striking "one hundred" and inserting "120"; and

(C) by striking "fifty" each place it appears and inserting "70".

(c) DURATION OF COPYRIGHT: WORKS CREATED BUT NOT PUBLISHED OR COPYRIGHTED BEFORE JANUARY 1, 1978.—Section 303 of title 17, United States

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Code, is amended in the second sentence by striking "December 31, 2027" and inserting "December 31, 2047".

(d) DURATION OF COPYRIGHT: SUBSISTING COPYRIGHTS.—

(1) IN GENERAL.—Section 304 of title 17, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (1)—

(I) in subparagraph (B) by striking "47" and inserting "67"; and

(II) in subparagraph (C) by striking "47" and inserting "67";

(ii) in paragraph (2)—

(I) in subparagraph (A) by striking "47" and inserting "67"; and

(II) in subparagraph (B) by striking "47" and inserting "67"; and

(iii) in paragraph (3)—

(I) in subparagraph (A)(i) by striking "47" and inserting "67"; and

(II) in subparagraph (B) by striking "47" and inserting "67";

(B) by amending subsection (b) to read as follows:

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"(b) COPYRIGHTS IN THEIR RENEWAL TERM AT THE TIME OF THE EFFECTIVE DATE OF THE COPYRIGHT TERM EXTENSION ACT OF 1997.—Any copyright still in its renewal term at the time that the Copyright Term Extension Act of 1997 becomes effective shall have a copyright term of 95 years from the date copyright was originally secured.";

(C) in subsection (c)(4)(A) in the first sentence by inserting "or, in the case of a termination under subsection (d), within the five-year period specified by subsection (d)(2)," after "specified by clause (3) of this subsection,"; and

(D) by adding at the end the following new subsection:

"(d) TERMINATION RIGHTS PROVIDED IN SUBSECTION (c) WHICH HAVE EXPIRED ON OR BEFORE THE EFFECTIVE DATE OF THE COPYRIGHT TERM EXTENSION ACT OF 1997.—In the case of any copyright other than a work made for hire, subsisting in its renewal term on the effective date of the Copyright Term Extension Act of 1997 for which the termination right provided in subsection (c) has expired by such date, where the author or owner of the termination right has not previously exercised such termination right, the exclusive or nonexclusive grant

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of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated in subsection (a)(1)(C) of this section, other than by will, is subject to termination under the following conditions:

"(1) The conditions specified in subsection (c) (1), (2), (4), (5), and (6) of this section apply to terminations of the last 20 years of copyright term as provided by the amendments made by the Copyright Term Extension Act of 1997.

"(2) Termination of the grant may be effected at any time during a period of 5 years beginning at the end of 75 years from the date copyright was originally secured.".

(2) COPYRIGHT RENEWAL ACT OF 1992.—Section 102 of the Copyright Renewal Act of 1992 (Public Law 102–307; 106 Stat. 266; 17 U.S.C. 304 note) is amended—

(A) in subsection (c)—

(i) by striking "47" and inserting "67";

(ii) by striking "(as amended by subsection (a) of this section)"; and

(iii) by striking "effective date of this section" each place it appears and insert-

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ing "effective date of the Copyright Term Extension Act of 1997"; and

(B) in subsection (g)(2) in the second sentence by inserting before the period the following: ", except each reference to forty-seven years in such provisions shall be deemed to be 67 years".

SEC. 3. REPRODUCTION BY LIBRARIES AND ARCHIVES.

Section 108 of title 17, United States Code, is amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following:

"(h)(1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.

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"(2) No reproduction, distribution, display, or performance is authorized under this subsection if—

"(A) the work is subject to normal commercial exploitation;

"(B) a copy or phonorecord of the work can be obtained at a reasonable price; or

"(C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.

"(3) The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.".

SEC. 4. DISTRIBUTION OF PHONORECORDS.

Section 303 of title 17, United States Code, is amended—

(1) in the first sentence by striking "Copyright" and inserting "(a) Copyright"; and

(2) by adding at the end the following:

"(b) The distribution before January 1, 1978, of phonorecords shall not constitute publication of the musical work embodied therein for purposes of the Copyright Act of 1909.".

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SEC. 5. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) DISTRIBUTION OF PHONORECORDS.—The amendment made by section 4 shall not be a basis to reopen an action nor to commence a subsequent action for copyright infringement if an action in which such claim was raised was dismissed by final judgment before the date of enactment of this Act. The amendment made by section 4 shall not apply to any action pending on the date of enactment in any court in which a party, prior to the date of enactment, sought dismissal of, judgment on, or declaratory relief regarding a claim of infringement by arguing that the adverse party had no valid copyright in a musical work by virtue of the distribution of phonorecords embodying it.

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