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SEC. 4. APPLICATION TO COMPUTER PROGRAMS, COMPUTER PROGRAM DOCUMENTATION, OR PACKAGING.

Section 2318 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "a computer program or computer program documentation or packaging or" after "copy of";

(2) in subsection (b)(3), by inserting "'computer program,'" after "'motion picture,'"; and

(3) in subsection (c)(3), by inserting "a copy of a computer program or computer program documentation or packaging," after "enclose,".

SEC. 5. TRAFFICKING IN COUNTERFEIT GOODS OR SERVICES.

Section 2320 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(e) Beginning with the first year after the date of enactment of this subsection, the Attorney General shall include in the report of the Attorney General to Congress on the business of the Department of Justice prepared pursuant to section 522 of title 28, on a district by district basis, for all actions involving trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, copies of motion pictures or other audiovisual works (as defined in section 2318 of title 18), criminal infringement of copyrights (as defined in section 2319 of title 18), or trafficking in goods or services bearing counterfeit marks (as defined in section 2320 of title 18), an accounting of—

"(1) the number of open investigations;

"(2) the number of cases referred by the United States Customs Service;

"(3) the number of cases referred by other agencies or sources; and

"(4) the number and outcome, including settlements, sentences, recoveries, and penalties, of all prosecutions brought under sections 2318, 2319, and 2320 of title 18.".

SEC. 6. SEIZURE OF COUNTERFEIT GOODS.

Section 34(d)(9) of the Act of July 5, 1946 (60 Stat. 427, chapter 540; 15 U.S.C. 1116(d)(9)), is amended by striking the first sentence and inserting the following: "The court shall order that service of a copy of the order under this subsection shall be made by a Federal law enforcement officer (such as a United States marshal or an officer or agent of the United States Customs Service, Secret Service, Federal Bureau of Investigation, or Post Office) or may be made by a State or local law enforcement officer, who, upon making service, shall carry out the seizure under the order.".

SEC. 7. RECOVERY FOR VIOLATION OF RIGHTS.

Section 35 of the Act of July 5, 1946 (60 Stat. 427, chapter 540; 15 U.S.C. 1117), is amended by adding at the end the following new subsection:

"(c) In a case involving the use of a counterfeit mark (as defined in section 34(d) (15 U.S.C. 1116(d)) in connection with the sale, offering for sale, or distribution of goods or services, the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits under subsection (a), an award of statutory damages for any such use in the amount of—

"(1) not less than $500 or more than $100,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just; or

"(2) if the court finds that the use of the counterfeit mark was willful, not more than $1,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.".

SEC. 8. DISPOSITION OF EXCLUDED ARTICLES.

Section 603(c) of title 17, United States Code, is amended in the second sentence by striking "as the case may be;" and all that follows through the end and inserting "as the case may be.".

SEC. 9. DISPOSITION OF MERCHANDISE BEARING AMERICAN TRADEMARK.

Section 526(e) of the Tariff Act of 1930 (19 U.S.C. 1526(e)) is amended—

(1) in the second sentence, by inserting "destroy the merchandise. Alternatively, if the merchandise is not unsafe or a hazard to health, and the Secretary has the consent of the trademark owner, the Secretary may" after "shall, after forfeiture,";

(2) by inserting "or" at the end of paragraph (2);

(3) by striking ", or" at the end of paragraph (3) and inserting a period; and

(4) by striking paragraph (4).

SEC. 10. CIVIL PENALTIES.

Section 526 of the Tariff Act of 1930 (19 U.S.C. 1526) is amended by adding at the end the following new subsection:

"(f)(1) Any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized under subsection (e) shall be subject to a civil fine.

"(2) For the first such seizure, the fine shall be not more than the value that the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price, determined under regulations promulgated by the Secretary.

"(3) For the second seizure and thereafter, the fine shall be not more than twice the value that the merchandise would have had if it were genuine, as determined under regulations promulgated by the Secretary.

"(4) The imposition of a fine under this subsection shall be within the discretion of the United States Customs Service, and shall be in addition to any other civil or criminal penalty or other remedy authorized by law.".

SEC. 11. PUBLIC DISCLOSURE OF AIRCRAFT MANIFESTS.

Section 431(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1431(c)(1)) is amended—

(1) in the matter preceding subparagarph (A), by inserting "vessel or aircraft" before "manifest";

(2) by amending subparagraph (D) to read as follows:

"(D) The name of the vessel, aircraft, or carrier.";

(3) by amending subparagraph (E) to read as follows:

"(E) The seaport or airport of loading."; and

(4) by amending subparagraph (F) to read as follows:

"(F) The seaport or airport of discharge.".

SEC. 12. CUSTOMS ENTRY DOCUMENTATION.

Section 484(d) of the Tariff Act of 1930 (19 U.S.C. 1484(d)) is amended—

(1) by striking "Entries" and inserting "(1) Entries"; and

(2) by adding at the end the following new paragraph:

"(2) The Secretary, in prescribing regulations governing the content of entry documentation, shall require that entry documentation contain such information as may be necessary to determine whether the imported merchandise bears an infringing trademark in violation of section 42 of the Act of July 5, 1946 (60 Stat. 440, chapter 540; 15 U.S.C. 1124) or any other applicable law, including a trademark appearing on the goods or packaging.".

SEC. 13. UNLAWFUL USE OF VESSELS, VEHICLES, AND AIRCRAFT IN AID OF COMMERCIAL COUNTERFEITING.

Section 80302(a) of title 49, United States Code, is amended—

(1) by striking "or" at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(6)(A) A counterfeit label for a phonorecord, computer program or computer program documentation or packaging or copy of a motion picture or other audiovisual work (as defined in section 2318 of title 18);

"(B) a phonorecord or copy in violation of section 2319 of title 18; or

"(C) any good bearing a counterfeit mark (as defined in section 2320 of title 18).".

SEC. 14. REGULATIONS.

Not later than 6 months after the date of enactment of this Act, the Secretary of the Treasury shall prescribe such regulations or amendments to existing regulations that may be necessary to implement and enforce this Act.

MOTION OFFERED BY MR. MOORHEAD

Mr. MOORHEAD. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. MOORHEAD moves to strike out all after the enacting clause of S. 1136 and to insert in lieu thereof the text of H.R. 2511, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES

Mr. MOORHEAD. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Pursuant to rule XX and by direction of the Committee on the Judiciary, Mr. MOORHEAD moves that the House insist on its amendment to the bill S. 1136 and request a conference thereon with the Senate.

The motion was agreed to.

The SPEAKER pro tempore. Without objection, the Chair appoints the following conferees: Messrs. HYDE, MOORHEAD, GOODLATTE, CONYERS, and Mrs. SCHROEDER.

There was no objection.

A similar House bill (H.R. 2511) was laid on the table.

COPYRIGHT CLARIFICATIONS ACT OF 1996

Mr. MOORHEAD. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1861) to make technical corrections in the Satellite Home Viewer Act of 1994 and other provisions of title 17, United States Code, as amended.

The Clerk read as follows:

H.R. 1861

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 Clarifications Act of 1996".

SEC. 2. SATELLITE HOME VIEWER ACT.

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

(1) Section 2(3)(A) is amended to read as follows:

"(A) in clause (i) by striking '12 cents' and inserting '17.5 cents per subscriber in the case of superstations that as retransmitted by the satellite carrier include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations that are syndex-proof as defined

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in section 258.2 of title 37, Code of Federal Regulations; and' ".

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

"(4) Subsection (c) is amended—

"(A) in paragraph (1)—

"(i) by striking 'until December 31, 1992,';

"(ii) by striking '(2), (3) or (4)' and inserting '(2) or (3)'; and

"(iii) by striking the second sentence;

"(B) in paragraph (2)—

"(i) in subparagraph (A) by striking 'July 1, 1991' and inserting 'July 1, 1996'; and

"(ii) in subparagraph (D) by striking 'December 31, 1994' and inserting 'December 31, 1999, or in accordance with the terms of the agreement, whichever is later'; and

"(C) in paragraph (3)—

"(i) in subparagraph (A) by striking 'December 31, 1991' and inserting 'January 1, 1997';

"(ii) by amending subparagraph (B) to read as follows:

'(B) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this paragraph, the copyright arbitration royalty panel appointed under chapter 8 shall establish fees for the retransmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions. In determining the fair market value, the panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

'(i) the competitive environment in which such programming is distributed, the cost of similar signals in similar private 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 inserting 'or July 1, 1997, whichever is later' after 'section 802(g)'.".

(3) Section 2(5)(A) is amended to read as follows:

"(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:

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

"(i) before the date of the enactment of the Uruguay Round Agreements Act, if the source country of the restored work is an eligible country on such date, or

"(ii) before the date of adherence or proclamation, if the source country of the restored work is not an eligible country on such date of enactment,a reliance party may continue to exploit that derivative work for the duration of the restored copyright if the reliance party pays to the owner of the restored copyright reasonable compensation for conduct which would be subject to a remedy for infringement but for the provisions of this paragraph.".

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

(3) Subsection (h)(2) is amended to read as follows:

"(2) The 'date of restoration' of a restored copyright is the later of—

"(A) January 1, 1996, the date on which the Agreement on Trade-Related Aspects of Intellectual Property referred to in section 101(d)(15) of the Uruguay Round Agreements Act enters into force with respect to the United States, if the source country of the restored work is a nation adhering to the Berne Convention or a WTO member country on such date, or

"(B) the date of adherence or proclamation, in the case of any other source country of the restored work.".

(4) Subsection (h)(3) is amended to read as follows:

"(3) The term 'eligible country' means a nation, other than the United States, that, after the date of the enactment of the Uruguay Round Agreements Act—

"(A) becomes a WTO member,

"(B) is or becomes a member of the Berne Convention, or

"(C) becomes subject to a proclamation under subsection (g).".

SEC. 4. LICENSES FOR NONEXEMPT SUBSCRIPTION TRANSMISSIONS.

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

(1) in paragraph (1), by inserting ", or ending 30 days after the Librarian issues and publishes in the Federal Register an order adopting or rejecting the report of the copyright arbitration royalty panel, if such panel is convened" after "December 31, 2000"; and

(2) in paragraph (2), by striking "and publish in the Federal Register".

SEC. 5. ROYALTY PAYABLE UNDER COMPULSORY LICENSE.

Section 115(c)(3)(D) of title 17, United States Code, is amended by striking "and publish in the Federal Register".

SEC. 6. NEGOTIATED LICENSE FOR JUKEBOXES.

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

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

"(2) ARBITRATION.—Parties not subject to such a negotiation may determine the result of the negotiation by arbitration in accordance with the provisions of chapter 8."; and

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

"(d) DEFINITIONS.—As used in this section, the following terms mean the following:

"(1) A 'coin-operated phonorecord player' is a machine or device that—

"(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by the insertion of coins, currency, tokens, or other monetary units or their equivalent;

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

"(C) is accompanied by a list which is comprised of the titles of all the musical works available for performance on it, and is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

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

"(2) An 'operator' is any person who, alone or jointly with others—

"(A) owns a coin-operated phonorecord player;

"(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

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

SEC. 7. LIMITATIONS ON EXCLUSIVE RIGHTS; COMPUTER PROGRAMS.

Section 117 of title 17, United States Code, is amended as follows:

(1) Strike "Notwithstanding" and insert the following:

"(a) MAKING OF ADDITIONAL COPY OR ADAPTATION BY OWNER OF COPY.—Notwithstanding".

(2) Strike "Any exact" and insert the following:

"(b) LEASE, SALE, OR OTHER TRANSFER OF ADDITIONAL COPY OR ADAPTATION.—Any exact".

(3) Add at the end the following:

"(c) MACHINE MAINTENANCE OR REPAIR.—Notwithstanding the provisions of section 106, it is not an infringement for the owner or lessee of a machine to make or authorize the making of a copy of a computer program if such copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes only of maintenance or repair of that machine, provided that—

"(1) such new copy is used in no other manner and is destroyed immediately after the maintenance or repair is completed, and

"(2) with respect to any computer program or part thereof that is not necessary for that machine to be activated, such program or part thereof is not accessed or used other than to make such new copy by virtue of the activation of the machine.

"(d) DEFINITIONS.—For purposes of this section—

"(1) the term 'maintenance' of a machine means servicing the machine in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that machine; and

"(2) the term 'repair' of a machine means restoring it to the state of working in accordance with its original specifications and any changes to those specifications authorized for that machine.".

SEC. 8. PUBLIC BROADCASTING COMPULSORY LICENSE.

Section 118 of title 17, United States Code, is amended as follows:

(1) Subsection (b) is amended by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(2) Subsection (b)(2) (as redesignated by paragraph (1) of this section) is amended by striking "(2)" each place it appears and inserting "(1)".

(3) Subsection (e) is amended to read as follows:

"(e)(1) Except as expressly provided in this subsection, this section shall not apply to works other than those specified in subsection (b).

"(2) Owners of copyright in nondramatic literary works and public broadcasting entities may, during the course of voluntary negotiations, agree among themselves, respectively, as to the terms and rates of royalty payments without liability under the antitrust laws. Any such terms and rates of royalty payments shall be effective upon being filed in the Copyright Office, in accordance with regulations that the Register of Copyrights shall prescribe.".

SEC. 9. REGISTRATION AND INFRINGEMENT ACTIONS.

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

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

SEC. 10. COPYRIGHT OFFICE FEES.

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

"(b) In calendar year 1996 and in any subsequent calendar year, the Register of Copyrights, by regulation, may increase the fees specified in subsection (a) in the following manner:

"(1) The Register shall conduct a study of the costs incurred by the Copyright Office for the registration of claims, the recordation of documents, and the provision of services. The study shall also consider the timing of any increase in fees and the authority to use such fees consistent with the budget.

"(2) The Register shall have discretion to increase fees up to the reasonable costs incurred by the Copyright Office for the services described in paragraph (1) plus a reasonable inflation adjustment to account for any estimated increase in costs.

"(3) Any newly established fee based on paragraph (2) shall be rounded off to the nearest dollar, or for a fee less than $12, rounded off to the nearest 50 cents.

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"(4) The fees shall be fair and equitable and give due consideration to the objectives of the copyright system.

"(5) If upon completion of the study, the Register determines that the fees should be increased, the Register shall prepare a proposed fee schedule and submit the schedule with the accompanying economic analysis to the Congress. The fees proposed by the Register may be instituted after the end of 120 days after the schedule is submitted to the Congress unless, within that 120-day period, a law is enacted stating in substance that the Congress does not approve the schedule.".

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

"(d)(1) Except as provided in paragraph (2), all fees received under this section shall be deposited by the Register of Copyrights in the Treasury of the United States and shall be credited to the appropriations for necessary expenses of the Copyright Office. Such fees that are collected shall remain available until expended. The Register may, in accordance with regulations that he or she shall prescribe, refund any sum paid by mistake or in excess of the fee required by this section.

"(2) In the case of fees deposited against future services, the Register of Copyrights shall request the Secretary of the Treasury to invest in interest-bearing securities in the United States Treasury any portion of the fees that, as determined by the Register, is not required to meet current deposit account demands. Funds shall be invested in securities that permit funds to be available to the Copyright Office at all times if they are determined to be necessary to meet current deposit account demands. Such investments shall be in public debt securities with maturities suitable to the needs of the fund, as determined by the Register of Copyrights, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

"(3) The income on such investments shall be deposited in the Treasury of the United States and shall be credited to the appropriations for necessary expenses of the Copyright Office.".

SEC. 11. COPYRIGHT ARBITRATION ROYALTY PANELS.

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

(1) in subsection (b)(1) by striking "and 116" in the first sentence and inserting "116, and 119";

(2) in subsection (c) by inserting after "panel" at the end of the sentence the following: ", including—

"(1) authorizing the distribution of those royalty fees collected under sections 111, 119, and 1005 that the Librarian has found are not subject to controversy; and

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

(3) by amending subsection (d) to read as follows:

"(d) SUPPORT AND REIMBURSEMENT OF ARBITRATION PANELS.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, shall provide the copyright arbitration royalty panels with the necessary administrative services related to proceedings under this chapter, and shall reimburse the arbitrators at such intervals and in such manner as the Librarian shall provide by regulation. Each such arbitrator is an independent contractor acting on behalf of the United States, and shall be paid pursuant to a signed agreement between the Library of Congress and the arbitrator. Payments to the arbitrators shall be considered costs incurred by the Library of Congress and the Copyright Office for purposes of section 802(h)(1).".

(b) PROCEEDINGS.—Section 802(h)(1) of title 17, United States Code, is amended—

(1) by amending the heading to read "DEDUCTION OF COSTS OF LIBRARY OF CONGRESS AND COPYRIGHT OFFICE FROM ROYALTY FEES.—";

(2) in the first sentence by inserting "to support distribution proceedings" after "Copyright Office"; and

(3) by amending the third sentence to read as follows: "In ratemaking proceedings, the Librarian of Congress and the Copyright Office may assess their reasonable costs directly to the parties to the most recent relevant arbitration proceeding, 50 percent of the costs to the parties who would receive royalties from the royalty rate adopted in the proceeding and 50 percent of the costs to the parties who would pay the royalty rate so adopted, subject to the discretion of the arbitrators to assess costs under subsection (c).".

SEC. 12. DIGITAL AUDIO RECORDING DEVICES AND MEDIA.

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

SEC. 13. TREATMENT OF PRE-1978 PUBLICATION OF SOUND RECORDINGS.

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

(1) by striking "Copyright" and inserting "(a) Copyright"; and

(2) by adding at the end the following:

"(b) The distribution before January 1, 1978, of a phonorecord shall not for any purpose constitute a publication of the musical work embodied therein.".

SEC. 14. CONFORMING AMENDMENT.

Paragraph (5) of section 4 of the Digital Performance Right in Sound Recordings Act of 1995 is redesignated as paragraph (4).

SEC. 15. EFFECTIVE DATES.

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

(b) SATELLITE HOME VIEWER ACT.—The amendments made by section 1 shall be effective as if enacted as part of the Satellite Home Viewer Act of 1994 (Public Law 103-369).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. MOORHEAD] and the gentlewoman from Colorado [Mrs. SCHROEDER] will each be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. MOORHEAD].

GENERAL LEAVE

Mr. MOORHEAD. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 1861.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

(Mr. MOORHEAD asked and was given permission to revise and extend his remarks.)

Mr. MOORHEAD. Mr. Speaker, I rise in support of H.R. 1861, the Copyright Clarifications Act of 1996. This important legislation will assist the U.S. Copyright Office in carrying out its duties, including giving the Office the ability to set reasonable fees for basic services, subject to congressional approval. It corrects or clarifies the language in several recent amendments to the Copyright act so that Congress' original intent can be better achieved. Two provisions resolve problems created by recent judicial interpretations of provisions of the copyright law. One of these amendments makes clear that the distribution of musical disks or tapes before 1978 did not publish the musical compositions embodied in the disks or tapes. The other amendment ensures that independent service organizations have the ability to activate a computer to maintain and repair its hardware components without being held liable by a court for copyright infringement due to that activation alone.

The U.S. Copyright Office is the agency charged with primary responsibility for implementing the provisions of the Copyright Act. In early 1995, the Copyright Office submitted to the Subcommittee on Courts and Intellectual Property a number of recommendations to clarify or correct the following: the Copyright Fees and Technical Amendments Act of 1989, the Audio Home Recording Act of 1992, the Copyright Royalty Tribunal Reform Act of 1993, the Satellite Home Viewer Act of 1994, and the Digital Performance Right in Sound Recordings Act of 1995. This legislation is the result of those efforts and I want to congratulate the Register of Copyrights, Marybeth Peters, and her staff, for their great initiative and hard work.

This legislation amends section 117 to ensure that independent service organizations do not inadvertently become liable for copyright infringement merely because they have turned on a machine in order to service its hardware components. The language contained in this section of the bill was driven by the introduction of H.R. 533, by Representative KNOLLENBERG of Michigan. I thank Mr. KNOLLENBERG for bringing this important matter to the subcommittee's attention and for leading the way in negotiations between the parties which resulted in the language contained in this bill.

A provision of this bill which clarifies the law to ensure that the mere distribution of musical disks or tapes before 1978 did not constitute a publication of the musical composition embodied in those disks or tapes comes from a decision of the Ninth Circuit in the case of La Cienega Music Co. which conflicts with 90 years of practice of the U.S. Copyright Office and the longstanding legal precedent in this country, thereby casting a black cloud over the rights of every U.S. music publisher for any pre-1978 composition released on phonorecords. I want to take a moment to thank Mr. Bernard Besman, the owner of La Cienega Music Co., who has fought so hard to exhaust his remedies in the courts, and who is primarily responsible for the necessary clarification to the law that exists in H.R. 1861. Music publishers, songwriters, and all those involved in the creation of music owe Mr. Besman deep thanks for his personal sacrifice

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in pursuing through the judicial and legislative system a just solution to a wrong about which he felt strongly. He can be assured that we will work quickly to get this piece of legislation to the President's desk for his signature so that Mr. Besman's fight for all music writers and publishers can come to a rewarding end.

Mr. Speaker, all of the provisions contained in this bill are necessary for the proper functioning of the U.S. Copyright Office and the Copyright system, I am unaware of any opposition to this legislation, and I urge a favorable vote on H.R. 1861.

Mr. Speaker, I reserve the balance of my time.

Mrs. SCHROEDER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker. I again thank my subcommittee chairman, the distinguished gentleman from California, [Mr. MOORHEAD], and I join the subcommittee chairman and the members of the subcommittee in supporting H.R. 1861, which has a whole number of provisions that clarify the copyright law.

So we are doing two things today. In the prior bill we increased the penalties, and here we are making it as clear as possible what the copyright law should be. Some of these provisions correct drafting errors in prior recent amendments to the law. Other provisions are intended to assist the Copyright Office in carrying out their duties. These provisions are basically technical and housekeeping in nature. This is one of the few housekeeping tasks I ever do in my role here. They are described in detail in the bill report that accompanies this.

Another provision reinstates the longstanding view of the Copyright Office that has been confirmed by the Second Circuit Court of Appeals that the sale or distribution of recordings to the public before 1978 did not constitute publication of the music composition embodied in the recording.

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This longstanding view, however, was rejected by the ninth circuit last year, and that created a good deal of uncertainty for many musical works that have been recorded and sold before 1978. This bill is intended to remove that uncertainty by confirming the longstanding view of the Copyright Office and what everybody had thought had been the law before the ninth circuit decision.

Finally, there is a narrowly crafted provision that enables independent service organizations that have the ability to activate a computer to maintain and repair its hardware components without becoming liable for copyright infringement.

I want to emphasize the extremely narrow reach of this provision. It is designed to maintain undiminished copyright protection to authors of computer programs, while making it possible for third parties to service the computer hardware.

The provisions of this bill have received the support of the Register of Copyrights who testified before our subcommittee on behalf of the U.S. Copyright Office. I urge my colleagues to support this bill.

Mr. Speaker, having no further requests for time, I yield back the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield 5 minutes to the gentleman from Michigan [Mr. KNOLLENBERG].

Mr. KNOLLENBERG. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I want to thank Chairman MOORHEAD for pushing this bill through Congress. It is a tribute to his fine leadership—and leadership we will miss when he departs at the end of this Congress.

I am very pleased the chairman has provided this opportunity to move this important, bipartisan bill through the House. My bill, H.R. 533, has been included in this legislation, and I want to extend my appreciation to the chairman for choosing to include our language.

My bill is designed to ensure that independent service organizations [ISO's] do not inadvertently become liable for copyright infringement merely because they have turned on a machine in order to service its hardware components.

As it is written, current law holds them liable when they flip the switch. It places a heavy burden on our workers who need to service our computer systems. And a strict enforcement of this law could shut down the multibillion dollar high technology maintenance industry which provides thousands of jobs.

In today's business world, our computer service technicians must have the flexibility to do their jobs without the fear they are breaking copyright laws.

Every day our reliance on our computer systems is growing, and in today's deadline-filled, rushed business world, minutes can mean millions.

These restrictions also have a negative impact on consumers. Costs and convenience are major factors when using specific computer service people. Forcing consumers into strict requirements of who can and cannot service your computer will certainly negatively impact consumers and businesses alike.

With the personal computer as common in our day-to-day lives as any other household item, we need to give our computer repairmen the flexibility and opportunity to service our systems.

At this point I would like to enter into a colloquy with the distinguished chairman of the Courts and Intellectual Property Subcommittee.

Mr. Chairman, the report language states:

When a computer is activated, that is when it is turned on, certain software or parts thereof (generally the machine's operating system software) is automatically copied into the machine's random access memory, or RAM.

In the very next sentence it states:

During the course of activating the computer, different parts of the operating system may reside in the RAM at different times because the operating system is sometimes larger than the capacity of the RAM.

Mr. Chairman, does activating the computer mean allowing the entire operating system to be loaded by the computer into the RAM, even if different parts of the operating system are not loaded in one step?

Mr. MOORHEAD. If the gentleman will yield, Mr. Speaker, the gentleman is correct. Activation may include getting the different parts of the operating system through the RAM. Because the entire operating system may not entirely fit into the RAM, activation may proceed through a series of steps until the entire operating system is fully loaded.

Mr. KNOLLENBERG. Again, I want to thank the chairman for his efforts and hard work. I want to thank him for including my legislation in this bill.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. MOORHEAD] that the House suspend the rules and pass the bill, H.R. 1861, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

BOATING AND AVIATION OPERATION SAFETY ACT OF 1996

Mr. GEKAS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 234) to amend title 11 of the United States Code to make nondischargeable a debt for death or injury caused by the debtor's operation of watercraft or aircraft while intoxicated, as amended.

The Clerk read as follows:

H.R. 234

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 "Boating and Aviation Operation Safety Act of 1996".

SEC. 2. AMENDMENT.

Section 523(a)(9) of title 11, United States Code, is amended by inserting ", watercraft, or aircraft" after "motor vehicle".

SEC. 3. EFFECTIVE DATE; APPLICATION OF AMENDMENT.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendment made by section 2 shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENT.—The amendment made by section 2 shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.

HeinOnline -- 1 Copyright Technical Amendments Act (Satellite Home Viewer Act, Amendments), P.L. 105-80, 111 Stat. 1529 H5784 1997

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HeinOnline -- 1 Copyright Technical Amendments Act (Satellite Home Viewer Act, Amendments), P.L. 105-80, 111 Stat. 1529 [i] 1997

HeinOnline -- 1 Copyright Technical Amendments Act (Satellite Home Viewer Act, Amendments), P.L. 105-80, 111 Stat. 1529 [ii] 1997