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Bill H.R.3045	Date Oct. 16, 1989 (139)	Page(s) H7066-7068

Action:

Copyright remedy clarification: H.R. 3045, to amend chapters 5 and 9 of title 17, United States Code, to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of copyright and infringement of exclusive rights in mask works, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private person or against other public entities.

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COPYRIGHT REMEDY CLARIFICATION ACT

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3045) to amend chapters 5 and 9 of title 17, United States Code, to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of copyright and infringement of exclusive rights in mask works, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private person or against other public entities.

The Clerk read as follows:

H.R. 3045

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 Remedy Clarification Act".

SEC. 2. LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS FOR INFRINGEMENT OF COPYRIGHT AND EXCLUSIVE RIGHTS IN MASK WORKS.

(a) COPYRIGHT INFRINGEMENT.—(1) Section 501(a) of title 17, United States Code, is amended by adding at the end the following: "As used in this subsection, the term 'anyone' includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.".

(2) Chapter 5 of title 17, United States Code, is amended by adding at the end the following new section:

"§ 511. Liability of States, instrumentalities of States, and State officials for infringemnet of copyright

"(a) IN GENERAL.—Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for a violation of any of the exclusive rights of a copyright owner provided by sections 106 through 119, for importing copies of phonorecords in violation of section 602, or for any other violation under this title.

"(b) REMEDIES.—In a suit described in subsection (a) for a violation described in that subsection, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any public or private entity other than a State, instrumentality of a State, or officer or employee of a State acting in his or her official capacity. Such remedies include impounding and disposition of infringing articles under section 503, actual damages and profits and statutory damages under section 504, costs and attorney's fees under section 505, and the remedies provided in section 510.".

(3) The table of sections at the beginning of chapter 5 of title 17, United States Code, is amended by adding at the end the following new item:

"Sec. 511. Liability of States, instrumentalities of States, and State officials for infringement of copyright.".

(b) INFRINGEMENT OF EXCLUSIVE RIGHTS IN MASK WORKS.—(1) Section 910(a) of title 17, United States Code, is amended by adding at the end the following: "As used in this subsection, the term 'any person' includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.".

(2) Section 911 of title 17, United States Code, is amended by adding at the end the following new subection:

"(g)(1) Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for a violation of any of the exclusive rights of the owner of a mask work under this chapter, or for any other violation under this chapter.

(2) In a suit described in paragraph (1) for a violation described in that paragraph, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any public or private entity other than a State, instrumentality of a State, or officer or employee of a State acting in his or her official capacity. Such remedies include actual damages and profits under subsection (b), statutory damages under subsection (c), impounding and disposition of infringing articles under subsection (e), and costs and attorney's fees under subsection (f).".

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall take effect with respect to violations that occur on or after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Wisconsin [Mr. KASTENMEIER] will be recognized for 20 minutes, and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. KASTENMEIER].

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

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

Mr. KASTENMEIER. Mr. Speaker, in 1976, Congress enacted the Copyright Act, which completely revised our copyright laws. One of the law's central premises was that a uniform system should be established. Pursuant to this premise, the Congress decided that, in general, defendants in copyright infringement suits would be treated equally, no matter what their status. In other words, if States infringed copyrights, the Congress intended that they should be held fully liable, for money damages as well as other relief.

However, in 1985, the Supreme Court held in Atascadero State Hosptial versus Scanlon that unless Congress explicitly and unambiguously abrogates the 11th amendment, States are immune from suits for money damages. While Atascadero was not a copyright case, it raised analogous questions about the copyright law. In fact, a number of Federal circuits have relied on Atascadero in deciding that, while Congress did intend to apply all copyright infringement remedies to the States, the language of the statute is not sufficiently clear. They have therefore held that the States are immune.

Because of these decisions, copyright owners are often unable to obtain fair and full relief when their copyrights are infringed. Injunctive relief, which is still available, prevents only future violations. It does not compensate for past harm, as monetary damages do.

Pursuant to these decisions, copyright owners have also been denied statutory damages and attorneys' fees. These kinds of recoveries are often essential to protect the rights of individual authors and small entrepreneurs, and to enable them to obtain counsel. During consideration of H.R. 3045, some in the educational community suggested that we should make an exception to the law to exempt States from liability for statutory damages and attorneys' fees. The concerns that the educational community has raised were specifically addressed in the 1976 revision effort. In the interests of the uniformity and equity that are essential premises of the Copyright Act, these concerns were rejected. I believe that the agreements made at that time continue to be vaid and should be supported now.

H.R. 3045, the Copyright Remedy Clarification Act, will encourage the creative process that benefits us all. Unless the legitimate rights of copyright owners are protected, many authors will not take the risks that creative endeavors often entail.

H.R. 3045 simply clarifies what Congress intended in the 1976 Copyright Act. When States infringe copyrights, they are liable for money damages. It does so by incorporating certain standards set forth by the Supreme Court in its last term. These standards must be met in order effectively and constitutionally to abrogate the 11th amendment.

Another constitutional question that arose during the committee's examination of the 11th amendment has also been resolved. It is clear that Congress is constitutionally empowered to abrogate that amendment pursuant to its 14th amendment powers. However, Congress' powers to enact the copyright laws arise under article 1 of the Constitution. Until the Supreme Court's last term, it was unclear whether Congress had the power to abrogate the 11th amendment pursuant to article I. Last June, the Court decided five cases that led the committee to conclude that Congress does have such power. This potential constitutional obstacle to H.R. 3045 has therefore also been eliminated.

The Register of Copyrights and the administration recommend that the Congress enact H.R. 3045. In addition, a wide range of parties with diverse interests in the copyright law support this bill.

In short, through various judicial decisions issued after the copyright law was enacted, an important loophole in that law was created. H.R. 3045 fills that loophole. It clarifies that the intent of Congress in 1976 wes to authorize imposition on the States of all available copyright infringement remedies, and that this continues to be our intent.

I thank my colleagues on the subcommittee, and in particular my colleague CARLOS MOORHEAD, for their strong support of this legislation. I urge my colleagues in the House to support it as well.

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

Mr. Speaker, I would like to concur in the remarks of the chairman of the Subcommittee on Courts, Intellectual Property and Administration of Justice, Mr. KASTENMEIER, and indicate my strong support for H.R. 3045, the Copyright Remedy Clarification Act. I would also like to commend the ranking member of the full Judicary Committee, Mr. FISH, as well as other members of the subcommittee for taking the initiative on this important issue.

The need for a careful study of the law in this area and indeed for the legislation was prompted by the Supreme Court's decision in *Atascadero State Hospital* v. *Scanlon*, 473 U.S. 234 (1985). In Atacadero the Supreme Court held that in order for Congress to abrogate State's immunity in a statute it must specifically include States in the defendant class. After Atascadero, several district courts addressing the issue found that States were immune from suit for damages in copyright infringement cases. These courts rather than looking at the Copyright Act is a whole, focused instead on the language that Congress had written in establishing the defendant class in the copyright act and found that congressional intent was less than clear with regard to whether or not the States were covered.

It was back on August 3, 1987, that the chairman and I wrote to Ralph Oman, the Register of Copyrights, requesting that the Copyright Office conduct a study of the copyright liability of the States and the 11th amendment. The Copyright Office report for which I commend Mr. Oman and his fine, staff was submitted on June 27, 1988, and concluded that:

• • • Congress intended to hold States responsible under the Federal copyright law, and that copyright owners have demonstrated that they will suffer immediate harm if they are unable to sue infringing States in Federal court for money damages.

Using the Copyright Office report as a starting point, the Courts Subcommittee held 2 days of hearings on H.R. 3045. The thust of the majority of the testimony presented to the subcommittee concurred with the conclusion of the Copyright Office report and urged Congress to act quickly before the problem became greater. I was not a member of the Courts Subcommittee when it considered the 1976 revision of the Copyright Office. It is clear to me that Congress in fact intended to cover the States under the 1976 act and H.R. 3045 is merely a reaffirmation of the that intent. It is also important to note that H.R. 3045 will in no way change the substantive rights of copyright owners. Mr. Speaker, H.R. 3045 has strong support from the vast majority of the copyright community and accordingly, I urge my colleagues' support for the legislation.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. FISH].

Mr. FISH. Mr. Speaker, I rise in support of H.R. 3045, which would amend the Copyright Act to provide that a State may be sued in Federal court for infringement. This is merely a reaffirmation of Congress' original intent when it enacted the 1976 revision of the Copyright Act, but it is important we do so, and I commend the chairman of the Subcommittee on Courts, Intellectual Property and the Administration of Justice, Mr. KASTENMEIER, as well as the ranking minority member of the subcommittee, Mr. MOORHEAD.

for addresing this issue in a timely manner.

Up until the Supreme Court's decision in *Atascadero State Hospital* V. *Scanlon*, 473 U.S. 234 (1985), courts had held that State governments were subject to suit for damages for copyright infringement. However, in Atascadero the Supreme Court enunciated a very stringent legislative intent standard that Congress must meet if it wishes to abrogate State sovereign immunity. Applying the standard set out in Atascadero lower courts began holding that Congress' intent was no sufficiently clear in the 1976 act and therefore States were immune from suit for damages in copyright infringement cases.

The thrust of H.R. 3045 is to make unmistakably clear Congress' original intent in a manner consistent with the Atascadero decision. The legislation has strong support and I urge my colleagues' support for its passage.

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

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

The SPEAKER pro tempore. (Mr. MCDERMOTT). The question is on the motion offered by the gentleman from Wisconsin [Mr. KASTENMEIR] that the House suspend the rules and pass the bill, H.R. 3045.

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

A motion to reconsider was laid on the table.