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INTRODUCED BY MR. DeCONCINI AND MR. HATCH

By Mr. DECONCINI (for himself and Mr. HATCH):

S. 756. A bill to amend title 17, United States Code, the copyright renewal provisions, and for other purposes; to the Committee on the Judiciary.

COPYRIGHT RENEWAL PROVISIONS

● Mr. DECONCINI. Mr. President, along with Senator HATCH, my colleague and the ranking minority member on the Judiciary Committee's Subcommittee on Patents, Copyrights and Trademarks, and at the request of the Register of Copyrights, I am introducing legislation today to amend two provisions of the copyright law.

Section 1 of the bill will provide a more equitable term of protection to a certain class of authors by modifying a provision remaining from the old copyright law. Section 2 repeals a requirement for the Copyright Office to prepare a report every 5 years on library photocopying of copyrighted materials. The copyright community feels that this report can safely be eliminated, and that Copyright Office resources could then be freed for analyses and reports on more pressing issues.

Section 1 will eliminate the current requirement for certain authors to file a renewal registration with the Copyright Office to obtain a second term of protection. It will create an automatic renewal system for all works copyrighted before January 1, 1978.

Section 1 makes no retroactive changes. The automatic renewal provision would apply only to works that are still in their first, 28-year term of protection on the date the bill becomes law. If the bill is enacted in 1991, the only works affected would be those copyrighted by publication with notice, or unpublished and registered with the Copyright Office, between 1963 and December 31, 1977. These works would automatically receive the same 47-year additional term of protection now available for pre-1978 works, whether or not the person entitled to the additional protection has filed a renewal registration with the Copyright Office. Works that are in the public domain when this bill becomes law will remain in the public domain.

For most works created on or after January 1, 1978, the 1976 Copyright Law Revision—Public Law 94-533—established a term of protection for the life of the author plus 50 years. For anonymous works, pseudonymous works, and works made for hire, the 1976 law established a term of protection of 75 years from the date of publication, or 100 years from the date of creation, whichever expired first. These provisions would remain unchanged by this legislation. The focus of section 1 of the bill is the renewal registration system that was left intact by the 1976 revisions for most works created before 1978.

The renewal registration system is one of the last vestiges of the old copyright law and carries with it the harsh consequences of that law. Failure to renew copyright for a pre-1978 work in the 28th year of protection causes it to fall irretrievably into the public domain in the United States.

The Senate report to the 1976 Copyright Law Revision called the renewal provision "* * * one of the worst features of the present copyright law * * * A substantial burden and expense, this unclear and highly technical requirement results in incalculable amounts of unproductive work. In a number of cases it is the cause of inadvertent and unjust loss of copyright." (S. Rept. No. 94-4573, 94th Cong. 1st Sess. 117-8 (1975).)

The renewal registration provision was consequently eliminated by the 1976 revisions for works created on and after January 1, 1978, but was retained for works still in their first term of protection on December 31, 1977. At the time, Congress felt that eliminating the renewal provision for pre-1978 works could upset existing expectancies and contractual relations.

Section 1 of this bill has been drafted with great care to address the chief concern of the drafters of the 1976 revisions. This bill will not impair existing expectancies or contractual interests in the renewal term. In fact, these expectancies and interests are now more clearly delineated in light of last year's Supreme Court decision in *Stewart* v. *Abend* (110 S. Ct. 750; 109 L. Ed. 2d 184.)

More importantly, this bill will help eliminate the harm that has been borne by authors and their heirs because of the existing renewal requirements. Most of the works affected by this amendment are minor works by less noted authors, but they supply a valuable source, sometimes the sole source, of income for the authors and their families. Many authors and their heirs are unaware of the renewal requirements for works created before 1978 and the need for careful recordkeeping and monitoring in order to file a timely renewal application for each copyrighted work. Frequently, authors or their heirs may rely on agents or publishers who, through inadvertence or neglect fail to file renewal registrations in the 28th year.

On January 1 of the 29th year, these unrenewed works simply fall into the public domain. Once this occurs, copyright protection ends and the works cannot be retrieved from the public domain. In 1976, Congress created a new term of copyright protection for authors of post-1977 works for reasons of fairness and certainty. For these reasons a change to the existing renewal provisions is clearly needed.

During the debate on the 1976 revisions, educators and scholars voiced concerns that keeping works out of the public domain by extending the duration of copyright protection would limit access to valuable material. Congress weighed these concerns against the rights of authors and on balance found in favor of extending the term of protection.

The Senate report on that legislation noted that providing a longer term of copyright protection "would not restrain scholars from using any work as source material of from making 'fair use' of it * * *" (S. Rept. No. 94-473, 94th Cong. 1st Sess. 119 (1975).) Also, Congress found that the most important works—materials that are most valuable to scholars and students—would be renewed anyway. The proposal to permit copyrighted works to be renewed automatically would not change this fact.

In 1976, Congress extended the second term of protection to 47 years for the works covered under this bill. This bill does not further extend the term of protection. It simply allows all authors entitled to copyright protection to receive it fairly by eliminating the complicated recordkeeping involved in renewing the registration for each of their works.

To be sure, affirmative renewal of registrations of copyrighted works can benefit both their creators and the public. Copyright Office records of these renewal registrations allow users of copyrighted materials to locate authors or their successors in interest so they can either license works, or determine when they will fall into the public domain. For these reasons, section would further enhance the public record and offer incentives for authors to voluntarily continue to register renewal claims with the Copyright Office.

First, the bill identifies the parties who are entitled to the renewal term. This provision will make it easier for users to find authors or their successors for licensing purposes. In the absence of the filing of a renewal registration, the bill specifies that copyright owners in the second term of protection are the person or persons entitled under the statute to the renewal on the last day of the original term of copyright.

Except for a very narrow class of claimants in works covered by the Universal Copyright Convention, current Copyright Office practices require an original registration in the first term before a renewal registration can be filed. It is clearly stated in the bill that this practice would continue: Original registrations could only be made in the first term. However, using its existing administrative authority, the Coyright Office could permit a renewal registration in the absence of an original registration under special circumstances.

Second, prima facie evidentiary weight would be accorded only to those renewal registrations filed within 1 year before the expiration of the first term. Third, derivative works created in the first term could continue to be used in the second term without permission from the copyright owner where no renewal registration has been made within 1 year before the expiration of the original term. But no new derivative works could be created in the second term without permission from the copyright owner.

Finally, the bill provides for fines of up to $2,500 for any false representation in the application of copyright renewal registrations.

Mr. President, another key issue in the debate during the 1976 Copyright Law Revisions was the "fair use" limitation on copyright protection. After extensive consideration of the many elements of this judicially created doctrine, the drafters of the 1976 revisions decided to codify it as section 107 of the law. A separate provision relating to photocopying in libraries and archives was included as section 108. This section authorizes libraries and archives to provide single photocopies of copyrighted materials for use by students and scholars.

Library photocopying is carefully circumscribed by the statute. The law clearly states that only one copy of copyrighted material can be made available to users, that the copy is not to be used for commercial advantage and that notice of copyright should be affixed to the materials. The law also requires the Register of Copyrights to prepare a report for Congress every 5 years that examines whether libraries and archives have been using their limited authority to photocopy copyrighted materials within reason.

After submitting two reports, the Register has concluded that libraries have not exploited the limitation and that photocopying in the circumstances prescribed by the law has achieved "the statutory balancing of the rights of creators and the needs of users" (17 U.S.c. § 108(i).)

For these reasons, section 2 of this bill repeals the report requirement. Repeal will save a small amount of money and Copyright Office resources, but at Congress' request or on the Copyright Office's initiative, those resources can be used to examine more pressing matters about the fair use limitation.

The Copyright Office has obtained the cooperation and support for the registration renewal provision from the copyright community, including the publishing, motion picture, sound recording, and software industries as well as authors and their representative organizations. I wish to thank the Office for its diligence in examining and reporting on the fair use limitation for library photocopying, and the value of that provision in achieving the appropriate balance between the rights of authors and the needs of users.

Mr. President, I urge my colleagues to support both provisions of this legislation. It will remove inequities in the current copyright renewal system and allow Copyright Office funds and resources to be used to examine emerging issues.

I ask unanimous consent that the entire text of the bill and a section-by-section analysis of its provision be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 756

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

SECTION 1. COPYWRITHT RENEWAL PROVISIONS.

(a) DURATION OF COPYRIGHT: SUBSISTING COPYRIGHTS.—Section 304(a) of title 17, United States Code, is amended to read as follows:

"(a) COPYRIGHTS IN THEIR FIRST TERM ON JANUARY 1, 1978.—(1)(A) Consistent with the provisions of subparagraphs (B) and (C), any copyright, the first term of which is subsisting on January 1, 1978, shall endure for 28 years from the date it was originally secured.

"(B) In the case of any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of 47 years.

"(C) In the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will,

his or her next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of 47 years.

"(2)(A) At the expiration of the original term of copyright in a work specified in paragraph (1)(A) of this subsection, the copyright shall endure for a renewed and extended further term of 47 years which shall vest upon the beginning of such further term—

"(i) in the proprietor of the copyright if—

"(I) an application to register a claim to such further term shall have been made to the Copyright Office and registered within 1 year prior to the expiration of the original term of copyright; or

"(II) no such application is made and registered; and

"(ii) in the person or entity that was the proprietor of the copyright on the last day of the original term of copyright.

"(B) At the expiration of the original term of copyright in a work specified in paragraph (1)(C) of this subsection, the copyright shall endure for a renewed and extended further term of 47 years which shall vest, upon, the beginning of such further term—

"(i) in any person entitled under paragraph (1)(C) to the renewal and extension of the copyright, if—

"(I) an application to register a claim to such further term shall have been made to the Copyright Office and registered within 1 year prior to the expiration of the original term of copyright; or

"(II) no such application is made and registered; and

"(ii) in any person entitled under paragraph (1)(C), as of the last of the original term of copyright, to such further term of 47 years.

"(3)(A) An application to register a claim to the renewed and extended term of copyright in a work may be made to the Copyright Office—

"(i) within 1 year prior to the expiration of the original term of copyright by any person entitled under paragraph (1)(B) or (C) to such further term of 47 years; and

"(ii) at any time during the renewed and extended term by any person in whom such further term vested, under paragraph (2)(A) or (B), or their successors or assigns, so long as the application is made in the name of the vested statutory claimants.

"(B) Such an application is not a condition of the renewal and extension of the copyright in a work for a further term of 47 years.

"(4)(A) If an application to register to claim to the renewed and extended term of copyright in a work is not made and registered within 1 year before the expiration of the original term of copyright in a work, then a derivative work prepared under authority of a grant made prior to the expiration of the original term of copyright, may continue to be utilized under the terms of the grant during the renewed and extended term of copyright, but this privilege does not extend to the preparation during such renewed and extended term of other derivative works based upon the copyrighted work covered by such grant.

"(B) If an application to register a claim to the renewed and extended term of copyright in a work is made and registered within 1 year before its expiration, the certificate of such registration shall constitute prima facie evidence as to the validity of the copyright during its renewed and extended term and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration of a renewed and extended term of copyright made thereafter shall be within the discretion of the court.".

(b) LEGAL EFFECT OF RENEWAL OF COPYRIGHT IS UNCHANGED.—The renewal and extension of a copyright for a further term of 47 years as provided under section 304(a)(1) and (2) of title 17, United States Code (as amended by subsection (a) of this section) shall have the same effect with respect to prior grants of a transfer of license of the further term as did the renewal of a copyright prior to the effective date of this Act under the law then in effect.

(c) REGISTRATION PERMISSIVE.—Section 408(a) of title 17, United States Code, is amended to read as follows:

"(a) REGISTRATION PERMISSIVE.—At any time during the subsistence of the first term of copyright in any published or unpublished work in which the copyright was secured before January 1, 1978, and during the subsistence of any copyright secured on or after that date, the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim by delivering to the Copyright Office the deposit specified by this section, together with the application and fee specified by sections 409 and 708. Such registration is not a condition of copyright protection.".

(d) FALSE REPRESENTATION.—Section 506(e) of title 17, United States Code, is amended to read as follows:

"(e) FALSE REPRESENTATION.—Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in the application for a renewal registration, or in any written statement filed in connection with either application, shall be fined not more than $2,500.".

(e) COPYRIGHT OFFICE FEES.—Section 708(a)(2) of title 17, United States Code, is amended to read as follows:

"(2) on filing each application of registration of a claim to a renewal of a subsisting copyright under section 304(a), including the issuance of a certificate of registration if registration is made, $20.".

(f) EFFECTIVE DATE; COPYRIGHTS AFFECTED BY AMENDMENT.—(1) This section shall take effect upon the date of enactment.

(2) The provisions of this section shall apply only to those copyrights secured between January 1, 1963 and December 31, 1977. Copyrights secured prior to January 1, 1963 shall be governed by the provisions of section 304(a) in effect on the day prior to the effective date of this Act.

SEC. 2. REPEAL OF COPYRIGHT REPORT TO CONGRESS.

Section 108(i) of title 17, United States Code, is repealed.

SECTION-BY-SECTION ANALYSIS OF S. 756

Section 1(a) amends section 304(a) of the Copyright Law to eliminate the renewal registration requirement for works copyrighted before January 1, 1978. These works would automatically receive the same, 47 year additional term of protection now available for pre-1978 works, whether or not the person entitled to the additional protection has filed a renewal registration with the Copyright Office in the 28th year of the first term. Section 1(a) also makes several conforming amendments and offers authors of copyrighted works incentives to voluntarily renew registrations for those works. These incentives will enhance the public record of copyright works.

Section 1(b) explains that the legal effect of an automatic renewal of the copyright term is the same as for renewals under current law.

Section 1(c) is a conforming amendment creating a voluntary renewal registration system for pre-1978 works.

Section 1(d) applies the penalty for false representations made in applications for copyright registrations to applications for renewal registrations.

Section 1(e) increases the fees for voluntary copyright renewal registration to $20.

Section 2 repeals section 108(i) of the copyright law, eliminating the Report to Congress on library photocopying required by that section.●