CONGRESSIONAL RECORD

103RD CONGRESS

HOUSE

Bill	Date	Page(s)
H.R. 897	Nov. 20, 1993	H10308-12

Action:

Amended and passed under suspension of the rules

Suspensions: House voted to suspend the rules and pass the following measures:

Copyright Reform Act: H.R. 897, amended, to amend title 17, United States Code, to modify certain recordation and registration requirements, and to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal. Agreed to amend the title;

Pages H10308–12

COPYRIGHT REFORM ACT OF 1993

Mr. HUGHES. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 897) to amend title 17, United States Code, to modify certain recordation and registration requirements, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, and for other purposes, as amended.

The Clerk read as follows:

H.R. 897

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 Reform Act of 1993".

SEC. 2. DEPOSIT OF COPIES OR PHONORECORDS FOR LIBRARY OF CONGRESS.

Section 407 of title 17, United States Code, is amended as follows:

(1) Subsection (a) is amended by striking "(a)" and all that follows through "publication—" and inserting the following:

"(a) REQUIRED DEPOSITS.—Except as provided in subsection (c), the owner of copyright in a work or of the exclusive right of publication of a work in the United States shall deposit, after the earliest date of such publication—".

(2) Subsection (b) is amended—

(A) by inserting "DEPOSIT IN COPYRIGHT OFFICE.—" after "(b)"; and

(B) by adding at the end the following: "A deposit made under this section may be used to satisfy the deposit requirements of section 408.".

(3) Subsection (c) is amended—

(A) by inserting "REGULATIONS.—" after "(c)"; and

(B) by striking "Register of Copyrights" and inserting "Librarian of Congress".

(4) Subsection (d) is amended—

(A) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(B) by striking "(d) At any time after publication of a work as provided by subsection (a)" and inserting the following:

"(d) PROCEDURES.—(1) During November of each year, the Librarian of Congress shall publish in the Federal Register a statement of the categories of works of which the Library of Congress wishes to acquire copies or phonorecords under this section during the next calendar year. The Librarian shall review such statement annually in light of the changes in the Library's policies and procedures, changes in technology, and changes in patterns of publication. The statement shall also describe—

"(A) the types of works of which only one copy or phonorecord need be deposited;

"(B) the types of works for which the deposit requirements may be fulfilled by placing the Library of Congress on a subscription list; and

"(C) the categories of works which are exempt under subsection (c) from the deposit requirements.

"(2) At any time after publication in the United States of a work or body of works";

(C) by striking "Register of Copyrights" and inserting "Librarian of Congress";

(D) by inserting after the first sentence the following: "Such demand shall specify a date for compliance with the demand.";

(E) by inserting "in a civil action" after "are liable";

(F) in subparagraph (B) (as redesignated by subparagraph (A) of this paragraph) by striking "cost of" and inserting "cost to";

(G) in subparagraph (C) (as redesignated by subparagraph (A) of this paragraph) by striking "clauses (1) and (2)" and inserting "subparagraphs (A) and (B)"; and

(H) by adding after subparagraph (C) (as so redesignated) the following:

"In addition to the penalties set forth in subparagraphs (A), (B), and (C), the person against whom an action is brought under this paragraph shall be liable in such action for all costs of the United States in pursuing the demand, including an amount equivalent to a reasonable attorney's fee.".

(5) Subsection (e) is amended—

(A) by inserting "TRANSMISSION PROGRAMS.—" after "(e)";

(B) by striking "Register of Copyrights shall, after consulting with the Librarian of Congress and other interested organizations and officials," and inserting "Librarian of Congress shall, after consulting with interested organizations and officials,"; and

(C) in paragraph (2) by striking "Register of Copyrights" and inserting "Librarian of Congress".

(6) Section 407 of title 17, United States Code, is further amended by adding at the end the following:

"(f) OBLIGATION TO MAKE DEPOSITS.—Immediately upon the publication in the United States of any work in which copyright subsists under this title, it shall be the obligation of the persons identified in subsection (a) with respect to that work, subject to the requirements and exceptions specified in this section, to deposit, for the use or disposition of the Library of Congress, the copies or phonorecords specified in such subsection. The obligation to make such deposit arises without any prior notification or demand for compliance with subsection (a).

"(g) RECORDS OF DEPOSITS.—The Librarian of Congress shall establish and maintain public records of the receipt of copies and phonorecords deposited under this section.

"(h) DATABASE OF DEPOSIT RECORDS.—The Librarian of Congress shall establish and maintain an electronic database containing its records of all deposits made under this section on and after October 1, 1995, and shall make such database available to the public through one or more international information networks.

"(i) DELEGATION AUTHORITY.—The Librarian of Congress may delegate to the Register of Copyrights or other officer or employee of the Library of Congress any of the Librarian's responsibilities under this section.".

SEC. 3. COPYRIGHT REGISTRATION IN GENERAL.

Section 408 of title 17, United States Code, is amended—

(1) in subsection (c)—

(A) in paragraph (1) by adding at the end the following: "The Register is also authorized to specify by regulation classes of material in which registration may be made without deposit of any copy or phonorecord, in cases in which the Register determines that the purposes of examination, registration, and deposit can be adequately served by deposit of descriptive material only, or by a written obligation to deposit copies or phonorecords at a later date."; and

(B) in paragraph (2) by striking "periodicals, including newspapers" and all that follows through the end of subparagraph (B) and inserting "collective works, including periodicals, published within a 5-year period, on the basis of a single deposit and application and upon payment of any special registration fee imposed under section 708(a)(10), if the application identifies each work separately, including the collective work containing it and its date of first publication."; and

(2) by adding at the end the following:

"(f) COPYRIGHT OFFICE HEARINGS.—Not later than 1 year after the effective date of this subsection, and at 1-year intervals thereafter, the Register of Copyrights shall hold public hearings to consider proposals to amend the regulations and practices of the Copyright Office with respect to deposit of works in order to eliminate deposits that are unnecessary for copyright examination or the collections of the Library of Congress, and in order to simplify the registration procedures.".

SEC. 4. APPLICATION FOR COPYRIGHT REGISTRATION.

(a) APPLICATIONS.—Section 409 of title 17, United States Code, is amended—

(1) by striking "The application" and inserting "(a) CONTENTS OF APPLICATION.—The application";

(2) in paragraph (5) by inserting before the semicolon the following: ", and if the document by which ownership was obtained has been recorded in the Copyright Office, the volume and page number of such recordation";

(3) by striking paragraphs (9) and (10) and inserting the following:

"(9) in the case of a compilation or derivative work, an identification of any preexisting work or works that it is substantially based on or substantially incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered;

"(10) at the option of the applicant, names, addresses, and telephone numbers of persons or

organizations that potential users of the work should contact concerning permissions or licenses to use the work, and any information with respect to the terms of such permissions or licenses; and"; and

(4) by adding at the end the following:

"(b) SHORT-FORM APPLICATION.—

"(1) USE OF SHORT-FORM.—The Register of Copyrights shall prescribe a short-form application which may be used whenever—

"(A) the work is by a living author;

"(B) the claimant is the author;

"(C) the work is not anonymous, pseudonymous, or made for hire; and

"(D) the work as a whole, or substantial portions of it, have not been previously published or registered.

"(2) CONTENTS OF SHORT-FORM.—The short-form application shall include—

"(A) the name and address of the author;

"(B) the title of the work;

"(C) the nationality or domicile of the author;

"(D) the year in which creation of the work was completed;

"(E) if the work has been published, the date and nation of its first publication;

"(F) any other information regarded by the Register of Copyrights as bearing upon the preparation or identification of the work or the existence, ownership, or duration of the copyright; and

"(G) at the option of the applicant, names, addresses, and telephone numbers of persons or organizations that potential users of the work should contact concerning permissions or licenses to use the work, and any information with respect to the terms of such permissions or licenses.".

(b) EFFECTIVE DATE.—The amendments made by this section take effect 6 months after the date of the enactment of this Act.

SEC. 5. REGISTRATION OF CLAIM AND ISSUANCE OF CERTIFICATE.

(a) DETERMINATION OF REGISTRATION.—Section 410 of title 17, United States Code, is amended by striking subsections (a) and (b) and inserting the following:

"(a) DETERMINATION OF REGISTER.—If, after examination, the Register of Copyrights determines, in accordance with the provisions of this title, that there is no reasonable possibility that a court would hold the work for which a deposit is made pursuant to section 408(c) to be copyrightable subject matter, or the Register determines that the claim is invalid for any other reason, the Register shall refuse registration and notify the applicant in writing of the reasons for such refusal. In all other cases, the Register shall register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office. A certificate of registration issued under this section extends only to those component parts of the work that both are the subject matter of copyright and the copyright owner has the right to claim. The certificate shall contain the information set forth in the application, together with the number and effective date of the registration.

"(b) APPEALS PROCEDURE.—The Register of Copyrights shall establish, and publish in the Federal Register, a formal procedure by which appeals may be taken from refusals under subsection (a) to register claims to copyright. Such procedure shall include a final appeal to the Register.".

(b) JUDICIAL PROCEEDINGS.—Subsection (c) of section 410 of title 17, United States Code, is amended—

(1) by inserting "EVIDENTIARY WEIGHT OF CERTIFICATE.—" after "(c)"; and

(2) by adding at the end the following: "Any error or omission made in good faith or upon reasonable reliance on counsel shall not affect the validity of the registration. In no case shall an incorrect statement made in an application for copyright registration invalidate the copyright.".

(c) TECHNICAL AMENDMENT.—Subsection (d) of section 410 of title 17, United States Code, is amended by inserting "EFFECTIVE DATE OF REGISTRATION.—" after "(d)".

SEC. 6. COPYRIGHT REGISTRATION PROVISIONS.

(a) REGISTRATION AND INFRINGEMENT ACTIONS.—(1) Section 411 of title 17, United States Code, is amended—

(A) by amending the section caption to read as follows:

"§ 411. Registration and infringement actions for certain works";

(B) by striking subsection (a); and

(C) in subsection (b)—

(i) by striking "(b)"; and

(ii) by striking paragraphs (1) and (2) and inserting the following:

"(1) serves notice upon the infringer, not less than 10 or more than 30 days before such fixation, identifying the work and the specific time and source of its first transmission; and

"(2) submits an application for registration of the copyright claim in the work, in accordance with this title, within 3 months after the first transmission of the work.".

(2) The item relating to section 411 in the table of sections at the beginning of chapter 4 of title 17, United States Code, is amended to read as follows:

"411. Registration and infringement actions for certain works.".

(b) REGISTRATION AS PREREQUISITE TO CERTAIN REMEDIES FOR INFRINGEMENT.—Section 412 of title 17, United States Code, and the item relating to section 412 in the table of sections at the beginning of chapter 4 of title 17, United States Code, are repealed.

SEC. 7. REMEDIES FOR INFRINGEMENT.

Section 504(c)(2) of title 17, United States Code, is amended in the second sentence—

(1) by striking "court it" and inserting "court in";

(2) by inserting "or eliminate" after "reduce"; and

(3) by striking "to a sum of not less than $200".

SEC. 8. NOTIFICATION OF FILING AND DETERMINATION OF ACTIONS.

Section 508 of title 17, United States Code, is amended—

(1) in subsection (a)—

(A) in the first sentence by inserting "and the party filing the action" after "United States"; and

(B) in the second sentence by inserting "and the party filing the action" after "clerk"; and

(2) in subsection (b) by inserting "and the party filing the action" after "clerk of the court".

SEC. 9. STUDY ON MANDATORY DEPOSIT.

(a) SUBJECT MATTER OF STUDY.—Upon the enactment of this Act, the Librarian of Congress shall conduct a study of the mandatory deposit provisions of section 407 of title 17, United States Code. Such study shall place particular emphasis on the implementation of section 407(e) of such title with respect to the deposit of transmission programs, as well as possible alternative methods of obtaining deposits if the mandatory deposit requirements of such section 407 are expanded to authorize the collection, archival preservation, and use by the Library of Congress of other publicly transmitted works, including unpublished works such as computer programs and online databases.

(b) CONDUCT OF STUDY.—The study under subsection (a) shall be conducted by the Register of Copyright, in consultation with any affected interests, and may include the voluntary establishment, in collaboration with representatives of such interests, of practical tests and pilot projects.

(c) REPORT TO CONGRESS.—Not later than 18 months after the date of the enactment of this Act, the Librarian shall submit to the Congress a report on the results of the study conducted under this section, together with recommendations the Librarian has on—

(1) safeguarding the interests of copyright owners whose works are subject to the mandatory deposit provisions referred to in subsection (a);

(2) fulfilling the present and future needs of the Library of Congress with respect to archival and other collections development; and

(3) any legislation that may be necessary.

SEC. 10. STUDIES OF EFFECTS OF REGISTRATION AND DEPOSIT PROVISIONS.

Upon the enactment of this Act, the Librarian of Congress, after consultation with the Register of Copyrights and any affected interests, shall commence a study of the extent to which changes in the registration and deposit provisions of title 17, United States Code, that are made by this Act have affected the acquisitions of the Library of Congress and the operations of the copyright registration system, and any recommendations the Librarian may have with respect to such effects. Not later than 3 years after the date of the enactment of this Act, the Librarian shall submit to the Congress a report on such study. The Librarian may conduct further studies described in the first sentence, and report to the Congress on such studies.

SEC. 11. CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 101 of title 17, United States Code, is amended by striking the definition of the "country of origin" of a Berne Convention work.

(b) INFRINGEMENT OF COPYRIGHT.—Section 501(b) of title 17, United States Code, is amended in the first sentence by striking ", subject to the requirements of section 411,".

(c) REMEDIES FOR INFRINGEMENT.—Section 504(a) of title 17, United States Code, is amended by striking "Except as otherwise provided by this title, an" and inserting "An".

SEC. 12. ADDITIONAL TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 17, UNITED STATES CODE.—Title 17, United States Code, is amended as follows:

(1) The definition of "publicly" contained in section 101 is amended—

(A) by striking "clause" and inserting "paragraph"; and

(B) by striking "processs" and inserting "process".

(2) The definition of "registration" contained in section 101 is amended by striking "412,".

(3) Section 108(e) is amended in the matter preceding paragraph (1) by striking "pair" and inserting "fair".

(4) Section 109(b)(2)(B) is amended by striking "Copyright" and inserting "Copyrights".

(5) Section 304(c) is amended in the matter preceding paragraph (1) by striking "the subsection (a)(1)(C) and inserting "subsection (a)(1)(C)".

(6) Section 405(b) is amended by striking "condition or" and inserting "condition for".

(7) The item relating to section 504 in the table of sections at the beginning of chapter 5 is amended by striking "Damage" and inserting "Damages".

(8) Section 501(a) is amended by striking "sections 106 through 118" and inserting "section 106".

(9) Section 509(b) is amended by striking "merchandise; and baggage" and inserting "merchandise, and baggage".

(10) Section 601 of title 17, United States Code, is amended—

(A) in subsection (a) by striking "nondramtic" and inserting "nondramatic"; and

(B) in subsection (b)(1) by striking "subsustantial" and inserting "substantial".

(11) Section 801(b)(4) of title 17, United States Code, is amended by adding a period after "chapter 10".

(12) The item relating to section 903 in the table of sections at the beginning of chapter 9 is amended to read as follows:

"903. Ownership, transfer, licensing, and recordation.".

(13) Section 909(b)(1) is amended—

(A) by striking "force" and inserting "work"; and

(B) by striking "sumbol" and inserting "symbol".

(14) Section 910(a) is amended in the second sentence by striking "as used" and inserting "As used".

(15) Section 1006(b)(1) is amended by striking "Federation Television" and inserting "Federation of Television".

(16) Section 1007 is amended—

(A) in subsection (a)(1) by striking "the calendar year in which this chapter takes effect" and inserting "calendar year 1992"; and

(B) in subsection (b) by striking "the year in which this section takes effect" and inserting "1992".

(17) The table of chapters at the beginning of title 17, United States Code, is amended—

(A) by amending the item relating to chapter 6 to read as follows:

"6. Manufacturing Requirements and Importation ..... 601";

(B) by amending the item relating to chapter 9 to read as follows:

"9. Protection of Semiconductor Chip Products ..... 901";

and

(C) by adding at the end the following:

"10. Digital Audio Recording Devices and Media ..... 1001".

(b) OTHER PROVISIONS OF LAW.—(1) Section 2319(b)(1) of title 18, United States Code, is amended by striking "at last" and inserting "at least".

(2) Section 1(a)(1) of the Act entitled "An Act to amend chapter 9 of title 17, United States Code, regarding protection extended to semiconductor chip products of foreign entities", approved November 9, 1987 (17 U.S.C. 914 note), is amended by striking "orginating" and inserting "originating".

(3) Section 3(a)(1)(C) of the Audio Home Recording Act of 1992 is amended by striking "adding the following new paragraph at the end" and inserting "inserting after paragraph (3) the following new paragraph".

SEC. 13. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in section 4(b), and subject to subsection (b) of this section, this Act and the amendments made by this Act take effect on the date of the enactment of this Act.

(b) PENDING ACTIONS.—The amendments and repeals made by section 6 shall not affect any action brought under title 17, United States Code, before the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Jersey [Mr. HUGHES] 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 New Jersey [Mr. HUGHES].

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

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

Mr. HUGHES. Mr. Speaker, I rise in strong support of H.R. 897, the Copyright Reform Act of 1993.

H.R. 897 will bring much needed reforms in the copyright office's registration procedures. H.R. 897 will also strengthen the section 407 mandatory deposit provisions, which are an important source of copyrighted works for the Library of Congress.

The principal reform made by H.R. 897 is repeal of sections 411(a) and 412 of title 17, United States Code. Section 411(a) requires that United States authors, but not authors from countries that are members of the Berne Convention, register their works with the United States Copyright Office before bringing an infringement action. Section 412 conditions the award of statutory damages and attorney's fees on registration being obtained before an infringement occurs.

After 15 years experience with these two provisions, the Committee on the Judiciary concluded that they no longer represent good copyright policy. I agree.

Section 411(a) discriminates against United States authors, who unlike their foreign counterparts, have to go through the time and expense of preparing copyright registrations. In the case of software, a medium-sized software company may spend as much as $100,000 a year. This is wasted time and money. The section 408 deposit, typically the first and last 25 pages of redacted source code, is of no use as a record of the scope of the copyright owner's claim, and it is of no use to the Library of Congress, which wants the machine-readable version of the program.

Section 412, originally designed to provide an indirect way for the Library of Congress to receive deposits of copyrighted works, has been subverted into a defense raised by infringers in order to deprive copyright owners of what may be their only realistic economic relief, statutory damages and attorney's fees. In the words of the Association of American Publishers in a 1986 letter to the Register of Copyrights, section 412 has

> Become more of a shield for infringers than a benefit to anyone. Registration as a condition to statutory damages and attorney's fees in some cases, as one example, has become particularly problematic. Eligibility for such remedies has been an important ingredient in our copyright laws out of recognition that they may provide the only real hope of meaningful economic relief in infringement actions. A possible lack of eligibility for this relief has been the cornerstone of the tactics of even the most blatant infringers under the 1976 Copyright Act. Yet, the Copyright Office's proposed fee increase will undoubtedly force many authors and other copyright owners to forego regular registration, rendering their copyrights of little practical value against infringers who will be emboldened by the possibility that the infringed author or copyright owner will be unable to secure any real financial relief after engaging in expensive complaint, settlement, and litigation procedures. Particularly with the proposed fee increases, the 'inducements' will become obstacles to the protection of copyright.

The Committee on the Judiciary agreed with this assessment and so do I. H.R. 897 is designed to remedy the very real problems for copyright owners pointed out by the Association of American Publishers.

Repeal of sections 411(a) and 412 will also assist our trade negotiators as they attempt to discourage foreign governments from imposing formalities on U.S. works, formalities that may have the result of depriving U.S. authors of adequate and effective protection. H.R. 897 may be viewed as the "unfinished business" of Berne adherence, as it removes the last significant vestiges of formalities in our copyright law.

Technical measures like H.R. 897 may appear to be green eyeshade legislation to some, but this bill will have important, positive effects on our copyright industries. These industries form a vital part of our Nation's economic well-being. A report issued Monday by the International Intellectual Property Alliance indicates that in 1991 copyright industries accounted for $206.6 billion, about 3.6 percent of our gross domestic product, more than any other single manufacturing sector.

The annual growth rate of the copyright industries is more than twice the growth rate for the economy as a whole. The average annual rate of job growth in the copyright industries is more than three times that of the economy as a whole. Foreign sales of U.S. copyrighted goods are conservatively estimated at $36.2 billion, an amount that puts copyright industries third in exports, behind the aircraft and agricultural industries.

I would now like to discuss specific parts of the legislation, in addition to repeal of sections 411(a) and 412.

VOLUNTARY REGISTRATION WITH THE COPYRIGHT OFFICE

Section 408 of the Copyright Act currently provides for voluntary registration of a claim to copyright with the Copyright Office. Section 408 serves a number of purposes, two of which are related to the reforms proposed by H.R. 897.

One purpose of section 408 is to create a public record of claims of copyright and information regarding a copyrighted work, including its ownership and date of creation. Another purpose is to act as an indirect incentive to bring in deposits that the Library of Congress may wish to acquire. This indirect incentive is accomplished by various means, including giving a certificate of registration the status of prima facie evidence of the work's copyrightability and of the facts stated in the certificate; requiring registration in order to give a recorded transfer of copyright priority over subsequent, conflicting transfers; and the existence of section 412, which conditions the recovery of statutory damages and attorney's fees on registration prior to infringement.

The changes to the copyright Office's registration process include: First, a new short form application; second, a more liberal examination standard; third, alternative forms of deposit for copyright registration; fourth, a formal appeals process for refusals to register a claim to copyright; fifth, provisions clarifying when preexisting works have to be disclosed on the copyright application form in order to limit sharply the fraud on the Copyright Office de-

fense; and, sixth, expansion of the group registration provisions.

OTHER COPYRIGHT OFFICE REFORMS

H.R. 897 also makes a number of changes designed to improve the Copyright Office registration system and the records of the Library of Congress. These include: First, amending section 410(a) to state explicitly that a certificate of registration only covers those parts of the work that are copyrightable and in which the copyright owner has a right to claim ownership and second, requiring the Register of Copyrights to hold annual public hearings on the section 408 deposit and registration requirements.

MANDATORY DEPOSIT WITH THE LIBRARY OF CONGRESS

The bill makes a number of changes to section 407 of title 17, United States Code, designed to strengthen and streamline mandatory deposit for the benefit of the Library of Congress. The changes include: First, clarifying that the obligation to deposit arises without any need for prior notification or demand; second, giving the Librarian rather than the Register of Copyrights authority over enforcement of the provision; third, permitting the Government to recover an amount equivalent to its attorney's fees if it has to bring suit to enforce its right to receive deposit copies; and, fourth, permitting section 407 mandatory Library of Congress deposits to be used to satisfy the deposit requirements of copyright registration under section 408.

The bill also directs the Librarian of Congress to publish an annual list of the types of works for which section 407 deposits will be sought and maintain a record and database of copies deposited under section 407. Finally, the Librarian is also directed to undertake a study to lay the foundation for the eventual expansion of section 407 to include works that are technically unpublished, but which are, nevertheless, publicly disseminated. In many cases, copyright owners do not retain this material and the Library of Congress will be the sole repository. The Copyright Act needs to be amended in order to ensure that the Library will receive these works. It is not feasible to do so immediately, though. There are many difficult issues to be resolved, some of which relate to the information superhighway and some of which relate to other concerns of copyright owners. These are real problems that cannot be solved overnight. They require study and experimentation.

MISCELLANEOUS ISSUES

H.R. 897 as reported by the Committee on the Judiciary deletes two provisions contained in the bill as introduced: First appointment of the Register of Copyrights by the President. This provision was in the bill in part because of a constitutional concern about the Register appointing and overseeing the arbitration panels, a concern which has been met by having the Librarian of Congress perform these duties; second, reversal of the National Peregrine decision has been dropped in order to study whether a single system of recordation of transfers applicable to copyrights, trademarks, and patents should be developed.

I urge my colleagues to support these needed reforms.

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

Mr. BROOKS. Mr. Speaker, I rise in support of H.R. 897, the Copyright Reform Act of 1993.

This bill will bring needed reforms to the Copyright Office registration process while ensuring that the Library of Congress will continue to receive copyrighted works for its collections.

The copyright industries are the brightest of our domestic industries. American motion pictures, records, and computer programs are sought throughout the world. Over 5.5 million workers are employed by the copyright industries, or about 4.8 percent of the U.S. work force. Economists estimate that in 1992, foreign sales of copyrighted works were almost $40 billion dollars, an increase of 9 percent over 1991. We need to do all we can to encourage the growth of our copyright industries. H.R. 897 will help this growth by removing bureaucratic obstacles to the protection and enforcement of copyrights.

This bill is the product of the distinguished chairman of the subcommittee on Intellectual Property and Judicial Administration, the gentleman from New Jersey [Mr. HUGHES] as well as the gentleman from Massachusetts [Mr. FRANK] and the ranking Republican member of the subcommittee, Mr. MOORHEAD.

I commend the gentleman from New Jersey for his time in developing and perfecting this legislation and urge my colleagues to support it.

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

Mr. Speaker, I rise in support of H.R. 897 and yield myself as much time as I may consume.

I want to thank the gentleman from Texas [Mr. BROOKS] for his support and scheduling H.R. 897, the Copyright Reform Act of 1993. I also want to express my appreciation to the gentleman from New Jersey for the time and consideration he gave the many concerns I had about this legislation and congratulate him on an excellent bill.

The most difficult concern I had related to the new, enhanced ability of photographers to sue if copyright registration is abolished. The subcommittee did hear during the second day of hearings complaints from photographers. Although the Copyright Office permit photographers to register 3,500 photos for one $20 registration fee, as a practical matter photographers don't usually register their photo. So if a family has its picture taken and the picture is copied by anyone other than the photographer who took the picture a copyright infringement suit could be filed by the photographers. That is the present law. However, as a practical matter most photos are not registered, therefore the photographers do not file suit against those people who have copies made of their photographs. Abolish registration and photographers would be more likely to file suit.

What I wanted to do to take care of this problem without taking away the copyright of the photographer would be to authorize the judge to reduce or remit the award of statutory damages and not permit any recovery of costs or attorneys fees.

Instead we are going to amend section 504 relating to the innocent infringers and permit the court to reduce the award of statutory damages to zero instead of "not less than $200." The gentleman from New Jersey [Mr. HUGHES] has agreed that strong report language on this issue is necessary so the parties and the court understand what our concerns are. And if it is abused by the photographers then we may need to correct it later.

Again I would like to commend the chairman for his hard work on this issue. I urge a favorable vote on H.R. 897 as reported by the committee.

Mr. Speaker, I yield such time as he may consume to the gentleman from North Carolina [Mr. COBLE].

Mr. COBLE. Mr. Speaker, I rise in support of H.R. 897, and would like to express my appreciation to the gentleman from New Jersey [Mr. HUGHES] and the gentleman from California [Mr. MOORHEAD] for their leadership and cooperation, and I was especially pleased what they did for the innocent infringer. I too, share a concern that we not unwittingly penalize innocent infringers. Thus, the committee's support for the amendment that removed a statutory minimum award in the case of infringement was a step in the right direction.

I offered an amendment in subcommittee which would have denied court costs and attorney fees in cases involving innocent infringement; however, I withdrew my amendment when the gentleman from New Jersey [Mr. HUGHES] assured me that the report language would reveal the committee was sympathetic to that position, and felt that section 505 presently gave the courts this option.

I raised my concern with innocent infringement by illustrating what could befall the photofinishing industry. Film processing companies as well as small independent photofinishers assure me that as a matter of policy, they honor copyrights and do not reproduce photos, slides, or other material which bears a copyright or studio name without the copyright owner's permission. Without some kind of marking, however, it is impossible for a photofinisher to know with certainty that a particular item is entitled to copyright protection.

That is why with the elimination of sections 411(a) and 412 and our earlier action to remove notice requirements, it is important that courts recognize their discretion to provide no statutory damages, costs, and attorney fees in appropriate cases. The report language

can be found on page 10 of the report and reads as follows:

Under this section, the courts already have the discretion to award an amount they believe appropriate, or no fees at all. Concern was expressed that with the repeal of Sections 411(a) and 412 of title 17, United States Code, litigation involving professional photographers may increase because of a failure to affix a copyright notice on the photograph, thus causing difficulties on the part of individuals and photofinishers in determining copyright ownership. In cases where a court finds the defendant to be an innocent infringer, the Committee expects that the courts will not, in the usual case, award costs or attorney's fees.

I would like to again thank the gentleman from New Jersey and California for the guidance they provided, and I urge a "yes" vote on H.R. 897.

Mr. MOORHEAD. Mr. Speaker, will the gentleman yield?

Mr. COBLE. I yield to the gentleman from California.

Mr. MOORHEAD. Mr. Speaker, I would like to commend the Gentleman for his hard work and the diligence that he put into that report language and I want to him to know that I agree with what he has just said. We are concerned about similar problems. I am concerned about the consumer, the Mom and Pop, the little leaguer who may be an innocent infringer and you are concerned about them as well plus the small photofinisher who has no way of determining whether something he has been asked to reproduce is or is not copyrighted. I think what the gentleman has done will put the photographer on notice not to use this change in the law to harass these people and it will also assist the courts when they are asked to make a determination on the innocent infringer.

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. 897.

I too would like to commend the gentlemen from Texas [Mr. BROOKS] and New Jersey [Mr. HUGHES] and my good friend from California [Mr. MOORHEAD] and the gentleman from Massachusetts [Mr. FRANK] a cosponsor of the bill for their good work on this important legislation.

The main thrust of H.R. 897 is the abolition of the requirement in present copyright law which requires U.S. authors to register their work with the Copyright Office before they can institute an infringement action. This is considered a formality (registration) and inconsistent with the Berne Convention. We got around this formality in 1988 when we passed the implementing legislation for Berne by saying that foreign authors from Berne countries do not have to go through registration, only American authors need register. This obviously discriminates against U.S. authors, thereby placing them at a competitive disadvantage, with foreign authors who do not have to spend the resources to create deposits for Copyright Office examination purposes.

The Berne Convention implementing legislation became law in October 1988. That same year I had the honor of personally delivering those official papers to the Director General of the World Intellectual Property Organization Doctor Arpad Bogsch. The Copyright Subcommittee is presently working on the Madrid Protocol legislation H.R. 2129 that will create an international trademark registration system within the World Intellectual Property Association. Again, the individuals and businesses in the United States that rely on this type of protection for their creative works will reap substantial benefits as a result of having a new and stronger relationship with 95 additional countries. I hope we can move that legislation early next session.

I urge a favorable vote for H.R. 897.

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Again, Mr. Speaker, the individuals and businesses in the United States that rely on this type of protection for their creative works will reap substantial benefits as a result of having new and stronger relationships with the 95 additional countries. I hope we can move that legislation early in the next session.

Mr. Speaker, I urge a favorable vote on H.R. 897.

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

I take this time just to say, Mr. Speaker, that we had a very productive session in the Subcommittee on Intellectual Property and Judicial Administration, and that would not have been possible without the gentleman from California [Mr. MOORHEAD], who is my ranking Republican and partner. I thank him for the bipartisan effort with which we have conducted business in that committee.

Also, I commend the gentleman from North Carolina [Mr. COBLE] for his work on innocent infringers in particular. He has done yeoman work, and he has been a very valuable member of that committee. I commend also the gentleman from Massachusetts [Mr. FRANK] who was very helpful in passing this particular piece of legislation.

Mr. Speaker, I would also thank the professional staff. They have done a very good job on this and on other legislation during this past year. I am talking about Hayden Gregory, the chief counsel, and Bill Patry, as well as Jarilyn Dupont and Ed O'Connell of the professional staff on the majority side; and Tom Mooney and Joe Wolfe on the minority side.

It has been a great effort, and we have produced a lot of legislation because we have worked in a bipartisan fashion.

Finally, I want to thank the chairman of the full committee, the gentleman from Texas [Mr. BROOKS], and the ranking Minority member of the full committee, the gentleman from New York [Mr. FISH] for their work in making possible many bills that I think will make a difference both in intellectual property as well as in the area of judicial administration.

Mr. MOORHEAD. Mr. Speaker, will the gentleman yield?

Mr. HUGHES. I am happy to yield to the gentleman from California.

Mr. MOORHEAD. Mr. Speaker, I really want to congratulate the gentleman from New Jersey [Mr. HUGHES] for the job he has done on this Subcommittee on Intellectual Property and Judicial Administration. We have worked together very closely. We have gotten out a lot of excellent legislation. I think we have helped the people of the United States with the job that has been done.

I agree with the gentleman that we have an outstanding staff that makes that possible. The staff is able to work together for positive results with the members of our committee. The staff members of both political parties have worked well together.

So I think the product we have come up with is better than what we would have had if either party had been working alone. We have been working as a team, and the legislation that has come out is beneficial for all and not just from a narrow point of view. So I want to congratulate the gentleman again for his work.

Mr. HUGHES. Mr. Speaker, I yield back the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. FIELDS of Louisiana). The question is on the motion offered by the gentleman from New Jersey [Mr. HUGHES] that the House suspend the rules and pass the bill, H.R. 897, 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.

The title of the bill was amended so as to read: "A bill to amend title 17, United States Code, to modify certain registration requirements, and for other purposes."

A motion to reconsider was laid on the table.

