Calendar No. 568

101ST CONGRESS
2D SESSION

S. 497

[Report No. 101–305]

Entitled the "Copyright Remedy Clarification Act".

IN THE SENATE OF THE UNITED STATES

MARCH 2 (legislative day, JANUARY 3), 1989

Mr. DECONCINI (for himself, Mr. SIMON, Mr. HATCH, and Mr. BOSCHWITZ) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JUNE 5 (legislative day, APRIL 18), 1990

Reported by Mr. BIDEN, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

Entitled the "Copyright Remedy Clarification Act".

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 FOR STATES AND INSTRUMENTALITIES OF STATES FOR INFRINGEMENT OF COPYRIGHT AND EXCLUSIVE RIGHTS IN MASK WORKS.~~

~~(a) COPYRIGHT INFRINGEMENT.—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 and any instrumentality of a State, both of which shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.".~~

~~(b) INFRINGMENT OF EXCLUSIVE RIGHTS IN MASK WORKS.—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 and any instrumentality of a State, both of which shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.".~~

~~SEC. 3. EFFECTIVE DATE.~~

~~The amendments made by this Act shall take effect on the date of the enactment of this Act but shall not apply to any case filed before such date.~~

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 infringement 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 im-

porting 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 instru-

mentality, 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 subsection:

"(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 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 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. COSTS AND ATTORNEY'S FEES.

Section 505 of title 17, United States Code, is amended—

(1) in the first sentences by inserting ", a State, or an instrumentality of a State" after "thereof";

(2) by designating the text of such section as subsection (a); and

(3) by adding at the end thereof the following:

"(b)(1) In any civil action under this title against a State or an instrumentality of a State by a party described in paragraph (2)(A), the court may award fees and other expenses as defined in paragraph (2)(B).

"(2) For the purposes of this subsection—

"(A) the term 'party' means—

"(i) a sole proprietor, corporation, partnership, or private and public organization with a net worth of not more than $5,000,000 and not more than 500 employees at the time the civil action was filed;

"(ii) a tax exempt organization as described in section 501(c)(3) of the Internal Revenue Code of 1986 exempt from taxation under section 501(a) of such Code, or a cooperative association,

as defined in section 15(a) of the Agricultural Marketing Act with not more than 500 employees at the time the civil action was filed; and

"(iii) an individual with a net worth of not more than $1,000,000 at the time the civil action was filed; and

"(B) the term 'fees and other expenses' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees (The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States; and (ii) attorney fees shall not be awarded in excess of $75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.).".

SEC. 4. 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.

Amend the title so as to read: "A bill 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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