

## TECHNICAL CORRECTIONS TO COPYRIGHT AND OTHER LAWS

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APRIL 12, 1999.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. COBLE, from the Committee on the Judiciary,  
submitted the following

### R E P O R T

[To accompany H.R. 1189]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill  
(H.R. 1189) to make technical corrections in title 17, United States  
Code, and other laws, having considered the same, reports favor-  
ably thereon without amendment and recommends that the bill do  
pass.

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#### PURPOSE AND SUMMARY

The purpose of H.R. 1189 is to make purely technical amend-  
ments to the Copyright Act and other laws. It renumbers sections  
and paragraphs. It clarifies section titles and corrects clerical er-  
rors. H.R. 1189 does not make any substantive changes in the law.

## BACKGROUND AND NEED FOR THE LEGISLATION

At the close of the 105th Congress, two major copyright bills were signed into law. These laws, the "Digital Millenium Copyright Act" and the "Copyright Term Extension Act," contained major changes to the Copyright Act and other laws. Subsequent to their passage, several technical errors were identified. These errors would cause confusion if not corrected. H.R. 1189 corrects these errors by making purely technical amendments to the Copyright Act and other laws. H.R. 1189 does not make any substantive changes in the law.

## COMMITTEE CONSIDERATION

On March 24, 1999, the Committee met in open session and ordered favorably reported the bill H.R. 1189 without amendment by voice vote, a quorum being present.

## COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budget authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1189, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 26, 1999.*

Hon. HENRY J. HYDE,  
*Chairman, Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1189, a bill to make technical corrections in title 17, United States Code, and other laws.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Hadley, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN. *Director.*

Enclosure.

cc: Honorable John Conyers, Jr.,  
Ranking Minority Member.

*H.R. 1189—A bill to make technical corrections in title 17, United States Code, and other laws*

H.R. 1189 would make certain technical corrections to copyright law concerning ephemeral recordings (those made and used solely for transmitting or archiving a performance or audiovisual display). The bill also would renumber and retitle certain sections of law relating to patents and copyrights. Finally, the bill would clarify that the Commissioner of Patents is to be paid at level III of the executive schedule.

CBO estimates that enacting H.R. 1189 would have no significant impact on the federal budget. Because H.R. 1189 would not affect direct spending or receipts, pay-as-you-go procedures would not apply. H.R. 1189 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no impact on the budgets of state, local, or tribal governments.

The CBO staff contact is Mark Hadley, who can be reached at 226–2860. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of the Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8, clause 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS

*Sec. 1. Technical Corrections to title 17, United States Code.* This section amends section 110(5) by changing the numbering of paragraphs (A) and (B) to (i) and (ii). Section 112(e) is also amended by changing the numbering of paragraphs (3) through (10) to (2) through (9) and the corresponding references back to those paragraphs within the section. Finally, chapter 5 is amended by redesignating the section 512 entitled “Limitations on liability relating to material online” as section 513 and amending the table of contents at the beginning of the chapter to reflect the change.

*Sec. 2. Other Technical Corrections.* This section makes a clerical amendment to title 28, United States Code, by amending the heading of section 1400 to read as: “§ 1400. Patents and copyrights, mask works, and designs.” This section also eliminates a conflicting provision in section 5316 of title 5, United States Code, by striking “Commissioner of Patents, Department of Commerce.”. Finally, this section makes a clerical correction to title 35, United States Code, by striking “,United States Code” in section 3(d).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## TITLE 17, UNITED STATES CODE

CHAPTER 1—SUBJECT MATTER AND SCOPE OF  
COPYRIGHT§ 110. Limitations on exclusive rights: Exemption of certain  
performances and displays

(1) \* \* \*

\* \* \* \*

(5)(A) except as provided in subparagraph (B), communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless—

[(A)] (i) a direct charge is made to see or hear the transmission; or

[(B)] (ii) the transmission thus received is further transmitted to the public;

\* \* \* \*

## § 112. Limitations on exclusive rights: Ephemeral recordings

(a) \* \* \*

\* \* \* \*

(e) STATUTORY LICENSE.—(1) \* \* \*

\* \* \* \*

[(3)] (2) Notwithstanding any provision of the antitrust laws, any copyright owners of sound recordings and any transmitting organizations entitled to a statutory license under this subsection may negotiate and agree upon royalty rates and license terms and conditions for making phonorecords of such sound recordings under this section and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

[(4)] (3) No later than 30 days after the date of the enactment of the Digital Millennium Copyright Act, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by paragraph [(2)] (1) of this subsection during the period beginning on the date of the enactment of such Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates shall include a minimum fee for each type of service offered by transmitting organizations. Any copyright owners of sound recordings or any transmitting organizations entitled to a statutory license under this subsection may submit to the Librarian of Congress licenses covering such activities with respect to such sound recordings. The parties to each negotiation proceeding shall bear their own costs.

[(5)] (4) In the absence of license agreements negotiated under paragraph [(3)] (2), during the 60-day period commencing 6

months after publication of the notice specified in paragraph **[(4)]** (3), and upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of reasonable rates and terms which, subject to paragraph **[(6)]** (5), shall be binding on all copyright owners of sound recordings and transmitting organizations entitled to a statutory license under this subsection during the period beginning on the date of the enactment of the Digital Millennium Copyright Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates shall include a minimum fee for each type of service offered by transmitting organizations. The copyright arbitration royalty panel shall establish rates that most clearly represent the fees that would have been negotiated in the marketplace between a willing buyer and a willing seller. In determining such rates and terms, the copyright arbitration royalty panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

(A) \* \* \*

\* \* \* \* \*

In establishing such rates and terms, the copyright arbitration royalty panel may consider the rates and terms under voluntary license agreements negotiated as provided in paragraphs **[(3) and (4)]** (2) and (3). The Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by transmitting organizations entitled to obtain a statutory license under this subsection.

**[(6)]** (5) License agreements voluntarily negotiated at any time between 1 or more copyright owners of sound recordings and 1 or more transmitting organizations entitled to obtain a statutory license under this subsection shall be given effect in lieu of any determination by a copyright arbitration royalty panel or decision by the Librarian of Congress.

**[(7)]** (6) Publication of a notice of the initiation of voluntary negotiation proceedings as specified in paragraph **[(4)]** (3) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, in the first week of January 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with paragraph **[(4)]** (3). The procedures specified in paragraph **[(5)]** (4) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, upon filing of a petition in accordance with section 803(a)(1), during a 60-day period commencing on July 1, 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with paragraph **[(4)]** (3). The procedures specified in paragraph **[(5)]** (4) shall be concluded in accordance with section 802.

**[(8)]** (7)(A) Any person who wishes to make a phonorecord of a sound recording under a statutory license in accordance with this

subsection may do so without infringing the exclusive right of the copyright owner of the sound recording under section 106(1)—

(i) \* \* \*

\* \* \* \* \*

[(9)] (8) If a transmitting organization entitled to make a phonorecord under this subsection is prevented from making such phonorecord by reason of the application by the copyright owner of technical measures that prevent the reproduction of the sound recording, the copyright owner shall make available to the transmitting organization the necessary means for permitting the making of such phonorecord as permitted under this subsection, if it is technologically feasible and economically reasonable for the copyright owner to do so. If the copyright owner fails to do so in a timely manner in light of the transmitting organization's reasonable business requirements, the transmitting organization shall not be liable for a violation of section 1201(a)(1) of this title for engaging in such activities as are necessary to make such phonorecords as permitted under this subsection.

[(10)] (9) Nothing in this subsection annuls, limits, impairs, or otherwise affects in any way the existence or value of any of the exclusive rights of the copyright owners in a sound recording, except as otherwise provided in this subsection, or in a musical work, including the exclusive rights to reproduce and distribute a sound recording or musical work, including by means of a digital phonorecord delivery, under sections 106(1), 106(3), and 115, and the right to perform publicly a sound recording or musical work, including by means of a digital audio transmission, under sections 106(4) and 106(6).

\* \* \* \* \*

## CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

Sec.

501. Infringement of copyright.

\* \* \* \* \*

512. Determination of reasonable license fees for individual proprietors.

[(512. Limitations on liability relating to material online.)]

513. *Limitations on liability relating to material online.*

\* \* \* \* \*

### § [512.] 513. Limitations on liability relating to material online

(a) TRANSITORY DIGITAL NETWORK COMMUNICATIONS.—A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider's transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if—

(1) \* \* \*

\* \* \* \* \*

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**SECTION 1400 OF TITLE 28, UNITED STATES CODE****[Patents and copyrights, mask works, and designs]****§ 1400. Patents and copyrights, mask works, and designs**

(a) \* \* \*

\* \* \* \* \*

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**SECTION 5316 OF TITLE 5, UNITED STATES CODE****§ 5316. Positions at level V**

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Administrator, Bonneville Power Administration, Department of the Interior.

\* \* \* \* \*

**[Commissioner of Patents, Department of Commerce.]**

\* \* \* \* \*

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**SECTION 3 OF TITLE 35, UNITED STATES CODE****§ 3. Officers and employees**

(a) \* \* \*

\* \* \* \* \*

(d) The Commissioner of Patents and Trademarks shall be an Assistant Secretary of Commerce and shall receive compensation at the rate in effect for level III of the Executive Schedule under section 5314 of title 5[, United States Code].

\* \* \* \* \*