

105TH CONGRESS
1ST SESSION

H. R. 2281

To amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 1997

Mr. COBLE (for himself, Mr. HYDE, Mr. CONYERS, and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “WIPO Copyright Trea-
5 ties Implementation Act”.

6 **SEC. 2. TECHNICAL AMENDMENTS.**

7 (a) DEFINITIONS.—Section 101 of title 17, United
8 States Code, is amended—

1 (1) by striking the definition of “Berne Conven-
2 tion work”;

3 (2) in the definition of “The ‘country of origin’
4 of a Berne Convention work”—

5 (A) by striking “The ‘country of origin’ of
6 a Berne Convention work, for purposes of sec-
7 tion 411, is the United States if” and inserting
8 “For purposes of section 411, a work is a
9 ‘United States work’ only if”;

10 (B) in paragraph (1)—

11 (i) in subparagraph (B) by striking
12 “nation or nations adhering to the Berne
13 Convention” and inserting “treaty party or
14 parties”;

15 (ii) in subparagraph (C) by striking
16 “does not adhere to the Berne Convention”
17 and inserting “is not a treaty party”; and

18 (iii) in subparagraph (D) by striking
19 “does not adhere to the Berne Convention”
20 and inserting “is not a treaty party”; and

21 (C) in the matter following paragraph (3)
22 by striking “For the purposes of section 411,
23 the ‘country of origin’ of any other Berne Con-
24 vention work is not the United States.”;

1 (3) by inserting after the definition of “fixed”
2 the following:

3 “The ‘Geneva Phonograms Convention’ is the
4 Convention for the Protection of Producers of
5 Phonograms Against Unauthorized Duplication of
6 Their Phonograms, concluded at Geneva, Switzer-
7 land, on October 29, 1971.”;

8 (4) by inserting after the definition of “includ-
9 ing” the following:

10 “An ‘international agreement’ is—

11 “(1) the Universal Copyright Convention;

12 “(2) the Geneva Phonograms Convention;

13 “(3) the Berne Convention;

14 “(4) the WTO Agreement;

15 “(5) the WIPO Copyright Treaty;

16 “(6) the WIPO Performances and
17 Phonograms Treaty; and

18 “(7) any other copyright treaty to which
19 the United States is a party.”;

20 (5) by inserting after the definition of “trans-
21 mit” the following:

22 “A ‘treaty party’ is a country or intergovern-
23 mental organization other than the United States
24 that is a party to an international agreement.”;

1 (6) by inserting after the definition of “widow”
2 the following:

3 “The ‘WIPO Copyright Treaty’ is the WIPO
4 Copyright Treaty concluded at Geneva, Switzerland,
5 on December 20, 1996.”;

6 (7) by inserting after the definition of “The
7 ‘WIPO Copyright Treaty’ ” the following:

8 “The ‘WIPO Performances and Phonograms
9 Treaty’ is the WIPO Performances and Phonograms
10 Treaty concluded at Geneva, Switzerland, on Decem-
11 ber 20, 1996.”; and

12 (8) by inserting after the definition of “work
13 made for hire” the following:

14 “The terms ‘WTO Agreement’ and ‘WTO mem-
15 ber country’ have the meanings given those terms in
16 paragraphs (9) and (10), respectively, of section 2 of
17 the Uruguay Round Agreements Act.”.

18 (b) SUBJECT MATTER OF COPYRIGHT; NATIONAL
19 ORIGIN.—Section 104 of title 17, United States Code, is
20 amended—

21 (1) in subsection (b)—

22 (A) in paragraph (1) by striking “foreign
23 nation that is a party to a copyright treaty to
24 which the United States is also a party” and in-
25 serting “treaty party”;

1 (B) in paragraph (2) by striking “party to
2 the Universal Copyright Convention” and in-
3 serting “treaty party”;

4 (C) by redesignating paragraph (5) as
5 paragraph (6);

6 (D) by redesignating paragraph (3) as
7 paragraph (5) and inserting it after paragraph
8 (4);

9 (E) by inserting after paragraph (2) the
10 following:

11 “(3) the work is a sound recording that was
12 first fixed in a treaty party; or”;

13 (F) in paragraph (4) by striking “Berne
14 Convention work” and inserting “pictorial,
15 graphic, or sculptural work that is incorporated
16 in a building or other structure, or an architec-
17 tural work that is embodied in a building and
18 the building or structure is located in the Unit-
19 ed States or a treaty party”; and

20 (G) by inserting after paragraph (6), as so
21 redesignated, the following:

22 “For purposes of paragraph (2), a work that is published
23 in the United States or a treaty party within 30 days after
24 publication in a foreign nation that is not a treaty party

1 shall be considered to be first published in the United
2 States or such treaty party, as the case may be.”; and

3 (2) by adding at the end the following new sub-
4 section:

5 “(d) EFFECT OF PHONOGRAMS TREATIES.—Not-
6 withstanding the provisions of subsection (b), no works
7 other than sound recordings shall be eligible for protection
8 under this title solely by virtue of the adherence of the
9 United States to the Geneva Phonograms Convention or
10 the WIPO Performances and Phonograms Treaty.”.

11 (e) COPYRIGHT IN RESTORED WORKS.—Section
12 104A(h) of title 17, United States Code, is amended—

13 (1) in paragraph (1), by striking subparagraphs
14 (A) and (B) and inserting the following:

15 “(A) a nation adhering to the Berne Con-
16 vention;

17 “(B) a WTO member country;

18 “(C) a nation adhering to the WIPO Copy-
19 right Treaty;

20 “(D) a nation adhering to the WIPO Per-
21 formances and Phonograms Treaty; or

22 “(E) subject to a Presidential proclamation
23 under subsection (g).”;

24 (2) by amending paragraph (3) to read as fol-
25 lows:

1 “(3) The term ‘eligible country’ means a nation,
2 other than the United States, that—

3 “(A) becomes a WTO member country
4 after the date of the enactment of the Uruguay
5 Round Agreements Act;

6 “(B) on such date of enactment is, or after
7 such date of enactment becomes, a nation ad-
8 hering to the Berne Convention;

9 “(C) adheres to the WIPO Copyright
10 Treaty;

11 “(D) adheres to the WIPO Performances
12 and Phonograms Treaty; or

13 “(E) after such date of enactment becomes
14 subject to a proclamation under subsection
15 (g).”;

16 (3) in paragraph (6)—

17 (A) in subparagraph (C)(iii) by striking
18 “and” after the semicolon;

19 (B) at the end of subparagraph (D) by
20 striking the period and inserting “; and”; and

21 (C) by adding after subparagraph (D) the
22 following:

23 “(E) if the source country for the work is
24 an eligible country solely by virtue of its adher-

1 **“CHAPTER 12—COPYRIGHT PROTECTION**
2 **AND MANAGEMENT SYSTEMS**

“Sec.

“1201. Circumvention of copyright protection systems.

“1202. Integrity of copyright management information.

“1203. Civil remedies.

“1204. Criminal offenses and penalties.

3 **“§ 1201. Circumvention of copyright protection sys-**
4 **tems**

5 “(a) VIOLATIONS REGARDING CIRCUMVENTION OF
6 TECHNOLOGICAL PROTECTION MEASURES.—(1) No per-
7 son shall circumvent a technological protection measure
8 that effectively controls access to a work protected under
9 this title.

10 “(2) No person shall manufacture, import, offer to
11 the public, provide or otherwise traffic in any technology,
12 product, service, device, component, or part thereof that—

13 “(A) is primarily designed or produced for the
14 purpose of circumventing a technological protection
15 measure that effectively controls access to a work
16 protected under this title;

17 “(B) has only limited commercially significant
18 purpose or use other than to circumvent a techno-
19 logical protection measure that effectively controls
20 access to a work protected under this title; or

21 “(C) is marketed by that person or another act-
22 ing in concert with that person for use in cir-
23 cumventing a technological protection measure that

1 effectively controls access to a work protected under
2 this title.

3 “(3) As used in this subsection—

4 “(A) to ‘circumvent a technological protection’
5 means to descramble a scrambled work, to decrypt
6 an encrypted work, or otherwise to avoid, bypass, re-
7 move, deactivate, or impair a technological protec-
8 tion measure, without the authority of the copyright
9 owner; and

10 “(B) a technological protection measure ‘effec-
11 tively controls access to a work’ if the measure, in
12 the ordinary course of its operation, requires the ap-
13 plication of information, or a process or a treatment,
14 with the authority of the copyright owner, to gain
15 access to the work.

16 “(b) ADDITIONAL VIOLATIONS.—(1) No person shall
17 manufacture, import, offer to the public, provide or other-
18 wise traffic in any technology, product, service, device,
19 component, or part thereof that—

20 “(A) is primarily designed or produced for the
21 purpose of circumventing protection afforded by a
22 technological protection measure that effectively pro-
23 tects a right of a copyright owner under this title in
24 a work or a portion thereof;

1 “(B) has only limited commercially significant
2 purpose or use other than to circumvent protection
3 afforded by a technological protection measure that
4 effectively protects a right of a copyright owner
5 under this title in a work or a portion thereof; or

6 “(C) is marketed by that person or another act-
7 ing in concert with that person for use in cir-
8 cumventing protection afforded by a technological
9 protection measure that effectively protects a right
10 of a copyright owner under this title in a work or
11 a portion thereof.

12 “(2) As used in this subsection—

13 “(A) the term ‘circumvent protection afforded
14 by a technological protection measure’ means avoid-
15 ing, bypassing, removing, deactivating, or otherwise
16 impairing a technological protection measure; and

17 “(B) a technological protection measure ‘effec-
18 tively protects a right of a copyright owner’ under
19 this title if the measure, in the ordinary course of
20 its operation, prevents, restricts, or otherwise limits
21 the exercise of a right of a copyright owner under
22 this title.

23 “(c) IMPORTATION.—The importation into the Unit-
24 ed States, the sale for importation, or the sale within the
25 United States after importation by the owner, importer,

1 or consignee of any technology, product, service, device,
2 component, or part thereof as described in subsection (a)
3 or (b) shall be actionable under section 337 of the Tariff
4 Act of 1930 (19 U.S.C. 1337).

5 “(d) OTHER RIGHTS, ETC., NOT AFFECTED.—Noth-
6 ing in this section shall affect rights, remedies, limitations,
7 or defenses to copyright infringement, including fair use,
8 under this title.

9 “(e) LAW ENFORCEMENT AND INTELLIGENCE AC-
10 TIVITIES.—This section does not prohibit any lawfully au-
11 thorized investigative, protective, or intelligence activity of
12 a law enforcement agency of the United States, a State,
13 or a political subdivision of a State, or of an intelligence
14 agency of the United States.

15 **“§ 1202. Integrity of copyright management informa-**
16 **tion**

17 “(a) FALSE COPYRIGHT MANAGEMENT INFORMA-
18 TION.—No person shall knowingly—

19 “(1) provide copyright management information
20 that is false, or

21 “(2) distribute or import for public distribution
22 copyright management information that is false,
23 with the intent to induce, enable, facilitate, or conceal in-
24 fringement.

1 “(b) REMOVAL OR ALTERATION OF COPYRIGHT
2 MANAGEMENT INFORMATION.—No person shall, without
3 the authority of the copyright owner or the law—

4 “(1) intentionally remove or alter any copyright
5 management information,

6 “(2) distribute or import for distribution copy-
7 right management information, knowing that the
8 copyright management information has been re-
9 moved or altered without authority of the copyright
10 owner or the law, or

11 “(3) distribute, import for distribution, or pub-
12 licly perform works, copies of works, or
13 phonorecords, knowing that the copyright manage-
14 ment information has been removed or altered with-
15 out authority of the copyright owner or the law,

16 knowing or, with respect to civil remedies under section
17 1203, having reasonable grounds to know, that it will in-
18 duce, enable, facilitate, or conceal an infringement of any
19 right under this title.

20 “(c) DEFINITION.—As used in this chapter, the term
21 ‘copyright management information’ means the following
22 information conveyed in connection with copies or
23 phonorecords of a work or performances or displays of a
24 work, including in digital form:

1 “(1) The title and other information identifying
2 the work, including the information set forth on a
3 notice of copyright.

4 “(2) The name of, and other identifying infor-
5 mation about, the author of a work.

6 “(3) The name of, and other identifying infor-
7 mation about, the copyright owner of the work, in-
8 cluding the information set forth in a notice of copy-
9 right.

10 “(4) Terms and conditions for use of the work.

11 “(5) Identifying numbers or symbols referring
12 to such information or links to such information.

13 “(6) Such other information as the Register of
14 Copyrights may prescribe by regulation, except that
15 the Register of Copyrights may not require the pro-
16 vision of any information concerning the user of a
17 copyrighted work.

18 “(d) LAW ENFORCEMENT AND INTELLIGENCE AC-
19 TIVITIES.—This section does not prohibit any lawfully au-
20 thorized investigative, protective, or intelligence activity of
21 a law enforcement agency of the United States, a State,
22 or a political subdivision of a State, or of an intelligence
23 agency of the United States.

1 **“§ 1203. Civil remedies**

2 “(a) CIVIL ACTIONS.—Any person injured by a viola-
3 tion of section 1201 or 1202 may bring a civil action in
4 an appropriate United States district court for such viola-
5 tion.

6 “(b) POWERS OF THE COURT.—In an action brought
7 under subsection (a), the court—

8 “(1) may grant temporary and permanent in-
9 junctions on such terms as it deems reasonable to
10 prevent or restrain a violation;

11 “(2) at any time while an action is pending,
12 may order the impounding, on such terms as it
13 deems reasonable, of any device or product that is
14 in the custody or control of the alleged violator and
15 that the court has reasonable cause to believe was
16 involved in a violation;

17 “(3) may award damages under subsection (c);

18 “(4) in its discretion may allow the recovery of
19 costs by or against any party other than the United
20 States or an officer thereof;

21 “(5) in its discretion may award reasonable at-
22 torney’s fees to the prevailing party; and

23 “(6) may, as part of a final judgment or decree
24 finding a violation, order the remedial modification
25 or the destruction of any device or product involved
26 in the violation that is in the custody or control of

1 the violator or has been impounded under paragraph
2 (2).

3 “(c) AWARD OF DAMAGES.—

4 “(1) IN GENERAL.—Except as otherwise pro-
5 vided in this chapter, a person committing a viola-
6 tion of section 1201 or 1202 is liable for either—

7 “(A) the actual damages and any addi-
8 tional profits of the violator, as provided in
9 paragraph (2); or

10 “(B) statutory damages, as provided in
11 paragraph (3).

12 “(2) ACTUAL DAMAGES.—The court shall
13 award to the complaining party the actual damages
14 suffered by the party as a result of the violation,
15 and any profits of the violator that are attributable
16 to the violation and are not taken into account in
17 computing the actual damages, if the complaining
18 party elects such damages at any time before final
19 judgment is entered.

20 “(3) STATUTORY DAMAGES.—(A) At any time
21 before final judgment is entered, a complaining
22 party may elect to recover an award of statutory
23 damages for each violation of section 1201 in the
24 sum of not less than \$200 or more than \$2,500 per
25 act of circumvention, device, product, component,

1 offer, or performance of service, as the court consid-
2 ers just.

3 “(B) At any time before final judgment is en-
4 tered, a complaining party may elect to recover an
5 award of statutory damages for each violation of sec-
6 tion 1202 in the sum of not less than \$2,500 or
7 more than \$25,000.

8 “(4) REPEATED VIOLATIONS.—In any case in
9 which the injured party sustains the burden of prov-
10 ing, and the court finds, that a person has violated
11 section 1201 or 1202 within 3 years after a final
12 judgment was entered against that person for an-
13 other such violation, the court may increase the
14 award of damages up to triple the amount that
15 would otherwise be awarded, as the court considers
16 just.

17 “(5) INNOCENT VIOLATIONS.—The court in its
18 discretion may reduce or remit the total award of
19 damages in any case in which the violator sustains
20 the burden of proving, and the court finds, that the
21 violator was not aware and had no reason to believe
22 that its acts constituted a violation.

1 **“§ 1204. Criminal offenses and penalties**

2 “(a) IN GENERAL.—Any person who violates section
3 1201 or 1202 willfully and for purposes of commercial ad-
4 vantage or private financial gain—

5 “(1) shall be fined not more than \$500,000 or
6 imprisoned for not more than 5 years, or both, for
7 the first offense; and

8 “(2) shall be fined not more than \$1,000,000 or
9 imprisoned for not more than 10 years, or both, for
10 any subsequent offense.

11 “(b) STATUTE OF LIMITATIONS.—Notwithstanding
12 section 507(a) of this title, no criminal proceeding shall
13 be maintained under subsection (a) unless such proceeding
14 is commenced within 5 years after the cause of action
15 arose.”.

16 **SEC. 4. CONFORMING AMENDMENT.**

17 The table of chapters for title 17, United States
18 Code, is amended by adding at the end the following:

“12. Copyright Protection and Management Systems 1201”.

19 **SEC. 5. EFFECTIVE DATE.**

20 (a) IN GENERAL.—Subject to subsection (b), the
21 amendments made by this Act shall take effect on the date
22 of the enactment of this Act.

23 (b) AMENDMENTS RELATING TO CERTAIN INTER-
24 NATIONAL AGREEMENTS.—(1) The following shall take ef-

1 fect upon the entry into force of the WIPO Copyright
2 Treaty with respect to the United States:

3 (A) Paragraph (5) of the definition of “inter-
4 national agreement” contained in section 101 of title
5 17, United States Code, as amended by section
6 2(a)(4) of this Act.

7 (B) The amendment made by section 2(a)(6) of
8 this Act.

9 (C) Subparagraph (C) of section 104(h)(1) of
10 title 17, United States Code, as amended by section
11 2(c)(1) of this Act.

12 (D) Subparagraph (C) of section 104(h)(3) of
13 title 17, United States Code, as amended by section
14 2(c)(2) of this Act.

15 (2) The following shall take effect upon the entry into
16 force of the WIPO Performances and Phonograms Treaty
17 with respect to the United States:

18 (A) Paragraph (6) of the definition of “inter-
19 national agreement” contained in section 101 of title
20 17, United States Code, as amended by section
21 2(a)(4) of this Act.

22 (B) The amendment made by section 2(a)(7) of
23 this Act.

24 (C) The amendment made by section 2(b)(2) of
25 this Act.

1 (D) Subparagraph (D) of section 104(h)(1) of
2 title 17, United States Code, as amended by section
3 2(c)(1) of this Act.

4 (E) Subparagraph (D) of section 104(h)(3) of
5 title 17, United States Code, as amended by section
6 2(c)(2) of this Act.

7 (F) The amendments made by section 2(c)(3)
8 of this Act.

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