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104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1284

To amend title 17 to adapt the copyright law to the digital, networked environment of the National Information Infrastructure, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28 (legislative day, SEPTEMBER 25), 1995

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

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## A BILL

To amend title 17 to adapt the copyright law to the digital, networked environment of the National Information Infrastructure, and for other purposes.

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 “NII Copyright Protec-  
5        tion Act of 1995”.

6        **SEC. 2. TRANSMISSION OF COPIES.**

7        (a) DISTRIBUTION.—Section 106(3) of title 17, Unit-  
8        ed States Code, is amended by striking “or by rental,

1 lease, or lending” and inserting “by rental, lease, or lend-  
2 ing, or by transmission”.

3 (b) DEFINITIONS.—Section 101 of title 17, United  
4 States Code, is amended—

5 (1) in the definition of “publication” by striking  
6 “or by rental, lease, or lending” in the first sentence  
7 and insert “by rental, lease, or lending, or by trans-  
8 mission”; and

9 (2) in the definition of “transmit” by inserting  
10 at the end thereof the following: “To ‘transmit’ a re-  
11 production is to distribute it by any device or proc-  
12 ess whereby a copy or phonorecord of the work is  
13 fixed beyond the place from which it was sent.”.

14 (c) IMPORTATION.—Section 602 of title 17, United  
15 States Code, is amended by inserting “whether by carriage  
16 of tangible goods or by transmission,” after “importation  
17 into the United States,”.

18 **SEC. 3. EXEMPTIONS FOR LIBRARIES AND THE VISUALLY**  
19 **IMPAIRED.**

20 (a) LIBRARIES.—Section 108 of title 17, United  
21 States Code, is amended—

22 (1) in subsection (a) by deleting “one copy or  
23 phonorecord” and inserting in lieu thereof “three  
24 copies or phonorecords”;

1           (2) in subsection (a) by deleting “such copy or  
2           phonorecord” and inserting in lieu thereof “no more  
3           than one of such copies or phonorecords”;

4           (3) by inserting at the end of subsection (a)(3)  
5           “if such notice appears on the copy or phonorecord  
6           that is reproduced under the provisions of this sec-  
7           tion”;

8           (4) in subsection (b) by inserting “or digital”  
9           after “facsimile” and by inserting “in facsimile  
10           form” before “for deposit for research use”; and

11           (5) in subsection (c) by inserting “or digital”  
12           after “facsimile”.

13           (b) VISUALLY IMPAIRED.—Title 17, United States  
14 Code, is amended by adding the following new section:

15 **“§108A. Limitations on exclusive rights: Reproduc-**  
16 **tion for the Visually Impaired**

17           “Notwithstanding the provision of section 106, it is  
18 not an infringement of copyright for a non-profit organiza-  
19 tion to reproduce and distribute to the visually impaired,  
20 at cost, a Braille, large type, audio or other edition of a  
21 previously published literary work in a form intended to  
22 be perceived by the visually impaired, provided that, dur-  
23 ing a period of at least one year after the first publication  
24 of a standard edition of such work in the United States,  
25 the owner of the exclusive right to distribute such work

1 in the United States has not entered the market for edi-  
 2 tions intended to be perceived by the visually impaired.”.

3 **SEC. 4. COPYRIGHT PROTECTION SYSTEMS AND COPY-**  
 4 **RIGHT MANAGEMENT INFORMATION.**

5 Title 17, United States Code, is amended by adding  
 6 the following new chapter:

“CHAPTER 12.—COPYRIGHT PROTECTION AND MANAGEMENT  
 SYSTEMS

“Sec.

“1201. Circumvention of copyright protection systems.

“1202. Integrity of copyright management information.

“1203. Civil remedies.

“1204. Criminal offenses and penalties.

7 **“§ 1201. Circumvention of copyright protection sys-**  
 8 **tems**

9 “No person shall import, manufacture or distribute  
 10 any device, product, or component incorporated into a de-  
 11 vice or product, or offer or perform any service, the pri-  
 12 mary purpose or effect of which is to avoid, bypass, re-  
 13 move, deactivate, or otherwise circumvent, without the au-  
 14 thority of the copyright owner or the law, any process,  
 15 treatment, mechanism or system which prevents or inhib-  
 16 its the violation of any of the exclusive rights of the copy-  
 17 right owner under section 106.

18 **“§ 1202. Integrity of copyright management informa-**  
 19 **tion**

20 “(a) FALSE COPYRIGHT MANAGEMENT INFORMA-  
 21 TION.—No person shall knowingly provide copyright man-  
 22 agement information that is false, or knowingly publicly

1 distribute or import for public distribution copyright man-  
2 agement information that is false.

3       “(b) REMOVAL OR ALTERATION OF COPYRIGHT  
4 MANAGEMENT INFORMATION.—No person shall, without  
5 authority of the copyright owner or the law, (i) knowingly  
6 remove or alter any copyright management information,  
7 (ii) knowingly distribute or import for distribution copy-  
8 right management information that has been altered with-  
9 out authority of the copyright owner or the law, or (iii)  
10 knowingly distribute or import for distribution copies or  
11 phonorecords from which copyright management informa-  
12 tion has been removed without authority of the copyright  
13 owner or the law.

14       “(c) DEFINITION.—As used in this chapter, “copy-  
15 right management information” means the name and  
16 other identifying information of the author of a work, the  
17 name and other identifying information of the copyright  
18 owner, terms and conditions for uses of the work, and such  
19 other information as the Register of Copyrights may pre-  
20 scribe by regulation.

21 **“§ 1203. Civil remedies**

22       “(a) CIVIL ACTIONS.—Any person injured by a viola-  
23 tion of Sec. 1201 or 1202 may bring a civil action in an  
24 appropriate United States district court for such violation.

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

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

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

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

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

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

18           “(6) may, as part of a final judgment or decree  
19 finding a violation, order the remedial modification  
20 or the destruction of any device or product involved  
21 in the violation that is in the custody or control of  
22 the violator or has been impounded under subsection  
23 (2).

24       “(c) AWARD OF DAMAGES.—

1           “(1) IN GENERAL.—Except as otherwise pro-  
2           vided in this chapter, a violator is liable for either  
3           (i) the actual damages and any additional profits of  
4           the violator, as provided by subsection (2) or (ii)  
5           statutory damages, as provided by subsection (3).

6           “(2) ACTUAL DAMAGES.—The court shall  
7           award to the complaining party the actual damages  
8           suffered by him or her as a result of the violation,  
9           and any profits of the violator that are attributable  
10          to the violation and are not taken into account in  
11          computing the actual damages, if the complaining  
12          party elects such damages at any time before final  
13          judgment is entered.

14          “(3) STATUTORY DAMAGES.—

15                 “(A) At any time before final judgment is  
16                 entered, a complaining party may elect to re-  
17                 cover an award of statutory damages for each  
18                 violation of section 1201 in the sum of not less  
19                 than \$200 or more than \$2,500 per device,  
20                 product, offer or performance of service, as the  
21                 court considers just.

22                 “(B) At any time before final judgment is  
23                 entered, a complaining party may elect to re-  
24                 cover an award of statutory damages for each



1 violation of section 1202 in the sum of not less  
2 than \$2,500 or more than \$25,000.

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

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

18 **“§ 1204. Criminal offenses and penalties**

19 “Any person who violates section 1202 with intent  
20 to defraud shall be fined not more than \$500,000 or im-  
21 prisoned for not more than 5 years, or both.”.

22 **SEC. 5. CONFORMING AMENDMENTS.**

23 (a) TABLE OF SECTIONS.—The table of sections for  
24 chapter 1 of title 17, United States Code, is amended by

1 inserting after the item relating to section 108 the follow-  
2 ing:

“108A. Limitations on exclusive rights: Reproduction for the Visually Im-  
paired.”

3 (b) TABLE OF CHAPTERS.—The table of chapters for  
4 title 17, United States Code, is amended by adding at the  
5 end the following:

“12. Copyright Protection and Management Systems ..... 1201”.

6 **SEC. 6. EFFECTIVE DATE.**

7 This Act, and the amendments made by this Act,  
8 shall take effect on the date of the enactment of this Act.

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## **Document No. 13**

