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## Calendar No. 40

105TH CONGRESS  
1ST SESSION**S. 506**

To clarify certain copyright provisions, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 20, 1997

Mr. HATCH introduced the following bill; which was read twice and referred to the Committee on the Judiciary

APRIL 17, 1997

Reported by Mr. HATCH, without amendment

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**A BILL**

To clarify certain copyright provisions, 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 “Copyright Clarifica-  
5 tions Act of 1997”.

6 **SEC. 2. SATELLITE HOME VIEWER ACT OF 1994.**

7 The Satellite Home Viewer Act of 1994 (Public Law  
8 103–369) is amended as follows:

1           (1) Section 2(3)(A) is amended to read as fol-  
2       lows:

3           “(A) in clause (i) by striking ‘12 cents’  
4       and inserting ‘17.5 cents per subscriber in the  
5       case of superstations that as retransmitted by  
6       the satellite carrier include any program which,  
7       if delivered by any cable system in the United  
8       States, would be subject to the syndicated ex-  
9       clusivity rules of the Federal Communications  
10      Commission, and 14 cents per subscriber in the  
11      case of superstations that are syndex-proof as  
12      defined in section 258.2 of title 37, Code of  
13      Federal Regulations’; and”.

14          (2) Section 2(4) is amended to read as follows:

15          “(4) Subsection (c) is amended—

16               “(A) in paragraph (1)—

17                       “(i) by striking ‘until December 31,  
18                       1992,’;

19                       “(ii) by striking ‘(2), (3) or (4)’ and  
20                       inserting ‘(2) or (3)’; and

21                       “(iii) by striking the second sentence;

22               “(B) in paragraph (2)—

23                       “(i) in subparagraph (A) by striking  
24                       ‘July 1, 1991’ and inserting ‘July 1,  
25                       1996’; and

1           “(ii) in subparagraph (D) by striking  
2           ‘December 31, 1994’ and inserting ‘De-  
3           cember 31, 1999, or in accordance with  
4           the terms of the agreement, whichever is  
5           later’; and

6           “(C) in paragraph (3)—

7           “(i) in subparagraph (A) by striking  
8           ‘December 31, 1991’ and inserting ‘Janu-  
9           ary 1, 1997’;

10           “(ii) by amending subparagraph (B)  
11           to read as follows:

12           ‘(B)   ESTABLISHMENT   OF   ROYALTY  
13           FEES.—In determining royalty fees under this  
14           paragraph, the copyright arbitration royalty  
15           panel appointed under chapter 8 shall establish  
16           fees for the retransmission of network stations  
17           and superstations that most clearly represent  
18           the fair market value of secondary trans-  
19           missions. In determining the fair market value,  
20           the panel shall base its decision on economic,  
21           competitive, and programming information pre-  
22           sented by the parties, including—

23           ‘(i) the competitive environment in  
24           which such programming is distributed,  
25           the cost of similar signals in similar pri-

1 vate and compulsory license marketplaces,  
2 and any special features and conditions of  
3 the retransmission marketplace;

4 ‘(ii) the economic impact of such fees  
5 on copyright owners and satellite carriers;  
6 and

7 ‘(iii) the impact on the continued  
8 availability of secondary transmissions to  
9 the public.’; and

10 “(iii) in subparagraph (C), by insert-  
11 ing ‘or July 1, 1997, whichever is later’  
12 after ‘section 802(g)’.”.

13 (3) Section 2(5)(A) is amended to read as fol-  
14 lows:

15 “(A) in paragraph (5)(C) by striking ‘the  
16 date of the enactment of the Satellite Home  
17 Viewer Act of 1988’ and inserting ‘November  
18 16, 1988’; and”.

19 **SEC. 3. COPYRIGHT IN RESTORED WORKS.**

20 Section 104A of title 17, United States Code, is  
21 amended as follows:

22 (1) Subsection (d)(3)(A) is amended to read as  
23 follows:

1           “(3) EXISTING DERIVATIVE WORKS.—(A) In  
2           the case of a derivative work that is based upon a  
3           restored work and is created—

4                   “(i) before the date of the enactment of  
5                   the Uruguay Round Agreements Act, if the  
6                   source country of the restored work is an eligi-  
7                   ble country on such date, or

8                   “(ii) before the date on which the source  
9                   country of the restored work becomes an eligi-  
10                  ble country, if that country is not an eligible  
11                  country on such date of enactment,

12           a reliance party may continue to exploit that deriva-  
13           tive work for the duration of the restored copyright  
14           if the reliance party pays to the owner of the re-  
15           stored copyright reasonable compensation for con-  
16           duct which would be subject to a remedy for in-  
17           fringement but for the provisions of this para-  
18           graph.”.

19           (2) Subsection (e)(1)(B)(ii) is amended by  
20           striking the last sentence.

21           (3) Subsection (h)(2) is amended to read as fol-  
22           lows:

23                   “(2) The ‘date of restoration’ of a restored  
24           copyright is—

1           “(A) January 1, 1996, if the source coun-  
2           try of the restored work is a nation adhering to  
3           the Berne Convention or a WTO member coun-  
4           try on such date; or

5           “(B) the date of adherence or proclama-  
6           tion, in the case of any other source country of  
7           the restored work.”.

8           (4) Subsection (h)(3) is amended to read as fol-  
9           lows:

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

12           “(A) becomes a WTO member country  
13           after the date of the enactment of the Uruguay  
14           Round Agreements Act;

15           “(B) on such date of enactment is, or after  
16           such date of enactment becomes, a member of  
17           the Berne Convention; or

18           “(C) after such date of enactment becomes  
19           subject to a proclamation under subsection (g).

20           For purposes of this paragraph, a nation that is a  
21           member of the Berne Convention on the date of the  
22           enactment of the Uruguay Round Agreements Act  
23           shall be construed to become an eligible country on  
24           such date of enactment.”.

1 **SEC. 4. LICENSES FOR NONEXEMPT SUBSCRIPTION TRANS-**  
2 **MISSIONS.**

3 Section 114(f) of title 17, United States Code, is  
4 amended—

5 (1) in paragraph (1), by inserting “, or, if a  
6 copyright arbitration royalty panel is convened, end-  
7 ing 30 days after the Librarian issues and publishes  
8 in the Federal Register an order adopting the deter-  
9 mination of the copyright arbitration royalty panel  
10 or an order setting the terms and rates (if the Li-  
11 brarian rejects the panel’s determination)” after  
12 “December 31, 2000”; and

13 (2) in paragraph (2), by striking “and publish  
14 in the Federal Register”.

15 **SEC. 5. ROYALTY PAYABLE UNDER COMPULSORY LICENSE.**

16 Section 115(c)(3)(D) of title 17, United States Code,  
17 is amended by striking “and publish in the Federal Reg-  
18 ister”.

19 **SEC. 6. NEGOTIATED LICENSE FOR JUKEBOXES.**

20 Section 116 of title 17, United States Code, is  
21 amended—

22 (1) by amending subsection (b)(2) to read as  
23 follows:

24 “(2) **ARBITRATION.**—Parties not subject to  
25 such a negotiation may determine, by arbitration in  
26 accordance with the provisions of chapter 8, the



1 terms and rates and the division of fees described in  
2 paragraph (1).”; and

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

5 “(d) DEFINITIONS.—As used in this section, the fol-  
6 lowing terms mean the following:

7 “(1) A ‘coin-operated phonorecord player’ is a  
8 machine or device that—

9 “(A) is employed solely for the perform-  
10 ance of nondramatic musical works by means of  
11 phonorecords upon being activated by the inser-  
12 tion of coins, currency, tokens, or other mone-  
13 tary units or their equivalent;

14 “(B) is located in an establishment making  
15 no direct or indirect charge for admission;

16 “(C) is accompanied by a list which is  
17 comprised of the titles of all the musical works  
18 available for performance on it, and is affixed  
19 to the phonorecord player or posted in the es-  
20 tablishment in a prominent position where it  
21 can be readily examined by the public; and

22 “(D) affords a choice of works available  
23 for performance and permits the choice to be  
24 made by the patrons of the establishment in  
25 which it is located.

1           “(2) An ‘operator’ is any person who, alone or  
2 jointly with others—

3           “(A) owns a coin-operated phonorecord  
4 player;

5           “(B) has the power to make a coin-oper-  
6 ated phonorecord player available for placement  
7 in an establishment for purposes of public per-  
8 formance; or

9           “(C) has the power to exercise primary  
10 control over the selection of the musical works  
11 made available for public performance on a  
12 coin-operated phonorecord player.”.

13 **SEC. 7. REGISTRATION AND INFRINGEMENT ACTIONS.**

14       Section 411(b)(1) of title 17, United States Code, is  
15 amended to read as follows:

16       “(1) serves notice upon the infringer, not less  
17 than 48 hours before such fixation, identifying the  
18 work and the specific time and source of its first  
19 transmission, and declaring an intention to secure  
20 copyright in the work; and”.

21 **SEC. 8. COPYRIGHT OFFICE FEES.**

22       (a) **FEE INCREASES.**—Section 708(b) of title 17,  
23 United States Code, is amended to read as follows:

24       “(b) In calendar year 1997 and in any subsequent  
25 calendar year, the Register of Copyrights, by regulation,

1 may increase the fees specified in subsection (a) in the  
2 following manner:

3           “(1) The Register shall conduct a study of the  
4 costs incurred by the Copyright Office for the reg-  
5 istration of claims, the recordation of documents,  
6 and the provision of services. The study shall also  
7 consider the timing of any increase in fees and the  
8 authority to use such fees consistent with the  
9 budget.

10           “(2) The Register may, on the basis of the  
11 study under paragraph (1), and subject to para-  
12 graph (5), increase fees to not more than that nec-  
13 essary to cover the reasonable costs incurred by the  
14 Copyright Office for the services described in para-  
15 graph (1), plus a reasonable inflation adjustment to  
16 account for any estimated increase in costs.

17           “(3) Any newly established fee under paragraph  
18 (2) shall be rounded off to the nearest dollar, or for  
19 a fee less than \$12, rounded off to the nearest 50  
20 cents.

21           “(4) The fees established under this subsection  
22 shall be fair and equitable and give due consider-  
23 ation to the objectives of the copyright system.

24           “(5) If the Register determines under para-  
25 graph (2) that fees should be increased, the Register

1 shall prepare a proposed fee schedule and submit the  
2 schedule with the accompanying economic analysis to  
3 the Congress. The fees proposed by the Register  
4 may be instituted after the end of 120 days after the  
5 schedule is submitted to the Congress unless, within  
6 that 120-day period, a law is enacted stating in sub-  
7 stance that the Congress does not approve the  
8 schedule.”.

9 (b) DEPOSIT OF FEES.—Section 708(d) of such title  
10 is amended to read as follows:

11 “(d)(1) Except as provided in paragraph (2), all fees  
12 received under this section shall be deposited by the Reg-  
13 ister of Copyrights in the Treasury of the United States  
14 and shall be credited to the appropriations for necessary  
15 expenses of the Copyright Office. Such fees that are col-  
16 lected shall remain available until expended. The Register  
17 may, in accordance with regulations that he or she shall  
18 prescribe, refund any sum paid by mistake or in excess  
19 of the fee required by this section.

20 “(2) In the case of fees deposited against future serv-  
21 ices, the Register of Copyrights shall request the Secretary  
22 of the Treasury to invest in interest-bearing securities in  
23 the United States Treasury any portion of the fees that,  
24 as determined by the Register, is not required to meet cur-  
25 rent deposit account demands. Funds from such portion

1 of fees shall be invested in securities that permit funds  
2 to be available to the Copyright Office at all times if they  
3 are determined to be necessary to meet current deposit  
4 account demands. Such investments shall be in public debt  
5 securities with maturities suitable to the needs of the  
6 Copyright Office, as determined by the Register of Copy-  
7 rights, and bearing interest at rates determined by the  
8 Secretary of the Treasury, taking into consideration cur-  
9 rent market yields on outstanding marketable obligations  
10 of the United States of comparable maturities.

11 “(3) The income on such investments shall be depos-  
12 ited in the Treasury of the United States and shall be  
13 credited to the appropriations for necessary expenses of  
14 the Copyright Office.”.

15 **SEC. 9. COPYRIGHT ARBITRATION ROYALTY PANELS.**

16 (a) ESTABLISHMENT AND PURPOSE.—Section 801 of  
17 title 17, United States Code, is amended—

18 (1) in subsection (b)(1) by striking “and 116”  
19 in the first sentence and inserting “116, and 119”;

20 (2) in subsection (c) by inserting after “panel”  
21 at the end of the sentence the following:

22 “, including—

23 “(1) authorizing the distribution of those roy-  
24 alty fees collected under sections 111, 119, and

1 1005 that the Librarian has found are not subject  
2 to controversy; and

3 “(2) accepting or rejecting royalty claims filed  
4 under sections 111, 119, and 1007 on the basis of  
5 timeliness or the failure to establish the basis for a  
6 claim”; and

7 (3) by amending subsection (d) to read as fol-  
8 lows:

9 “(d) SUPPORT AND REIMBURSEMENT OF ARBITRA-  
10 TION PANELS.—The Librarian of Congress, upon the rec-  
11 ommendation of the Register of Copyrights, shall provide  
12 the copyright arbitration royalty panels with the necessary  
13 administrative services related to proceedings under this  
14 chapter, and shall reimburse the arbitrators presiding in  
15 distribution proceedings at such intervals and in such  
16 manner as the Librarian shall provide by regulation. Each  
17 such arbitrator is an independent contractor acting on be-  
18 half of the United States, and shall be hired pursuant to  
19 a signed agreement between the Library of Congress and  
20 the arbitrator. Payments to the arbitrators shall be consid-  
21 ered costs incurred by the Library of Congress and the  
22 Copyright Office for purposes of section 802(h)(1).”.

23 (b) PROCEEDINGS.—Section 802 of title 17, United  
24 States Code, is amended—

1 (1) in subsection (c) by striking the last sen-  
2 tence; and

3 (2) in subsection (h) by amending paragraph  
4 (1) to read as follows:

5 “(1) DEDUCTION OF COSTS OF LIBRARY OF  
6 CONGRESS AND COPYRIGHT OFFICE FROM ROYALTY  
7 FEES.—The Librarian of Congress and the Register  
8 of Copyrights may, to the extent not otherwise pro-  
9 vided under this title, deduct from royalty fees de-  
10 posited or collected under this title the reasonable  
11 costs incurred by the Library of Congress and the  
12 Copyright Office under this chapter. Such deduction  
13 may be made before the fees are distributed to any  
14 copyright claimants. In addition, all funds made  
15 available by an appropriations Act as offsetting col-  
16 lections and available for deductions under this sub-  
17 section shall remain available until expended. In  
18 ratemaking proceedings, the Librarian of Congress  
19 and the Copyright Office may assess their reason-  
20 able costs directly to the parties to the most recent  
21 relevant arbitration proceeding, 50 percent of the  
22 costs to the parties who would receive royalties from  
23 the royalty rate adopted in the proceeding and 50  
24 percent of the costs to the parties who would pay the  
25 royalty rate so adopted.”.

1 **SEC. 10. DIGITAL AUDIO RECORDING DEVICES AND MEDIA.**

2 Section 1007(b) of title 17, United States Code, is  
3 amended by striking “Within 30 days after” in the first  
4 sentence and inserting “After”.

5 **SEC. 11. CONFORMING AMENDMENT.**

6 Section 4 of the Digital Performance Right in Sound  
7 Recordings Act of 1995 (Public Law 104–39) is amended  
8 by redesignating paragraph (5) as paragraph (4).

9 **SEC. 12. MISCELLANEOUS TECHNICAL AMENDMENTS.**

10 (a) AMENDMENTS TO TITLE 17, UNITED STATES  
11 CODE.—Title 17, United States Code, is amended as fol-  
12 lows:

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

15 (A) in the item relating to chapter 6, by  
16 striking “**Requirement**” and inserting “**Re-**  
17 **quirements**”;

18 (B) in the item relating to chapter 8, by  
19 striking “**Royalty Tribunal**” and inserting  
20 “**Arbitration Royalty Panels**”;

21 (C) in the item relating to chapter 9, by  
22 striking “**semiconductor chip products**”  
23 and inserting “**Semiconductor Chip**  
24 **Products**”; and



1 (D) by inserting after the item relating to  
2 chapter 9 the following:

**“10. Digital Audio Recording Devices and Media ..... 1001”.**

3 (2) The item relating to section 117 in the table  
4 of sections at the beginning of chapter 1 is amended  
5 to read as follows:

“117. Limitations on exclusive rights: Computer programs.”.

6 (3) Section 101 is amended in the definition of  
7 to perform or display a work “publicly” by striking  
8 “processs” and inserting “process”.

9 (4) Section 108(e) is amended by striking  
10 “pair” and inserting “fair”.

11 (5) Section 109(a)(2)(B) is amended by strik-  
12 ing “Copyright” and inserting “Copyrights”.

13 (6) Section 110 is amended—

14 (A) in paragraph (8) by striking the period  
15 at the end and inserting a semicolon;

16 (B) in paragraph (9) by striking the period  
17 at the end and inserting “; and”; and

18 (C) in paragraph (10) by striking “4  
19 above” and inserting “(4)”.

20 (7) Section 115(c)(3)(E) is amended—

21 (A) in clause (i) by striking “section  
22 106(1) and (3)” each place it appears and in-  
23 serting “paragraphs (1) and (3) of section  
24 106”; and

1 (B) in clause (ii)(II) by striking “sections  
2 106(1) and 106(3)” and inserting “paragraphs  
3 (1) and (3) of section 106”.

4 (8) Section 119(c)(1) is amended by striking  
5 “unless until” and inserting “unless”.

6 (9) Section 304(c) is amended in the matter  
7 preceding paragraph (1) by striking “the subsection  
8 (a)(1)(C)” and inserting “subsection (a)(1)(C)”.

9 (10) Section 405(b) is amended by striking  
10 “condition or” and inserting “condition for”.

11 (11) Section 407(d)(2) is amended by striking  
12 “cost of” and inserting “cost to”.

13 (12) The item relating to section 504 in the  
14 table of sections at the beginning of chapter 5 is  
15 amended by striking “Damage” and inserting  
16 “Damages”.

17 (13) Section 504(c)(2) is amended by striking  
18 “court it” and inserting “court in”.

19 (14) Section 509(b) is amended by striking  
20 “merchandise; and baggage” and inserting “mer-  
21 chandise, and baggage”.

22 (15) Section 601(a) is amended by striking  
23 “nondramtic” and inserting “nondramatic”.

24 (16) Section 601(b)(1) is amended by striking  
25 “subsustantial” and inserting “substantial”.

1           (17) The item relating to section 710 in the  
2 table of sections at the beginning of chapter 7 is  
3 amended by striking “Reproductions” and inserting  
4 “Reproduction”.

5           (18) The item relating to section 801 in the  
6 table of sections at the beginning of chapter 8 is  
7 amended by striking “establishment” and inserting  
8 “Establishment”.

9           (19) Section 801(b) is amended—

10                 (A) by striking “shal be—” and inserting  
11 “shall be as follows.”;

12                 (B) in paragraph (1) by striking “to  
13 make” and inserting “To make”;

14                 (C) in paragraph (2)—

15                         (i) by striking “to make” and insert-  
16 ing “To make”; and

17                         (ii) in subparagraph (D) by striking  
18 “adjustment; and” and inserting “adjust-  
19 ment.”; and

20                 (D) in paragraph (3) by striking “to dis-  
21 tribute” and inserting “To distribute”.

22           (20) Section 803(b) is amended in the second  
23 sentence by striking “subsection subsection” and in-  
24 serting “subsection”.

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

“903. Ownership, transfer, licensure, and recordation.”.

4           (22) Section 909(b)(1) is amended—

5                   (A) by striking “force” and inserting  
6                   “work”; and

7                   (B) by striking “sumbol” and inserting  
8                   “symbol”.

9           (23) Section 910(a) is amended in the second  
10          sentence by striking “as used” and inserting “As  
11          used”.

12          (24) Section 1006(b)(1) is amended by striking  
13          “Federation Television” and inserting “Federation  
14          of Television”.

15          (25) Section 1007 is amended—

16                   (A) in subsection (a)(1) by striking “The  
17                   calendar year in which this chapter takes ef-  
18                   fect” and inserting “calendar year 1992”; and

19                   (B) in subsection (b) by striking “the year  
20                   in which this section takes effect” and inserting  
21                   “1992”.

22          (b) RELATED PROVISIONS.—

23                  (1) Section 1(a)(1) of the Act entitled “An Act  
24                  to amend chapter 9 of title 17, United States Code,  
25                  regarding protection extended to semiconductor chip

1 products of foreign entities”, approved November 9,  
2 1987 (17 U.S.C. 914 note), is amended by striking  
3 “originating” and inserting “originating”.

4 (2) Section 2319(b)(1) of title 18, United  
5 States Code, is amended by striking “last 10” and  
6 inserting “least 10”.

7 **SEC. 13. EFFECTIVE DATES.**

8 (a) **IN GENERAL.**—Except as provided in subsections  
9 (b) and (c), the amendments made by this title shall take  
10 effect on the date of the enactment of this Act.

11 (b) **SATELLITE HOME VIEWER ACT OF 1994.**—The  
12 amendments made by section 2 shall be effective as if en-  
13 acted as part of the Satellite Home Viewer Act of 1994  
14 (Public Law 103–369).

15 (c) **TECHNICAL AMENDMENT.**—The amendment  
16 made by section 12(b)(1) shall be effective as if enacted  
17 on November 9, 1987.

○

9)