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Calendar No. 66

107TH CONGRESS
1ST SESSION

S. 487

[Report No. 107-31]

To amend chapter 1 of title 17, United States Code, relating to the exemption of certain performances or displays for educational uses from copyright infringement provisions, to provide that the making of a single copy of such performances or displays is not an infringement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 7, 2001

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

JUNE 5, 2001

Reported by Mr. HATCH, with an amendment

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

A BILL

To amend chapter 1 of title 17, United States Code, relating to the exemption of certain performances or displays for educational uses from copyright infringement provisions, to provide that the making of a single copy of such performances or displays is not an infringement, 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 “Technology, Education
5 and Copyright Harmonization Act of 2001”.

6 **SEC. 2. EXEMPTION OF CERTAIN PERFORMANCES AND DIS-**
7 **PLAYS FOR EDUCATIONAL USES.**

8 Section 110(2) of title 17, United States Code, is
9 amended—

10 (1) by striking the matter preceding subpara-
11 graph (A) and inserting the following:

12 “(2) except with respect to a work produced
13 primarily for instructional use or a performance or
14 display that is given by means of a copy that is not
15 lawfully made and acquired under this title, and the
16 transmitting governmental body or nonprofit edu-
17 cational institution knew or had reason to believe
18 was not lawfully made and acquired, the perform-
19 ance of a nondramatic literary or musical work or
20 reasonable and limited portions of any other work,
21 or display of a work, by or in the course of a trans-
22 mission, reproduction of such work in transient cop-
23 ies or phonorecords created as a part of the auto-
24 matic technical process of a digital transmission,
25 and distribution of such copies or phonorecords in

1 the course of such transmission, to the extent tech-
 2 nologically necessary to transmit the performance or
 3 display, if—”;

4 (2) in subparagraph (A) by striking all begin-
 5 ning with “the performance” through “regular” and
 6 inserting the following: “the performance or display
 7 is made by or at the direction of an instructor as an
 8 integral part of a class session offered as a regular”;

9 (3) by striking subparagraph (C) and inserting
 10 the following:

11 “(C) the transmission is made solely for,
 12 and, to the extent technologically feasible, the
 13 reception of such transmission is limited to—

14 “(i) students officially enrolled in the
 15 course for which the transmission is made;
 16 or

17 “(ii) officers or employees of govern-
 18 mental bodies as part of their official du-
 19 ties or employment; and”;

20 (4) by adding at the end the following:

21 “(D) any transient copies are retained for
 22 no longer than reasonably necessary to complete
 23 the transmission; and

24 “(E) the transmitting body or
 25 institution—

1 “(i) institutes policies regarding copy-
 2 right, provides informational materials to
 3 faculty, students, and relevant staff mem-
 4 bers that accurately describe, and promote
 5 compliance with, the laws of the United
 6 States relating to copyright, and provides
 7 notice to students that materials used in
 8 connection with the course may be subject
 9 to copyright protection; and

10 “(ii) in the case of digital trans-
 11 missions, applies technological measures
 12 that reasonably prevent unauthorized ac-
 13 cess to and dissemination of the work, and
 14 does not intentionally interfere with tech-
 15 nological measures used by the copyright
 16 owner to protect the work.”.

17 **SEC. 3. EPHEMERAL RECORDINGS.**

18 (a) **IN GENERAL.**—Section 112 of title 17, United
 19 States Code, is amended—

20 (1) by redesignating subsection (f) as sub-
 21 section (g); and

22 (2) by inserting after subsection (e) the fol-
 23 lowing:

24 “(f) Notwithstanding the provisions of section 106,
 25 and without limiting the application of subsection (b), it

1 is not an infringement of copyright for a governmental
 2 body or other nonprofit educational institution entitled to
 3 transmit a performance or display of a work that is in
 4 digital form under section 110(2) to make copies or
 5 phonorecords embodying the performance or display to be
 6 used for making transmissions authorized under section
 7 110(2), if—

8 “(1) such copies or phonorecords are retained
 9 and used solely by the body or institution that made
 10 them, and no further copies or phonorecords are re-
 11 produced from them, except as authorized under sec-
 12 tion 110(2);

13 “(2) such copies or phonorecords are used sole-
 14 ly for transmissions authorized under section
 15 110(2); and

16 “(3) the body or institution does not inten-
 17 tionally interfere with technological measures used
 18 by the copyright owner to protect the work.”

19 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
 20 Section 802(e) of title 17, United States Code, is amended
 21 in the third sentence by striking “section 112(f)” and in-
 22 serting “section 112(g)”.

23 **SEC. 4. IMPLEMENTATION BY COPYRIGHT OFFICE.**

24 (a) **REPORT.**—Not later than 2 years after the date
 25 of enactment of this Act, the Copyright Office shall con-

1 duct a study and submit a report to Congress on the sta-
2 tus of—

3 (1) licensing by private and public educational
4 institutions of copyrighted works for digital distance
5 education programs, including—

6 (A) live interactive distance learning class-
7 es;

8 (B) faculty instruction recorded without
9 students present for later transmission; and

10 (C) asynchronous delivery of distance
11 learning over computer networks; and

12 (2) the use of copyrighted works in such pro-
13 grams.

14 (b) CONFERENCE.—Not later than 2 years after the
15 date of enactment of this Act, the Copyright Office shall—

16 (1) convene a conference of interested parties,
17 including representatives of copyright owners, non-
18 profit educational institutions and nonprofit libraries
19 and archives to develop guidelines for the use of
20 copyrighted works for digital distance education
21 under the fair use doctrine and section 110 (1) and
22 (2) of title 17, United States Code;

23 (2) to the extent the Copyright Office deter-
24 mines appropriate, submit to the Committees on the
25 Judiciary of the Senate and the House of Represent-

1 atives such guidelines, along with information on the
2 organizations, Government agencies, and institutions
3 participating in the guideline development and en-
4 dorsing the guidelines; and

5 (3) post such guidelines on an Internet website
6 for educators, copyright owners, libraries, and other
7 interested persons.

8 **SECTION 1. EDUCATIONAL USE COPYRIGHT EXEMPTION.**

9 (a) *SHORT TITLE.*—This Act may be cited as the
10 “Technology, Education, and Copyright Harmonization
11 Act of 2001”.

12 (b) *EXEMPTION OF CERTAIN PERFORMANCES AND DIS-*
13 *PLAYS FOR EDUCATIONAL USES.*—Section 110 of title 17,
14 United States Code, is amended—

15 (1) by striking paragraph (2) and inserting the
16 following:

17 “(2) except with respect to a work produced or
18 marketed primarily for performance or display as
19 part of mediated instructional activities transmitted
20 via digital networks, or a performance or display that
21 is given by means of a copy or phonorecord that is
22 not lawfully made and acquired under this title, and
23 the transmitting government body or accredited non-
24 profit educational institution knew or had reason to
25 believe was not lawfully made and acquired, the per-

1 *formance of a nondramatic literary or musical work*
2 *or reasonable and limited portions of any other work,*
3 *or display of a work in an amount comparable to*
4 *that which is typically displayed in the course of a*
5 *live classroom session, by or in the course of a trans-*
6 *mission, if—*

7 *“(A) the performance or display is made by,*
8 *at the direction of, or under the actual super-*
9 *vision of an instructor as an integral part of a*
10 *class session offered as a regular part of the sys-*
11 *tematic mediated instructional activities of a*
12 *governmental body or an accredited nonprofit*
13 *educational institution;*

14 *“(B) the performance or display is directly*
15 *related and of material assistance to the teaching*
16 *content of the transmission;*

17 *“(C) the transmission is made solely for,*
18 *and, to the extent technologically feasible, the re-*
19 *ception of such transmission is limited to—*

20 *“(i) students officially enrolled in the*
21 *course for which the transmission is made;*
22 *or*

23 *“(ii) officers or employees of govern-*
24 *mental bodies as a part of their official du-*
25 *ties or employment; and*

1 “(D) the transmitting body or institution—

2 “(i) institutes policies regarding copy-
3 right, provides informational materials to
4 faculty, students, and relevant staff mem-
5 bers that accurately describe, and promote
6 compliance with, the laws of the United
7 States relating to copyright, and provides
8 notice to students that materials used in
9 connection with the course may be subject to
10 copyright protection; and

11 “(ii) in the case of digital
12 transmissions—

13 “(I) applies technological meas-
14 ures that, in the ordinary course of
15 their operations, prevent—

16 “(aa) retention of the work
17 in accessible form by recipients of
18 the transmission from the trans-
19 mitting body or institution for
20 longer than the class session; and

21 “(bb) unauthorized further
22 dissemination of the work in ac-
23 cessible form by such recipients to
24 others; and

1 “(II) does not engage in conduct
2 that could reasonably be expected to
3 interfere with technological measures
4 used by copyright owners to prevent
5 such retention or unauthorized further
6 dissemination;” and

7 (2) by adding at the end the following:

8 “*In paragraph (2), the term ‘mediated instructional activities’ with respect to the performance or*
9 *display of a work by digital transmission under this*
10 *section refers to activities that use such work as an*
11 *integral part of the class experience, controlled by or*
12 *under the actual supervision of the instructor and*
13 *analogous to the type of performance or display that*
14 *would take place in a live classroom setting. The term*
15 *does not refer to activities that use, in 1 or more class*
16 *sessions of a single course, such works as textbooks,*
17 *course packs, or other material in any media, copies*
18 *or phonorecords of which are typically purchased or*
19 *acquired by the students in higher education for their*
20 *independent use and retention or are typically pur-*
21 *chased or acquired for elementary and secondary stu-*
22 *dents for their possession and independent use.*

23 “*For purposes of paragraph (2), accreditation—*
24

1 “(A) with respect to an institution pro-
2 viding post-secondary education, shall be as de-
3 termined by a regional or national accrediting
4 agency recognized by the Council on Higher
5 Education Accreditation or the United States
6 Department of Education; and

7 “(B) with respect to an institution pro-
8 viding elementary or secondary education, shall
9 be as recognized by the applicable state certifi-
10 cation or licensing procedures.

11 “For purposes of paragraph (2), no govern-
12 mental body or accredited nonprofit educational in-
13 stitution shall be liable for infringement by reason of
14 the transient or temporary storage of material carried
15 out through the automatic technical process of a dig-
16 ital transmission of the performance or display of
17 that material as authorized under paragraph (2). No
18 such material stored on the system or network con-
19 trolled or operated by the transmitting body or insti-
20 tution under this paragraph shall be maintained on
21 such system or network in a manner ordinarily acces-
22 sible to anyone other than anticipated recipients. No
23 such copy shall be maintained on the system or net-
24 work in a manner ordinarily accessible to such an-
25 ticipated recipients for a longer period than is rea-

1 sonably necessary to facilitate the transmissions for
2 which it was made.”

3 (c) *EPHEMERAL RECORDINGS.*—

4 (1) *IN GENERAL.*—Section 112 of title 17,
5 United States Code, is amended—

6 (A) by redesignating subsection (f) as subsection
7 (g); and

8 (B) by inserting after subsection (e) the fol-
9 lowing:

10 “(f)(1) Notwithstanding the provisions of section 106,
11 and without limiting the application of subsection (b), it
12 is not an infringement of copyright for a governmental body
13 or other nonprofit educational institution entitled under
14 section 110(2) to transmit a performance or display to
15 make copies or phonorecords of a work that is in digital
16 form and, solely to the extent permitted in paragraph (2),
17 of a work that is in analog form, embodying the perform-
18 ance or display to be used for making transmissions author-
19 ized under section 110(2), if—

20 “(A) such copies or phonorecords are retained
21 and used solely by the body or institution that made
22 them, and no further copies or phonorecords are re-
23 produced from them, except as authorized under sec-
24 tion 110(2); and

1 “(B) such copies or phonorecords are used solely
2 for transmissions authorized under section 110(2).

3 “(2) This subsection does not authorize the conversion
4 of print or other analog versions of works into digital for-
5 mats, except that such conversion is permitted hereunder,
6 only with respect to the amount of such works authorized
7 to be performed or displayed under section 110(2), if—

8 “(A) no digital version of the work is available
9 to the institution; or

10 “(B) the digital version of the work that is avail-
11 able to the institution is subject to technological pro-
12 tection measures that prevent its use for section
13 110(2).”.

14 (2) *TECHNICAL AND CONFORMING AMEND-*
15 *MENT.*—Section 802(c) of title 17, United States
16 Code, is amended in the third sentence by striking
17 “section 112(f)” and inserting “section 112(g)”.

18 (d) *PATENT AND TRADEMARK OFFICE REPORT.*—

19 (1) *IN GENERAL.*—Not later than 180 days after
20 the date of enactment of this Act and after a period
21 for public comment, the Undersecretary of Commerce
22 for Intellectual Property, after consultation with the
23 Register of Copyrights, shall submit to the Committees
24 on the Judiciary of the Senate and the House of Rep-
25 resentatives a report describing technological protec-

1 *tion systems that have been implemented, are avail-*
2 *able for implementation, or are proposed to be devel-*
3 *oped to protect digitized copyrighted works and pre-*
4 *vent infringement, including upgradeable and self-re-*
5 *pairing systems, and systems that have been devel-*
6 *oped, are being developed, or are proposed to be devel-*
7 *oped in private voluntary industry-led entities*
8 *through an open broad based consensus process. The*
9 *report submitted to the Committees shall not include*
10 *any recommendations, comparisons, or comparative*
11 *assessments of any commercially available products*
12 *that may be mentioned in the report.*

13 (2) *LIMITATIONS.—The report under this*
14 *subsection—*

15 (A) *is intended solely to provide informa-*
16 *tion to Congress; and*

17 (B) *shall not be construed to affect in any*
18 *way, either directly or by implication, any pro-*
19 *vision of title 17, United States Code, including*
20 *the requirements of clause (ii) of section*
21 *110(2)(D) of that title (as added by this Act), or*
22 *the interpretation or application of such provi-*
23 *sions, including evaluation of the compliance*
24 *with that clause by any governmental body or*
25 *nonprofit educational institution.*

DOCUMENT NO. 14

107TH CONGRESS
1ST SESSION

S. 487

AN ACT

To amend chapter 1 of title 17, United States Code, relating to the exemption of certain performances or displays for educational uses from copyright infringement provisions, to provide that the making of copies or phonorecords of such performances or displays is not an infringement under certain circumstances, and for other purposes.

