

102<sup>D</sup> CONGRESS  
1ST SESSION

# H. R. 2372

To amend title 17, United States Code, with respect to fair use and copyright renewal, to reauthorize the National Film Registry Board, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 16, 1991

Mr. HUGHES (for himself and Mr. MOORHEAD) introduced the following bill; which was referred jointly to the Committees on the Judiciary and House Administration

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## A BILL

To amend title 17, United States Code, with respect to fair use and copyright renewal, to reauthorize the National Film Registry Board, 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 Amend-  
5 ments Act of 1991".

## **TITLE I—FAIR USE**

### **SECTION 101. FAIR USE REGARDING UNPUBLISHED WORKS.**

Section 107 of title 17, United States Code, is amended by adding at the end the following: “The fact that a work is unpublished is an important element which tends to weigh against a finding of fair use, but shall not diminish the importance traditionally accorded to any other consideration under this section, and shall not bar a finding of fair use if such finding is made upon full consideration of all the factors set forth in paragraphs (1) through (4).”.

## **TITLE II—RENEWAL OF COPYRIGHT**

### **SEC. 201. SHORT TITLE.**

This title may be referred to as the “Copyright Renewal Act of 1991”.

### **SEC. 202. COPYRIGHT RENEWAL PROVISIONS.**

(a) DURATION OF COPYRIGHT: SUBSISTING COPYRIGHTS.—Section 304(a) of title 17, United States Code, is amended to read as follows:

“(a) COPYRIGHTS IN THEIR FIRST TERM ON JANUARY 1, 1978.—(1)(A) Any copyright, the first term of which is subsisting on January 1, 1978, shall endure for 28 years from the date it was originally secured.

1       “(B) In the case of—

2               “(i) any posthumous work or of any periodical,  
3       cyclopedic, or other composite work upon which the  
4       copyright was originally secured by the proprietor  
5       thereof, or

6               “(ii) any work copyrighted by a corporate body  
7       (otherwise than as assignee or licensee of the indi-  
8       vidual author) or by an employer for whom such  
9       work is made for hire,

10   the proprietor of such copyright shall be entitled to a re-  
11   newal and extension of the copyright in such work for the  
12   further term of 47 years.

13       “(C) In the case of any other copyrighted work, in-  
14   cluding a contribution by an individual author to a periodi-  
15   cal or to a cyclopedic or other composite work—

16               “(i) the author of such work, if the author is  
17       still living,

18               “(ii) the widow, widower, or children of the au-  
19       thor, if the author is not living,

20               “(iii) the author’s executors, if such author,  
21       widow, widower, or children are not living, or

22               “(iv) the author’s next of kin, in the absence of  
23       a will of the author,

24   shall be entitled to a renewal and extension of the copy-  
25   right in such work for a further term of 47 years.

1       “(2)(A) At the expiration of the original term of  
2 copyright in a work specified in paragraph (1)(B) of this  
3 subsection, the copyright shall endure for a renewed and  
4 extended further term of 47 years, which—

5               “(i) if an application to register a claim to such  
6 further term has been made to the Copyright Office  
7 within 1 year before the expiration of the original  
8 term of copyright, and the claim is registered, shall  
9 vest, upon the beginning of such further term, in the  
10 proprietor of the copyright who is entitled to claim  
11 the renewal of copyright at the time the application  
12 is made; or

13               “(ii) if no such application is made or the claim  
14 pursuant to such application is not registered, shall  
15 vest, upon the beginning of such further term, in the  
16 person or entity that was the proprietor of the copy-  
17 right as of the last day of the original term of copy-  
18 right.

19       “(B) At the expiration of the original term of copy-  
20 right in a work specified in paragraph (1)(C) of this sub-  
21 section, the copyright shall endure for a renewed and ex-  
22 tended further term of 47 years, which—

23               “(i) if an application to register a claim to such  
24 further term has been made to the Copyright Office  
25 within 1 year before the expiration of the original

1 term of copyright, and the claim is registered, shall  
2 vest, upon the beginning of such further term, in  
3 any person who is entitled under paragraph (1)(C)  
4 to the renewal and extension of the copyright at the  
5 time the application is made; or

6 “(ii) if no such application is made or the claim  
7 pursuant to such application is not registered, shall  
8 vest, upon the beginning of such further term, in  
9 any person entitled under paragraph (1)(C), as of  
10 the last day of the original term of copyright, to the  
11 renewal and extension of the copyright.

12 “(3)(A) An application to register a claim to the re-  
13 newed and extended term of copyright in a work may be  
14 made to the Copyright Office—

15 “(i) within 1 year before the expiration of the  
16 original term of copyright by any person entitled  
17 under paragraph (1)(B) or (C) to such further term  
18 of 47 years; and

19 “(ii) at any time during the renewed and ex-  
20 tended term by any person in whom such further  
21 term vested, under paragraph (2)(A) or (B), or by  
22 any successor or assign of such person, if the appli-  
23 cation is made in the name of such person.

1       “(B) Such an application is not a condition of the  
2 renewal and extension of the copyright in a work for a  
3 further term of 47 years.

4       “(4)(A) If an application to register a claim to the  
5 renewed and extended term of copyright in a work is not  
6 made within 1 year before the expiration of the original  
7 term of copyright in a work, or if the claim pursuant to  
8 such application is not registered, then a derivative work  
9 prepared under authority of a grant of a transfer or li-  
10 cense of copyright that is made before the expiration of  
11 the original term of copyright, may continue to be used  
12 under the terms of the grant during the renewed and ex-  
13 tended term of copyright without infringing the copyright,  
14 except that such use does not extend to the preparation  
15 during such renewed and extended term of other derivative  
16 works based upon the copyrighted work covered by such  
17 grant.

18       “(B) If an application to register a claim to the re-  
19 newed and extended term of copyright in a work is made  
20 within 1 year before its expiration, and the claim is regis-  
21 tered, the certificate of such registration shall constitute  
22 prima facie evidence as to the validity of the copyright  
23 during its renewed and extended term and of the facts  
24 stated in the certificate. The evidentiary weight to be ac-  
25 corded the certificate of a registration of a renewed and

1 extended term of copyright made after the end of that 1-  
2 year period shall be within the discretion of the court.”.

3 (b) LEGAL EFFECT OF RENEWAL OF COPYRIGHT IS  
4 UNCHANGED.—The renewal and extension of a copyright  
5 for a further term of 47 years as provided under para-  
6 graphs (1) and (2) of section 304(a) of title 17, United  
7 States Code, (as amended by subsection (a) of this sec-  
8 tion) shall have the same effect with respect to any grant,  
9 before the effective date of this section, of a transfer or  
10 license of the further term as did the renewal of a copy-  
11 right before the effective date of this section under the  
12 law in effect at the time of such grant.

13 (c) CONFORMING AMENDMENT.—Section 304(c) of  
14 title 17, United States Code, is amended in the matter  
15 preceding paragraph (1) by striking “second proviso of  
16 subsection (a)” and inserting “subsection (a)(1)(C)”.

17 (d) REGISTRATION PERMISSIVE.—Section 408(a) of  
18 title 17, United States Code, is amended by striking “At”  
19 and all that follows through “unpublished work,” and in-  
20 serting “At any time during the subsistence of the first  
21 term of copyright in any published or unpublished work  
22 in which the copyright was secured before January 1,  
23 1978, and during the subsistence of any copyright secured  
24 on or after that date,”.

1 (e) FALSE REPRESENTATION.—Section 506(e) of  
2 title 17, United States Code, is amended by inserting after  
3 “409,” the following: “in the application for a renewal reg-  
4 istration,”.

5 (f) COPYRIGHT OFFICE FEES.—Section 708(a)(2) of  
6 title 17, United States Code, is amended—

7 (1) by striking “in its first term”; and

8 (2) by striking “\$12” and inserting “\$20”.

9 (g) EFFECTIVE DATE; COPYRIGHTS AFFECTED BY  
10 AMENDMENT.—(1) Subject to paragraphs (2) and (3),  
11 this section and the amendments made by this section  
12 shall take effect on the date of the enactment of this Act.

13 (2) The amendments made by this section shall apply  
14 only to those copyrights secured between January 1, 1963,  
15 and December 31, 1977. Copyrights secured before Janu-  
16 ary 1, 1963, shall be governed by the provisions of section  
17 304(a) of title 17, United States Code, as in effect on the  
18 day before the effective date of this section.

19 (3) This section and the amendments made by this  
20 section shall not affect any court proceedings pending on  
21 the effective date of this section.



# TITLE III—NATIONAL FILM PRESERVATION

## SEC. 301. SHORT TITLE.

This title may be cited as the “National Film Preservation Act of 1991”.

## SEC. 302. FINDINGS.

The Congress finds that—

(1) motion pictures are an indigenous American art form that has been emulated throughout the world;

(2) certain motion pictures represent an enduring part of our Nation’s historical and cultural heritage;

(3) less than half of the feature-length films produced in the United States before 1951, including only 20 percent of the silent films, still exist today because of deterioration or loss, and many of the films produced after 1951 are deteriorating at an alarming rate;

(4) it is appropriate and necessary for the Federal Government to recognize motion pictures as a significant American art form deserving of protection, including preservation and restoration, and to establish a registry of films that represent an enduring part of the national, historical, and cultural her-





1           (2) In addition to the Librarian's duties under para-  
2 graph (1), the Librarian shall do the following:

3           (A) The Librarian shall determine, after consul-  
4 tation with the Board, which films satisfy the crite-  
5 ria developed under paragraph (1)(B) and qualify  
6 for inclusion in the National Film Registry, except  
7 that the Librarian shall not select more than 25  
8 films each year for inclusion in the Registry.

9           (B) The Librarian shall publish in the Federal  
10 Register the name of each film that is selected for  
11 inclusion in the National Film Registry.

12           (C) The Librarian shall provide a seal to indi-  
13 cate that a film has been included in the National  
14 Film Registry as an enduring part of the national  
15 cultural heritage of the United States. Such seal  
16 may then be used on copies of such films that are  
17 original and complete versions as they were first  
18 published, after such copies have been examined and  
19 approved by the Librarian. In the case of copyright-  
20 ed works, only the copyright owner, a duly author-  
21 ized licensee, or the Librarian or an archive other  
22 than the Library of Congress may place a seal on  
23 a copy of a film selected for inclusion in the Nation-  
24 al Film Registry. Wherever appropriate, the Librari-  
25 an may accompany the seal with language indicating

1 that a copy of a film was preserved and restored by  
2 the Librarian or by an archive acting under the  
3 standards issued under subparagraph (D).

4 (D) The Librarian shall publish in the Federal  
5 Register the standards for preservation or restora-  
6 tion that will qualify films for use of the seal under  
7 subparagraph (C).

8 (3) The Librarian shall submit to the Congress a re-  
9 port, not less than once every two years, listing films in-  
10 cluded in the National Film Registry and describing the  
11 activities of the Board.

12 **SEC. 305. NATIONAL FILM PRESERVATION BOARD.**

13 (a) NUMBER AND APPOINTMENT.—(1) The Librari-  
14 an shall establish in the Library of Congress a National  
15 Film Preservation Board to be comprised of up to 17  
16 members, who shall be selected by the Librarian in accord-  
17 ance with the provisions of this section. Subject to sub-  
18 paragraphs (C) and (O), the Librarian shall request each  
19 organization listed in subparagraphs (A) through (P) to  
20 submit to the Librarian a list of not less than 3 candidates  
21 qualified to serve as a member of the Board. Except for  
22 the member-at-large appointed under paragraph (2), the  
23 Librarian shall appoint one member from each such list  
24 submitted by such organizations, and shall designate from  
25 that list an alternate who may attend those meetings to





1 (b) CHAIRPERSON.—The Librarian shall appoint one  
2 member of the Board to serve as Chairperson.

3 (c) TERM OF OFFICE.—(1) The term of each member  
4 of the Board shall be 3 years, except that there shall be  
5 no limit to the number of terms that any individual mem-  
6 ber may serve.

7 (2) A vacancy in the Board shall be filled in the man-  
8 ner prescribed by the Librarian, except that no entity list-  
9 ed in subsection (a) may have more than one nominee on  
10 the Board at any time. Any member appointed to fill a  
11 vacancy before the expiration of the term for which his  
12 predecessor was appointed shall be appointed only for the  
13 remainder of such term.

14 (d) QUORUM.—Nine members of the Board shall con-  
15 stitute a quorum but a lesser number may hold hearings.

16 (e) BASIC PAY.—Members of the Board shall serve  
17 without pay. While away from their home or regular places  
18 of business in the performance of functions of the Board,  
19 members of the Board shall be allowed travel expenses,  
20 including per diem in lieu of subsistence, in the same man-  
21 ner as persons employed intermittently in Government  
22 service are allowed expenses under section 5701 of title  
23 5, United States Code.



1 (f) MEETINGS.—The Board shall meet at least once  
2 each calendar year. Meetings shall be at the call of the  
3 Librarian.

4 (g) CONFLICT OF INTEREST.—The Librarian shall  
5 establish rules and procedures to address any potential  
6 conflict of interest between a member of the Board and  
7 the responsibilities of the Board.

8 **SEC. 306. RESPONSIBILITIES AND POWERS OF BOARD.**

9 (a) IN GENERAL.—The Board shall review nomina-  
10 tions of films submitted to it for inclusion in the National  
11 Film Registry and shall consult with the Librarian, as pro-  
12 vided in section 304, with respect to the inclusion of such  
13 films in the Registry and the preservation of these and  
14 other films that are culturally, historically, or aesthetically  
15 significant.

16 (b) NOMINATION OF FILMS.—The Board shall con-  
17 sider, for inclusion in the National Film Registry, nomina-  
18 tions submitted by the general public as well as represent-  
19 atives of the film industry, such as the guilds and societies  
20 representing actors, directors, screenwriters, cinematogra-  
21 phers and other creative artists, producers, film critics,  
22 film preservation organizations, and representatives of  
23 academic institutions with film study programs. The  
24 Board shall nominate not more than 25 films each year  
25 for inclusion in the Registry.

1       (c) GENERAL POWERS.—The Board may, for the  
2 purpose of carrying out its duties, hold such hearings, sit  
3 and act at such times and places, take such testimony,  
4 and receive such evidence, as the Librarian and the Board  
5 considers appropriate.

6 **SEC. 307. NATIONAL FILM REGISTRY COLLECTION OF THE**  
7 **LIBRARY OF CONGRESS.**

8       (a) ACQUISITION OF ARCHIVAL QUALITY COPIES.—  
9 The Librarian shall endeavor to obtain, by gift from the  
10 owner, an archival quality copy of an original version of  
11 each film included in the National Film Registry. Wherev-  
12 er possible, the Librarian shall endeavor to obtain the best  
13 surviving materials, including preprint materials.

14       (b) ADDITIONAL MATERIALS.—The Librarian shall  
15 endeavor to obtain, for educational and research purposes,  
16 additional materials related to each film included in the  
17 National Film Registry, such as background materials,  
18 production reports, shooting scripts (including continuity  
19 scripts) and other similar materials.

20       (c) PROPERTY OF UNITED STATES.—All copies of  
21 films on the National Film Registry that are received by  
22 the Librarian and other materials received by the Librari-  
23 an under subsection (b) shall become the property of the  
24 United States Government, except that nothing in this

1 subsection shall affect the rights of owners of copyright  
2 under title 17, United States Code.

3 (d) NATIONAL FILM REGISTRY COLLECTION.—All  
4 copies of films on the National Film Registry that are re-  
5 ceived by the Librarian and all materials received by the  
6 Librarian under subsection (b) shall be maintained in a  
7 special collection in the Library of Congress to be known  
8 as the “National Film Registry Collection of the Library  
9 of Congress”. The Librarian shall, by regulation, and in  
10 accordance with title 17, United States Code, provide for  
11 reasonable access to films in such collection for scholarly  
12 and research purposes.

13 **SEC. 308. SEAL OF THE NATIONAL FILM REGISTRY.**

14 (a) USE OF THE SEAL.—No person shall knowingly  
15 distribute or exhibit to the public a version of a film which  
16 bears a seal described in section 304(a)(2)(C) if such  
17 film—

18 (1) is not included in the National Film Regis-  
19 try; or

20 (2) is included in the National Film Registry,  
21 but such copy was not examined and approved for  
22 the use of the seal by the Librarian under section  
23 304(a)(2)(C).

24 (b) EFFECTIVE DATE OF THE SEAL.—The use of the  
25 seal described in section 304(a)(2)(C) shall be effective for

1 each film after the Librarian publishes in the Federal Reg-  
2 ister the name of that film as selected for inclusion in the  
3 National Film Registry.

4 **SEC. 309. REMEDIES.**

5 (a) JURISDICTION AND STANDING.—The several dis-  
6 trict courts of the United States shall have jurisdiction,  
7 for cause shown, to prevent and restrain violations of sec-  
8 tion 8(a) upon the application of the Librarian to the At-  
9 torney General of the United States.

10 (b) RELIEF.—(1) Except as provided in paragraph  
11 (2), relief for a violation of section 308(a) shall be limited  
12 to the removal of the seal of the National Film Registry  
13 from the film involved in the violation.

14 (2) In the case in which the Librarian finds a pattern  
15 or practice of the willful violation of section 308(a), the  
16 United States district courts may order a civil fine of not  
17 more than \$10,000 and appropriate injunctive relief.

18 **SEC. 310. LIMITATIONS OF REMEDIES.**

19 The remedies provided in section 309 shall be the ex-  
20 clusive remedies under this Act, or any other Federal or  
21 State law, regarding the use of the seal described in sec-  
22 tion 304(a)(2)(C).

1 **SEC. 311. STAFF OF BOARD; EXPERTS AND CONSULTANTS.**

2 (a) **STAFF.**—The Librarian may appoint and fix the  
3 pay of such personnel as the Librarian considers appropri-  
4 ate.

5 (b) **EXPERTS AND CONSULTANTS.**—The Librarian  
6 may procure temporary and intermittent services under  
7 section 3109(b) of title 5, United States Code, but at rates  
8 for individuals not to exceed the daily equivalent of the  
9 maximum rate of basic pay payable for GS-15 of the Gen-  
10 eral Schedule. In no case may a member of the Board  
11 be paid as an expert or consultant under such section.

12 **SEC. 312. DEFINITIONS.**

13 As used in this Act—

14 (1) The term “Librarian” means the Librarian  
15 of Congress.

16 (2) The term “Board” means the National  
17 Film Preservation Board.

18 (3) The term “film” means a “motion picture”  
19 as defined in section 101 of title 17, United States  
20 Code, except that such term does not include any  
21 work not originally fixed on film stock, such as a  
22 work fixed on videotape or laser disks.

23 (4) The term “publication” means “publica-  
24 tion” as defined in section 101 of title 17, United  
25 States Code.

1           (5) The term “original and complete” means,  
2           with respect to a film, the version of the film first  
3           published, or as complete a version as the bona fide  
4           preservation and restoration activities by the Librar-  
5           ian or an archive acting pursuant to section  
6           304(a)(2)(D) can compile in those cases where the  
7           original material has been irretrievably lost.

8 **SEC. 313. AUTHORIZATION OF APPROPRIATIONS.**

9           There are authorized to be appropriated to the Li-  
10          brarian such sums as may be necessary to carry out the  
11          purposes of this Act.

12 **SEC. 314. STUDY BY THE LIBRARIAN.**

13          (a) **STUDY.**—The Librarian, after consultation with  
14          the Board, shall conduct a study on the current state of  
15          film preservation and restoration activities, including the  
16          activities of the Library of Congress and the other major  
17          film archives in the United States. The Librarian shall,  
18          in conducting the study, consult with film archivists, edu-  
19          cators and historians, copyright owners, film industry rep-  
20          resentatives, including those involved in the preservation  
21          of film, and others involved in activities related to film  
22          preservation.

23          (b) **REPORT.**—Not later than 1 year after the date  
24          of the enactment of this Act, the Librarian shall submit

1 to the Congress a report containing the results of the  
2 study conducted under subsection (a).

3 **SEC. 315. EFFECTIVE DATE.**

4       The provisions of this Act shall be effective until Sep-  
5 tember 30, 1997. The provisions of this Act shall apply  
6 to any copy of any film, including those copies of films  
7 selected for inclusion in the National Film Registry under  
8 the National Film Preservation Act of 1988, except that  
9 any film so selected under such Act shall be deemed to  
10 have been selected for the National Film Registry under  
11 this Act.

12 **SEC. 316. REPEAL.**

13       The National Film Preservation Act of 1988 (2  
14 U.S.C. 178 and following) is repealed.

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