

Union Calendar No. 178

101ST CONGRESS
1ST SESSION

H. R. 3045

[Report No. 101-282]

To amend chapters 5 and 9 of title 17, United States Code, to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of copyright and infringement of exclusive rights in mask works, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private person or against other public entities.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 1989

Mr. KASTENMEIER (for himself, Mr. MOORHEAD, Mr. CROCKETT, Mr. BERMAN, Mr. BRYANT, Mr. CARDIN, Mr. BOUCHER, Mr. SANGMEISTER, Mr. HUGHES, Mr. SYNAR, Mr. HYDE, and Mr. FISH) introduced the following bill; which was referred to the Committee on the Judiciary

OCTOBER 13, 1989

Additional sponsors: Mr. FRANK, Mr. MOAKLEY, Mr. CHANDLER, Mr. CLEMENT, and Mr. MORRISON of Connecticut

OCTOBER 13, 1989

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend chapters 5 and 9 of title 17, United States Code, to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringe-

ment of copyright and infringement of exclusive rights in mask works, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private person or against other public entities.

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 Remedy
5 Clarification Act”.

6 **SEC. 2. LIABILITY OF STATES, INSTRUMENTALITIES OF**
7 **STATES, AND STATE OFFICIALS FOR INFRINGE-**
8 **MENT OF COPYRIGHT AND EXCLUSIVE RIGHTS**
9 **IN MASK WORKS.**

10 (a) **COPYRIGHT INFRINGEMENT.**—(1) Section 501(a) of
11 title 17, United States Code, is amended by adding at the end
12 the following: “As used in this subsection, the term ‘anyone’
13 includes any State, any instrumentality of a State, and any
14 officer or employee of a State or instrumentality of a State
15 acting in his or her official capacity. Any State, and any such
16 instrumentality, officer, or employee, shall be subject to the
17 provisions of this title in the same manner and to the same
18 extent as any nongovernmental entity.”.

19 (2) Chapter 5 of title 17, United States Code, is amend-
20 ed by adding at the end the following new section:

1 "§ 511. Liability of States, instrumentalities of States, and
2 State officials for infringement of copyright

3 "(a) IN GENERAL.—Any State, any instrumentality of a
4 State, and any officer or employee of a State or instrumental-
5 ity of a State acting in his or her official capacity, shall not be
6 immune, under the Eleventh Amendment of the Constitution
7 of the United States or under any other doctrine of sovereign
8 immunity, from suit in Federal court by any person, including
9 any governmental or nongovernmental entity, for a violation
10 of any of the exclusive rights of a copyright owner provided
11 by sections 106 through 119, for importing copies of phono-
12 records in violation of section 602, or for any other violation
13 under this title.

14 "(b) REMEDIES.—In a suit described in subsection (a)
15 for a violation described in that subsection, remedies (includ-
16 ing remedies both at law and in equity) are available for the
17 violation to the same extent as such remedies are available
18 for such a violation in a suit against any public or private
19 entity other than a State, instrumentality of a State, or offi-
20 cer or employee of a State acting in his or her official
21 capacity. Such remedies include impounding and disposition
22 of infringing articles under section 503, actual damages and
23 profits and statutory damages under section 504, costs and
24 attorney's fees under section 505, and the remedies provided
25 in section 510."

1 (3) The table of sections at the beginning of chapter 5 of
2 title 17, United States Code, is amended by adding at the end
3 the following new item:

“Sec. 511. Liability of States, instrumentalities of States, and State officials for infringement of copyright.”.

4 (b) **INFRINGEMENT OF EXCLUSIVE RIGHTS IN MASK**
5 **WORKS.**—(1) Section 910(a) of title 17, United States Code,
6 is amended by adding at the end the following: “As used in
7 this subsection, the term ‘any person’ includes any State, any
8 instrumentality of a State, and any officer or employee of a
9 State or instrumentality of a State acting in his or her official
10 capacity. Any State, and any such instrumentality, officer, or
11 employee, shall be subject to the provisions of this chapter in
12 the same manner and to the same extent as any nongovern-
13 mental entity.”.

14 (2) Section 911 of title 17, United States Code, is
15 amended by adding at the end the following new subsection:

16 “(g)(1) Any State, any instrumentality of a State, and
17 any officer or employee of a State or instrumentality of a
18 State acting in his or her capacity, shall not be immune,
19 under the Eleventh Amendment of the Constitution of the
20 United States or under any other doctrine of sovereign immu-
21 nity, from suit in Federal court by any person, including any
22 governmental or nongovernmental entity, for a violation of
23 any of the exclusive rights of the owner of a mask work

1 under this chapter, or for any other violation under this
2 chapter.

3 “(2) In a suit described in paragraph (1) for a violation
4 described in that paragraph, remedies (including remedies
5 both at law and in equity) are available for the violation to
6 the same extent as such remedies are available for such a
7 violation in a suit against any public or private entity other
8 than a State, instrumentality of a State, or officer or employ-
9 ee of a State acting in his or her official capacity. Such reme-
10 dies include actual damages and profits under subsection (b),
11 statutory damages under subsection (c), impounding and dis-
12 position of infringing articles under subsection (e), and costs
13 and attorney’s fees under subsection (f).”.

14 **SEC. 3. EFFECTIVE DATE.**

15 The amendments made by this Act shall take effect with
16 respect to violations that occur on or after the date of the
17 enactment of this Act.

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