

101ST CONGRESS
1ST SESSION

H. R. 3045

IN THE SENATE OF THE UNITED STATES

OCTOBER 18 (legislative day, SEPTEMBER 18), 1989

Received; read twice and referred to the Committee on the Judiciary

AN ACT

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.

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".

1 SEC. 2. LIABILITY OF STATES, INSTRUMENTALITIES OF
2 STATES, AND STATE OFFICIALS FOR INFRINGE-
3 MENT OF COPYRIGHT AND EXCLUSIVE RIGHTS
4 IN MASK WORKS.

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

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

16 “§ 511. Liability of States, instrumentalities of States, and
17 State officials for infringement of copyright

18 “(a) IN GENERAL.—Any State, any instrumentality of a
19 State, and any officer or employee of a State or instrumentality
20 of a State acting in his or her official capacity, shall not be
21 immune, under the Eleventh Amendment of the Constitution
22 of the United States or under any other doctrine of sovereign
23 immunity, from suit in Federal court by any person, including
24 any governmental or nongovernmental entity, for a violation
25 of any of the exclusive rights of a copyright owner provided
26 by sections 106 through 119, for importing copies of phono-

1 records in violation of section 602, or for any other violation
2 under this title.

3 “(b) **REMEDIES.**—In a suit described in subsection (a)
4 for a violation described in that subsection, remedies (includ-
5 ing remedies both at law and in equity) are available for the
6 violation to the same extent as such remedies are available
7 for such a violation in a suit against any public or private
8 entity other than a State, instrumentality of a State, or offi-
9 cer or employee of a State acting in his or her official
10 capacity. Such remedies include impounding and disposition
11 of infringing articles under section 503, actual damages and
12 profits and statutory damages under section 504, costs and
13 attorney’s fees under section 505, and the remedies provided
14 in section 510.”.

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

“Sec. 511. Liability of States, instrumentalities of States, and State officials for in-
fringement of copyright.”.

18 (b) **INFRINGEMENT OF EXCLUSIVE RIGHTS IN MASK**
19 **WORKS.**—(1) Section 910(a) of title 17, United States Code,
20 is amended by adding at the end the following: “As used in
21 this subsection, the term ‘any person’ includes any State, any
22 instrumentality of a State, and any officer or employee of a
23 State or instrumentality of a State acting in his or her official
24 capacity. Any State, and any such instrumentality, officer, or

1 employee, shall be subject to the provisions of this chapter in
2 the same manner and to the same extent as any nongovern-
3 mental entity.”.

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

6 “(g)(1) Any State, any instrumentality of a State, and
7 any officer or employee of a State or instrumentality of a
8 State acting in his or her capacity, shall not be immune,
9 under the Eleventh Amendment of the Constitution of the
10 United States or under any other doctrine of sovereign immu-
11 nity, from suit in Federal court by any person, including any
12 governmental or nongovernmental entity, for a violation of
13 any of the exclusive rights of the owner of a mask work
14 under this chapter, or for any other violation under this
15 chapter.

16 “(2) In a suit described in paragraph (1) for a violation
17 described in that paragraph, remedies (including remedies
18 both at law and in equity) are available for the violation to
19 the same extent as such remedies are available for such a
20 violation in a suit against any public or private entity other
21 than a State, instrumentality of a State, or officer or employ-
22 ee of a State acting in his or her official capacity. Such reme-
23 dies include actual damages and profits under subsection (b),
24 statutory damages under subsection (c), impounding and dis-

1 position of infringing articles under subsection (e), and costs
2 and attorney's fees under subsection (f).''.

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

4 The amendments made by this Act shall take effect with
5 respect to violations that occur on or after the date of the
6 enactment of this Act.

 Passed the House of Representatives October 16,
1989.

Attest: DONNALD K. ANDERSON,
Clerk.