

Calendar No. 569

101ST CONGRESS
2D SESSION**H. R. 3045**

[Report No. 101-305]

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

JUNE 5 (legislative day, APRIL 18), 1990

Reported by Mr. BIDEN, without amendment

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,*

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Copyright Remedy
3 Clarification Act”.

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

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

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

19 “§ 511. Liability of States, instrumentalities of States, and
20 State officials for infringement of copyright

21 “(a) IN GENERAL.—Any State, any instrumentality of a
22 State, and any officer or employee of a State or instrumentality
23 of a State acting in his or her official capacity, shall not be
24 immune, under the Eleventh Amendment of the Constitution
25 of the United States or under any other doctrine of sovereign
26 immunity, from suit in Federal court by any person, including

1 any governmental or nongovernmental entity, for a violation
2 of any of the exclusive rights of a copyright owner provided
3 by sections 106 through 119, for importing copies of phono-
4 records in violation of section 602, or for any other violation
5 under this title.

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

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

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

21 (b) **INFRINGEMENT OF EXCLUSIVE RIGHTS IN MASK**
22 **WORKS.**—(1) Section 910(a) of title 17, United States Code,
23 is amended by adding at the end the following: “As used in
24 this subsection, the term ‘any person’ includes any State, any

1 instrumentality of a State, and any officer or employee of a
2 State or instrumentality of a State acting in his or her official
3 capacity. Any State, and any such instrumentality, officer, or
4 employee, shall be subject to the provisions of this chapter in
5 the same manner and to the same extent as any nongovern-
6 mental entity.”.

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

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

19 “(2) In a suit described in paragraph (1) for a violation
20 described in that paragraph, remedies (including remedies
21 both at law and in equity) are available for the violation to
22 the same extent as such remedies are available for such a
23 violation in a suit against any public or private entity other
24 than a State, instrumentality of a State, or officer or employ-
25 ee of a State acting in his or her official capacity. Such reme-

1 dies include actual damages and profits under subsection (b),
2 statutory damages under subsection (c), impounding and dis-
3 position of infringing articles under subsection (e), and costs
4 and attorney's fees under subsection (f).''.

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

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

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