Calendar No. 569 H.R. 3045

[Report No. 101-305]

101ST CONGRESS

2D SESSION

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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.
- Be it enacted by the Senate and House of Representa tives of the United States of America in Congress assembled,

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Copyright Remedy3 Clarification Act".

4 SEC. 2. LIABILITY OF STATES, INSTRUMENTALITIES OF
5 STATES, AND STATE OFFICIALS FOR INFRINGE6 MENT OF COPYRIGHT AND EXCLUSIVE RIGHTS
7 IN MASK WORKS.

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

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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, and20State 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 instrumental23 ity 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
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any governmental or nongovernmental entity, for a violation
 of any of the exclusive rights of a copyright owner provided
 by sections 106 through 119, for importing copies of phono records in violation of section 602, or for any other violation
 under this title.

"(b) REMEDIES.—In a suit described in subsection (a) 6 for a violation described in that subsection, remedies (includ-7 ing remedies both at law and in equity) are available for the 8 9 violation to the same extent as such remedies are available 10 for such a violation in a suit against any public or private entity other than a State, instrumentality of a State, or offi-11 12cer or employee of a State acting in his or her official 13capacity. Such remedies include impounding and disposition 14 of infringing articles under section 503, actual damages and profits and statutory damages under section 504, costs and 1516attorney's fees under section 505, and the remedies provided in section 510.". 17

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

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

[&]quot;Sec. 511. Liability of States, instrumentalities of States, and State officials for infringement of copyright.".

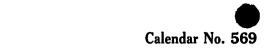
instrumentality of a State, and any officer or employee of a
 State or instrumentality of a State acting in his or her official
 capacity. Any State, and any such instrumentality, officer, or
 employee, shall be subject to the provisions of this chapter in
 the same manner and to the same extent as any nongovern mental entity.".

(2) Section 911 of title 17, United States Code, is 7 amended by adding at the end the following new subsection: 8 "(g)(1) Any State, any instrumentality of a State, and 9 any officer or employee of a State or instrumentality of a 10 11 State acting in his or her capacity, shall not be immune, 12under 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 15governmental or nongovernmental entity, for a violation of any of the exclusive rights of the owner of a mask work 16 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 remedies include actual damages and profits under subsection (b),
 statutory damages under subsection (c), impounding and dis position of infringing articles under subsection (e), and costs
 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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> JUNE 5 (legislative day, APRIL 18), 1990 Reported without amendment

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