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H. R. 4096

To implement a serial copy management system for digital audio tape recorders.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 22, 1990

Mr. WAXMAN (for himself, Mr. SWIFT, Mr. COOPER, Mr. BOUCHER, Mr. LEVINE of California, Mr. SENSENBRENNER, Mr. OXLEY, Mr. DEWINE, Mr. FIELDS, Mr. RITTEB, Mr. BRUCE, Mr. BARTON of Texas, and Mr. TAUKE) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To implement a serial copy management system for digital audio tape recorders.

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 referred to as the "Digital Audio Tape
5 Recorder Act of 1990".

6 **SEC. 2. FINDINGS.**

7 (a) **FINDINGS.**—The Congress finds that—

1 (1) the Congress has been expressly granted the
2 power under article 1, section 8, of the Constitution to
3 promote the progress of science and the useful arts;

4 (2) representatives of the consumer electronics
5 and recording industries have jointly studied possible
6 recommendations to governments about the functions
7 of digital audio tape (hereinafter in this section referred
8 to as "DAT") recorders;

9 (3) taking into account concerns raised in the
10 worldwide music community regarding copyright pro-
11 tection, the industry representatives announced a
12 worldwide agreement in 1989 to make joint recommen-
13 dations to governments, including the United States
14 Government, with respect to DAT technology;

15 (4) the industry representatives agreed to recom-
16 mend for government implementation worldwide the
17 serial copy management system (hereinafter in this
18 section referred to as "SCMS"), a technical system for
19 controlling so-called "serial" copying on DAT
20 recorders;

21 (5) under SCMS, the circuitry which controls the
22 functions of a DAT recorder will be programmed to
23 read certain coding information accompanying the
24 source material and, based on the particular combina-
25 tion of codes it reads, will not prevent unrestricted

1 copying, will not prevent copying but label the copy
2 with a code to restrict further digital-to-digital copying,
3 or will disallow such copying;

4 (6) under SCMS, a DAT recorder will not be pre-
5 vented from making first-generation digital-to-digital
6 copies of original copyright-protected prerecorded
7 music and other material from compact discs, prere-
8 corded DAT cassettes, digital broadcasts, and other
9 digital sources entering through a digital input, but will
10 be prevented from making second-generation digital-to-
11 digital copies of the copies;

12 (7) under SCMS, in recognition of the fact that a
13 DAT recorder at present will be unable to determine
14 whether original prerecorded music or other material
15 entering through an analog input has been coded for
16 copyright protection, a DAT recorder will not be pre-
17 vented from making first-generation and second-gen-
18 eration digital-to-digital copies of the source material,
19 but will be prevented from making third-generation
20 digital-to-digital copies of the second-generation copies;

21 (8) in the event that technological developments
22 permit the circuitry of a DAT recorder to identify
23 copyrighted material entering through an analog input,
24 equivalent limitations on digital copies of copies should
25 apply, but there will be no limitation on serial digital

1 copying of analog material not coded for copyright
2 protection;

3 (9) home taping on conventional analog tape re-
4 corders will not be subject to SCMS and thus will
5 remain unaffected;

6 (10) the benefits of implementing SCMS for DAT
7 recorders will be significant for consumers, the record-
8 ing industry, the consumer electronics industry, and
9 others in the United States;

10 (11) in furtherance of the realization of those ben-
11 efits and to encourage other governments to act ac-
12 cordingly, this Act implements SCMS for DAT record-
13 ers and provides mechanisms for regulatory implemen-
14 tation of solutions with respect to future issues and
15 technological developments;

16 (12) representatives of the consumer electronics
17 and music industries are expected to discuss copyright
18 issues resulting from new technologies, including re-
19 cordable and erasable compact disc players, and to
20 study possible approaches, and to make recommenda-
21 tions to governments, including the United States Gov-
22 ernment, for applying SCMS or another system with
23 greater copying restrictions than SCMS to these new
24 technologies;

1 (13) this Act does not address or affect the legali-
2 ty of private home copying under the copyright laws;

3 (14) the enactment of this Act shall not prejudice
4 consideration of whether or not royalties should be
5 levied for private home copying of copyrighted music;
6 and

7 (15) the enactment of this Act will promote the
8 progress of science and the useful arts by encouraging
9 the development of new technologically advanced prod-
10 ucts while providing copyright-related protection for
11 creators of artistic works.

12 **SEC. 3. DIGITAL AUDIO TAPE RECORDERS AND PHONO-**
13 **RECORDS.**

14 (a) **PROHIBITION ON MANUFACTURE OR DISTRIBUTION.**—(1) No person shall manufacture or distribute any
15 digital audio tape recorder or digital audio interface device
16 which does not conform to the standards and specifications to
17 implement the serial copy management system that are
18 either—
19 either—

20 (A) set forth in the technical reference document;
21 or

22 (B) established under an order by the Secretary of
23 Commerce under section 4(b)(1) or (2).

24 (2) If the Secretary of Commerce approves standards
25 and specifications under section 4(b)(3), then no person shall

1 manufacture or distribute any digital audio tape recorder or
2 digital audio interface device which does not conform to such
3 standards and specifications.

4 (b) PROHIBITION ON CIRCUMVENTION OF SERIAL
5 COPY MANAGEMENT SYSTEM.—No person shall manufac-
6 ture or distribute any device, or offer or perform any service,
7 the primary purpose or effect of which is to avoid, bypass,
8 remove, deactivate, or otherwise circumvent any program or
9 circuit which implements, in whole or in part, the serial copy
10 management system in a digital audio tape recorder or digital
11 audio interface device.

12 (c) EXCEPTION FOR PROFESSIONAL MODELS.—(1)
13 Notwithstanding subsections (a) and (b), the requirements of
14 those subsections shall not apply to a professional model digi-
15 tal audio tape recorder. For purposes of this Act, the term
16 “professional model digital audio tape recorder” means a digi-
17 tal audio tape recorder—

18 (A) which is capable of sending a digital audio
19 interface signal in which the channel status block flag
20 is set as a “professional” interface, in accordance with
21 the standards and specifications set forth in the techni-
22 cal reference document or established under an order
23 issued by the Secretary of Commerce under section 4;

24 (B) which is clearly, prominently, and permanent-
25 ly marked with the letter “P” or the word “profession-

1 al” on the outside of its packaging, and in all advertis-
2 ing, promotional, and descriptive literature, with re-
3 spect to the recorder, that is available or provided to
4 persons other than the manufacturer, its employees, or
5 its agents; and

6 (C) which is designed, manufactured, marketed,
7 and intended for use by recording professionals, in the
8 ordinary course of a lawful business.

9 (2) The capability in a digital audio tape recorder de-
10 scribed in paragraph (1)(A), or the marking of a digital audio
11 tape recorder described in paragraph (1)(B), shall not create
12 any presumption that the recorder is a professional model
13 digital audio tape recorder.

14 (3) In determining whether a digital audio tape recorder
15 meets the requirements of paragraph (1)(C), factors to be con-
16 sidered shall include—

17 (A) whether it has features used by recording pro-
18 fessionals in the course of a lawful business, including
19 features such as—

20 (i) a data collection and reporting system of
21 error codes during recording and playback;

22 (ii) a record and reproduce format providing
23 “read after write” and “read after read”;

24 (iii) a time code reader and generator con-
25 forming to the standards set by the Society of

1 Motion Picture and Television Engineers for such
2 readers and generators; and

3 (iv) a professional input/output interface,
4 both digital and analog, conforming to standards
5 set by audio engineering organizations for connec-
6 tors, signaling formats, levels, and impedances;

7 except that the presence or absence of features referred
8 to in this subparagraph shall not create any presump-
9 tion as to whether or not a digital audio tape recorder
10 is a professional model digital audio tape recorder;

11 (B) the nature of the promotional materials used
12 to market the digital audio tape recorder;

13 (C) the media used for the dissemination of the
14 promotional materials, including the intended audience;

15 (D) the distribution channels and retail outlets
16 through which the recorder is disseminated;

17 (E) the manufacturer's price for the recorder as
18 compared with the manufacturer's price for digital
19 audio tape recorders implementing the serial copying
20 management system;

21 (F) the relative quantity of manufacture of the re-
22 corder as compared to the size of the manufacturer's
23 market for professional digital audio tape recorders;

24 (G) the occupations of the purchasers of the re-
25 corder; and

1 (H) the uses to which the recorder is put.

2 (d) ENCODING OF INFORMATION ON PHONORE-
3 CORDS.—(1) No person shall encode a phonorecord of a
4 sound recording with inaccurate information relating to the
5 category code, copyright status, or generation status of the
6 source material so as to improperly affect the operation of the
7 serial copy management system.

8 (2) Nothing in this Act requires any person engaged in
9 the manufacture or assembly of phonorecords to encode any
10 such phonorecord with respect to its copyright status.

11 (e) INFORMATION TO ACCOMPANY TRANSMISSION IN
12 DIGITAL FORMAT.—Any person who transmits or otherwise
13 communicates to the public any sound recording in digital
14 format shall not be required under this Act to transmit or
15 otherwise communicate the information relating to the copy-
16 right status of the sound recording; except that any such
17 person who does transmit or otherwise communicate such
18 copyright status information shall transmit or communicate
19 such information accurately.

20 (f) DEFINITION.—For purposes of this section, the term
21 “manufacture or distribute” means to manufacture, assemble,
22 sell, resell, lease, or distribute in commerce, or to offer for
23 sale, resale, lease, or distribution in commerce.

1 SEC. 4. SERIAL COPY MANAGEMENT SYSTEM.

2 (a) PUBLICATION OF TECHNICAL REFERENCE DOCU-
3 MENT.—Within 10 days after the date of the enactment of
4 this Act, the Register of Copyrights shall cause the technical
5 reference document to be published in the Federal Register.

6 (b) ORDERS OF SECRETARY OF COMMERCE.—The Sec-
7 retary of Commerce, upon petition by an interested party and
8 after consultation with the Register of Copyrights, may issue
9 an order to implement the serial copy management system
10 set forth in the technical reference document as follows:

11 (1) The Secretary may issue such order for the
12 purpose of permitting in commerce devices that do not
13 conform to all of the standards and specifications set
14 forth in the technical reference document, if the Secre-
15 tary determines that such devices possess the same
16 functional characteristics with respect to regulation of
17 serial copying as, and are compatible with the prevail-
18 ing method for implementation of, the serial copy man-
19 agement system set forth in the technical reference
20 document.

21 (2) The Secretary may issue such order for the
22 purpose of permitting in commerce devices that do not
23 conform to all of the standards and specifications set
24 forth in the technical reference document, if the Secre-
25 tary determines that the standards and specifications
26 relating generally to digital audio tape recorders and

1 digital audio interface devices have been or are being
2 revised or otherwise amended or modified such that the
3 standards and specifications set forth in the technical
4 reference document are not or would no longer be ap-
5 plicable, and that such devices conform to such new
6 standards and specifications and possess the same func-
7 tional characteristics with respect to regulation of
8 serial copying as the serial copy management system
9 set forth in the technical reference document.

10 (3) The Secretary may issue such order for the
11 purpose of approving standards and specifications for a
12 technical method implementing in a digital audio tape
13 recorder the same functional characteristics as the
14 serial copy management system so as to regulate serial
15 copying of source material in the analog format in an
16 equivalent manner as source material in the digital
17 format.

18 **SEC. 5. REMEDIES.**

19 (a) **CIVIL ACTIONS.**—Any aggrieved person or the At-
20 torney General of the United States may bring a civil action
21 in an appropriate United States district court against any
22 person for a violation of section 3.

23 (b) **POWERS OF THE COURT.**—In an action brought
24 under subsection (a), the court—

1 (1) consistent with the limitation set forth in sub-
2 section (e), may grant temporary and final injunctions
3 on such terms as it may deem reasonable to prevent or
4 restrain violations of section 3;

5 (2) shall award damages under subsection (c);

6 (3) shall direct the recovery of full costs, including
7 awarding reasonable attorney's fees, by an aggrieved
8 person, other than the United States, who prevails;
9 and

10 (4) may grant such other equitable relief as it may
11 deem reasonable.

12 (c) DAMAGES.—(1) An aggrieved person shall be enti-
13 tled to recover damages for violations of section 3, which
14 shall be computed, at the election of the aggrieved person at
15 any time before final judgment is rendered, in accordance
16 with one of the following, but in no event shall the judgment
17 exceed a total of \$1,000,000:

18 (A) The aggrieved person may recover the actual
19 damages suffered by him or her as a result of the vio-
20 lation and any profits of the violator that are attributa-
21 ble to the violation which are not taken into account in
22 computing the actual damages. In determining the vio-
23 lator's profits, the aggrieved person is required to
24 prove only the violator's gross revenue, and the viola-
25 tor is required to prove his or her deductible expenses

1 and the elements of profit attributable to factors other
2 than the violation.

3 (B) The aggrieved person may recover an award
4 of statutory damages for each violation of subsection
5 (a) or (b) of section 3 in the sum of not less than
6 \$1,000 nor more than \$10,000 per device involved in
7 such violation or per device on which a service prohib-
8 ited by section 3(b) has been performed, as the court
9 considers just.

10 (C) The aggrieved person may recover an award
11 of statutory damages for each violation of subsection
12 (d) of section 3 in the sum of not less than \$10 nor
13 more than \$100 per phonorecord involved in such vio-
14 lation, as the court considers just.

15 (D) The aggrieved person may recover an award
16 of statutory damages for each transmission or commu-
17 nication that violates subsection (e) of section 3, in the
18 sum of not less than \$10,000 nor more than \$100,000,
19 as the court considers just.

20 (2) In addition to making an award of damages under
21 paragraph (1), in any case in which the court finds that a
22 violation of section 3 was committed willfully and for pur-
23 poses of direct or indirect commercial advantage or private
24 financial gain, the court in its discretion may increase the

1 award of damages, whether actual or statutory, by an addi-
2 tional amount of not more than \$5,000,000.

3 (3) In any case in which the court finds that the violator
4 was not aware and had no reason to believe that his or her
5 acts constituted a violation of section 3, the court in its dis-
6 cretion may reduce the total award of damages to a sum of
7 not less than \$250.

8 (d) **IMPOUNDING OF ARTICLES.**—At any time while an
9 action under this section is pending, the court may order the
10 impounding, on such terms as it may deem reasonable, of any
11 device or phonorecord that is in the custody or control of the
12 alleged violator and that the court has reasonable cause to
13 believe does not comply with, or was involved in a violation
14 of, section 3.

15 (e) **LIMITATION REGARDING PROFESSIONAL**
16 **MODELS.**—Unless a court finds that the labeling and distri-
17 bution of a digital audio tape recorder as a professional model
18 by a manufacturer, given the factors set forth in subsection
19 (c) of section 3, were without a reasonable basis or not in
20 good faith, the court shall not grant a temporary or prelimi-
21 nary injunction against the distribution of such devices by the
22 manufacturer.

23 (f) **REMEDIAL MODIFICATION AND DESTRUCTION OF**
24 **ARTICLES.**—As part of a final judgment or decree finding a
25 violation of section 3, the court shall order the remedial

1 modification, if possible, or the destruction of any device or
2 phonorecord that does not comply with, or was involved in a
3 violation of, section 3 that is in the custody or control of the
4 violator or that has been impounded under subsection (d) of
5 this section.

6 (g) DEFINITION.—For purposes of this section, the term
7 “device” does not include a phonorecord.

8 SEC. 6. DEFINITIONS.

9 (a) IN GENERAL.—As used in this Act—

10 (1) the term “aggrieved person” means—

11 (A) any person engaged in the manufacture
12 or assembly of any digital audio tape recorder or
13 any phonorecord;

14 (B) any person who is a copyright owner of
15 any work embodied in a phonorecord; and

16 (C) any association, representative, or agent
17 of any person described in subparagraph (A) or
18 (B);

19 (2) the term “commerce” means commerce be-
20 tween or among any of the States, or between any of
21 the States and any foreign nation;

22 (3) the term “digital audio interface device”
23 means any machine or device, whether or not devel-
24 oped as of the date of the enactment of this Act, and
25 whether or not included with or as part of some other

1 device, that supplies a digital audio signal through a
2 “non-professional interface”, as the term “non-profes-
3 sional interface” is used in the Digital Audio Interface
4 Standard in part I of the technical reference document
5 or in an order of the Secretary of Commerce under
6 section 4(b) (1) or (2);

7 (4) the term “digital audio tape recorder” means
8 any device, whether or not developed as of the date of
9 the enactment of this Act, and whether or not included
10 with or as a part of some other device, that is intended
11 or marketed for the primary purpose of making a sound
12 recording in a digital format on magnetic tape;

13 (5) the term “interested party” means any person
14 engaged in the manufacture or assembly of any digital
15 audio tape recorder or any phonorecord, or any asso-
16 ciation, representative, or agent of such person;

17 (6) the term “person” includes “anyone” as that
18 term is used in section 501(a) of title 17, United States
19 Code;

20 (7) the term “serial copy management system”
21 means the system for regulating serial copying by digi-
22 tal audio tape recorders that is set forth in the techni-
23 cal reference document or in an order of the Secretary
24 of Commerce under section 4;

1 (8) the term "State" means any of the several
2 States, the District of Columbia, and any common-
3 wealth, territory, or possession of the United States;

4 (9) the term "technical reference document"
5 means the document entitled "Technical Reference
6 Document for Digital Audio Tape Recorder Act of
7 1990", as such document appears under the proceed-
8 ings of the House of Representatives in the Congres-
9 sional Record for February 26, 1990; and

10 (10) the terms "analog format", "copyright
11 status", "category code", "generation status", and
12 "source material" mean those terms as they are used
13 in the technical reference document.

14 (b) **COPYRIGHT DEFINITIONS.**—Except as otherwise
15 provided, all terms used in this Act shall have the same
16 meanings as those terms are given in title 17, United States
17 Code.

18 **SEC. 7. EFFECT ON OTHER LAW.**

19 This Act does not affect any right or remedy, or any
20 limitation on such right or remedy, held by or available to
21 any person under title 17, United States Code. Nothing in
22 this Act creates or affords any greater or lesser rights with
23 respect to private home copying of a copyrighted work than
24 any rights afforded under title 17, United States Code.

1 **SEC. 8. AMENDMENT TO TITLE 17, UNITED STATES CODE.**

2 (a) **IN GENERAL.**—Chapter 5 of title 17, United States
3 Code, is amended by adding at the end the following:

4 **“§ 511. Effect of Digital Audio Tape Recorder Act of 1990**

5 “The Digital Audio Tape Recorder Act of 1990 does
6 not affect any right or remedy, or any limitation on such right
7 or remedy, held by or available to any person under this title.
8 Nothing in the Digital Audio Tape Recorder Act of 1990
9 creates or affords any greater or lesser rights with respect to
10 private home copying of a copyrighted work than any rights
11 afforded under this title.”.

12 (b) **CONFORMING AMENDMENT.**—The table of sections
13 at the beginning of chapter 5 of title 17, United States Code,
14 is amended by adding at the end the following:

“511. Effect of Digital Audio Tape Recorder Act of 1990.”.

15 **SEC. 9. EFFECTIVE DATE.**

16 This Act shall take effect on the date of the enactment
17 of this Act, but shall not apply to any device or phonorecord
18 manufactured or assembled before such date.

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