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Citation: 1 Copyright Technical Amendments Act Satellite Home
Act Amendments P.L. 105-80 111 Stat. 1529 1 1997

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Union Calendar No. 16

105TH CONGRESS
1ST SESSION**H. R. 672****[Report No. 105-25]**

To make technical amendments to certain provisions of title 17, United States Code.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 1997

Mr. COBLE introduced the following bill; which was referred to the Committee on the Judiciary

MARCH 17, 1997

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 11, 1997]

A BILL

To make technical amendments to certain provisions of title 17, United States Code.

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. TECHNICAL CORRECTIONS TO THE SATELLITE**
2 **HOME VIEWER ACT OF 1994.**

3 *The Satellite Home Viewer Act of 1994 (Public Law*
4 *103-369) is amended as follows:*

5 (1) *Section 2(3)(A) is amended to read as fol-*
6 *lows:*

7 “(A) *in clause (i) by striking ‘12 cents’ and*
8 *inserting ‘17.5 cents per subscriber in the case of*
9 *superstations that as retransmitted by the sat-*
10 *ellite carrier include any program which, if de-*
11 *livered by any cable system in the United States,*
12 *would be subject to the syndicated exclusivity*
13 *rules of the Federal Communications Commis-*
14 *sion, and 14 cents per subscriber in the case of*
15 *superstations that are syndex-proof as defined in*
16 *section 258.2 of title 37, Code of Federal Regula-*
17 *tions’; and ”.*

18 (2) *Section 2(4) is amended to read as follows:*

19 “(4) *Subsection (c) is amended—*

20 “(A) *in paragraph (1)—*

21 “(i) *by striking ‘until December 31,*
22 *1992,’;*

23 “(ii) *by striking ‘(2), (3) or (4)’ and*
24 *inserting ‘(2) or (3)’; and*

25 “(iii) *by striking the second sentence;*

26 “(B) *in paragraph (2)—*

1 “(i) in subparagraph (A) by striking
2 ‘July 1, 1991’ and inserting ‘July 1, 1996’;
3 and

4 “(ii) in subparagraph (D) by striking
5 ‘December 31, 1994’ and inserting ‘Decem-
6 ber 31, 1999, or in accordance with the
7 terms of the agreement, whichever is later’;
8 and

9 “(C) in paragraph (3)—

10 “(i) in subparagraph (A) by striking
11 ‘December 31, 1991’ and inserting ‘January
12 1, 1997’;

13 “(ii) by amending subparagraph (B)
14 to read as follows:

15 “(B) ESTABLISHMENT OF ROYALTY
16 FEES.—In determining royalty fees under this
17 paragraph, the copyright arbitration royalty
18 panel appointed under chapter 8 shall establish
19 fees for the retransmission of network stations
20 and superstations that most clearly represent the
21 fair market value of secondary transmissions. In
22 determining the fair market value, the panel
23 shall base its decision on economic, competitive,
24 and programming information presented by the
25 parties, including—

1 “(i) the competitive environment in
2 which such programming is distributed, the
3 cost of similar signals in similar private
4 and compulsory license marketplaces, and
5 any special features and conditions of the
6 retransmission marketplace;

7 “(ii) the economic impact of such fees
8 on copyright owners and satellite carriers;
9 and

10 “(iii) the impact on the continued
11 availability of secondary transmissions to
12 the public.’; and

13 “(iii) in subparagraph (C), by insert-
14 ing ‘or July 1, 1997, whichever is later’
15 after ‘section 802(g)’.”.

16 (3) Section 2(5)(A) is amended to read as fol-
17 lows:

18 “(A) in paragraph (5)(C) by striking ‘the
19 date of the enactment of the Satellite Home
20 Viewer Act of 1988’ and inserting ‘November 16,
21 1988’; and”.

22 **SEC. 2. COPYRIGHT IN RESTORED WORKS.**

23 Section 104A of title 17, United States Code, is amend-
24 ed as follows:

1 (1) *Subsection (d)(3)(A) is amended to read as*
2 *follows:*

3 “(3) *EXISTING DERIVATIVE WORKS.—(A) In the*
4 *case of a derivative work that is based upon a re-*
5 *stored work and is created—*

6 *“(i) before the date of the enactment of the*
7 *Uruguay Round Agreements Act, if the source*
8 *country of the restored work is an eligible coun-*
9 *try on such date, or*

10 *“(ii) before the date on which the source*
11 *country of the restored work becomes an eligible*
12 *country, if that country is not an eligible coun-*
13 *try on such date of enactment,*

14 *a reliance party may continue to exploit that deriva-*
15 *tive work for the duration of the restored copyright if*
16 *the reliance party pays to the owner of the restored*
17 *copyright reasonable compensation for conduct which*
18 *would be subject to a remedy for infringement but for*
19 *the provisions of this paragraph.”.*

20 (2) *Subsection (e)(1)(B)(ii) is amended by strik-*
21 *ing the last sentence.*

22 (3) *Subsection (h)(2) is amended to read as fol-*
23 *lows:*

24 *“(2) The ‘date of restoration’ of a restored copy-*
25 *right is—*

1 “(A) January 1, 1996, if the source country
2 of the restored work is a nation adhering to the
3 Berne Convention or a WTO member country on
4 such date, or

5 “(B) the date of adherence or proclamation,
6 in the case of any other source country of the re-
7 stored work.”.

8 (4) Subsection (h)(3) is amended to read as fol-
9 lows:

10 “(3) The term ‘eligible country’ means a nation,
11 other than the United States, that—

12 “(A) becomes a WTO member country after
13 the date of the enactment of the Uruguay Round
14 Agreements Act;

15 “(B) on such date of enactment is, or after
16 such date of enactment becomes, a member of the
17 Berne Convention; or

18 “(C) after such date of enactment becomes
19 subject to a proclamation under subsection (g).

20 For purposes of this section, a nation that is a mem-
21 ber of the Berne Convention on the date of the enact-
22 ment of the Uruguay Round Agreements Act shall be
23 construed to become an eligible country on such date
24 of enactment.”.

1 **SEC. 3. LICENSES FOR NONEXEMPT SUBSCRIPTION TRANS-**
 2 **MISSIONS.**

3 *Section 114(f) of title 17, United States Code, is*
 4 *amended—*

5 (1) *in paragraph (1), by inserting “, or, if a*
 6 *copyright arbitration royalty panel is convened, end-*
 7 *ing 30 days after the Librarian issues and publishes*
 8 *in the Federal Register an order adopting the deter-*
 9 *mination of the copyright arbitration royalty panel*
 10 *or an order setting the terms and rates (if the Librar-*
 11 *ian rejects the panel’s determination)” after “Decem-*
 12 *ber 31, 2000”; and*

13 (2) *in paragraph (2), by striking “and publish*
 14 *in the Federal Register”.*

15 **SEC. 4. ROYALTY PAYABLE UNDER COMPULSORY LICENSE.**

16 *Section 115(c)(3)(D) of title 17, United States Code,*
 17 *is amended by striking “and publish in the Federal Reg-*
 18 *ister”.*

19 **SEC. 5. NEGOTIATED LICENSE FOR JUKEBOXES.**

20 *Section 116 of title 17, United States Code, is amend-*
 21 *ed—*

22 (1) *by amending subsection (b)(2) to read as fol-*
 23 *lows:*

24 “(2) *ARBITRATION.—Parties not subject to such*
 25 *a negotiation may determine, by arbitration in ac-*
 26 *cordance with the provisions of chapter 8, the terms*

1 *and rates and the division of fees described in para-*
2 *graph (1).”;* and

3 *(2) by adding at the end the following new sub-*
4 *section:*

5 “(d) *DEFINITIONS.—As used in this section, the follow-*
6 *ing terms mean the following:*

7 “(1) *A ‘coin-operated phonorecord player’ is a*
8 *machine or device that—*

9 “(A) *is employed solely for the performance*
10 *of nondramatic musical works by means of*
11 *phonorecords upon being activated by the inser-*
12 *tion of coins, currency, tokens, or other monetary*
13 *units or their equivalent;*

14 “(B) *is located in an establishment making*
15 *no direct or indirect charge for admission;*

16 “(C) *is accompanied by a list which is com-*
17 *prised of the titles of all the musical works avail-*
18 *able for performance on it, and is affixed to the*
19 *phonorecord player or posted in the establish-*
20 *ment in a prominent position where it can be*
21 *readily examined by the public; and*

22 “(D) *affords a choice of works available for*
23 *performance and permits the choice to be made*
24 *by the patrons of the establishment in which it*
25 *is located.*

1 “(2) An ‘operator’ is any person who, alone or
2 jointly with others—

3 “(A) owns a coin-operated phonorecord
4 player;

5 “(B) has the power to make a coin-operated
6 phonorecord player available for placement in
7 an establishment for purposes of public perform-
8 ance; or

9 “(C) has the power to exercise primary con-
10 trol over the selection of the musical works made
11 available for public performance on a coin-oper-
12 ated phonorecord player.”.

13 **SEC. 6. REGISTRATION AND INFRINGEMENT ACTIONS.**

14 Section 411(b)(1) of title 17, United States Code, is
15 amended to read as follows:

16 “(1) serves notice upon the infringer, not less
17 than 48 hours before such fixation, identifying the
18 work and the specific time and source of its first
19 transmission, and declaring an intention to secure
20 copyright in the work; and”.

21 **SEC. 7. COPYRIGHT OFFICE FEES.**

22 (a) *FEE INCREASES.*—Section 708(b) of title 17, Unit-
23 ed States Code, is amended to read as follows:

24 “(b) In calendar year 1997 and in any subsequent cal-
25 endar year, the Register of Copyrights, by regulation, may

1 *increase the fees specified in subsection (a) in the following*
2 *manner:*

3 “(1) *The Register shall conduct a study of the*
4 *costs incurred by the Copyright Office for the registra-*
5 *tion of claims, the recordation of documents, and the*
6 *provision of services. The study shall also consider the*
7 *timing of any increase in fees and the authority to*
8 *use such fees consistent with the budget.*

9 “(2) *The Register may, on the basis of the study*
10 *under paragraph (1), and subject to paragraph (5),*
11 *increase fees to not more than that necessary to cover*
12 *the reasonable costs incurred by the Copyright Office*
13 *for the services described in paragraph (1), plus a*
14 *reasonable inflation adjustment to account for any es-*
15 *timated increase in costs.*

16 “(3) *Any fee established under paragraph (2)*
17 *shall be rounded off to the nearest dollar, or for a fee*
18 *less than \$12, rounded off to the nearest 50 cents.*

19 “(4) *Fees established under this subsection shall*
20 *be fair and equitable and give due consideration to*
21 *the objectives of the copyright system.*

22 “(5) *If the Register determines under paragraph*
23 *(2) that fees should be increased, the Register shall*
24 *prepare a proposed fee schedule and submit the sched-*
25 *ule with the accompanying economic analysis to the*

1 *Congress. The fees proposed by the Register may be*
2 *instituted after the end of 120 days after the schedule*
3 *is submitted to the Congress unless, within that 120-*
4 *day period, a law is enacted stating in substance that*
5 *the Congress does not approve the schedule.”.*

6 **(b) DEPOSIT OF FEES.**—*Section 708(d) of such title*
7 *is amended to read as follows:*

8 “(d)(1) *Except as provided in paragraph (2), all fees*
9 *received under this section shall be deposited by the Register*
10 *of Copyrights in the Treasury of the United States and shall*
11 *be credited to the appropriations for necessary expenses of*
12 *the Copyright Office. Such fees that are collected shall re-*
13 *main available until expended. The Register may, in ac-*
14 *cordance with regulations that he or she shall prescribe, re-*
15 *fund any sum paid by mistake or in excess of the fee re-*
16 *quired by this section.*

17 “(2) *In the case of fees deposited against future serv-*
18 *ices, the Register of Copyrights shall request the Secretary*
19 *of the Treasury to invest in interest-bearing securities in*
20 *the United States Treasury any portion of the fees that,*
21 *as determined by the Register, is not required to meet cur-*
22 *rent deposit account demands. Funds from such portion of*
23 *fees shall be invested in securities that permit funds to be*
24 *available to the Copyright Office at all times if they are*
25 *determined to be necessary to meet current deposit account*

1 *demands. Such investments shall be in public debt securities*
 2 *with maturities suitable to the needs of the Copyright Office,*
 3 *as determined by the Register of Copyrights, and bearing*
 4 *interest at rates determined by the Secretary of the Treas-*
 5 *ury, taking into consideration current market yields on out-*
 6 *standing marketable obligations of the United States of*
 7 *comparable maturities.*

8 “(3) *The income on such investments shall be deposited*
 9 *in the Treasury of the United States and shall be credited*
 10 *to the appropriations for necessary expenses of the Copy-*
 11 *right Office.”.*

12 **SEC. 8. COPYRIGHT ARBITRATION ROYALTY PANELS.**

13 (a) *ESTABLISHMENT AND PURPOSE.*—Section 801 of
 14 *title 17, United States Code, is amended—*

15 (1) *in subsection (b)(1) by striking “and 116” in*
 16 *the first sentence and inserting “116, and 119”;*

17 (2) *in subsection (c) by inserting after “panel”*
 18 *at the end of the sentence the following:*

19 *“, including—*

20 “(1) *authorizing the distribution of those royalty*
 21 *fees collected under sections 111, 119, and 1005 that*
 22 *the Librarian has found are not subject to con-*
 23 *troversy; and*

24 “(2) *accepting or rejecting royalty claims filed*
 25 *under sections 111, 119, and 1007 on the basis of*

1 *timeliness or the failure to establish the basis for a*
2 *claim”;* and

3 (3) *by amending subsection (d) to read as fol-*
4 *lows:*

5 “(d) *SUPPORT AND REIMBURSEMENT OF ARBITRATION*
6 *PANELS.—The Librarian of Congress, upon the rec-*
7 *ommendation of the Register of Copyrights, shall provide*
8 *the copyright arbitration royalty panels with the necessary*
9 *administrative services related to proceedings under this*
10 *chapter, and shall reimburse the arbitrators presiding in*
11 *distribution proceedings at such intervals and in such man-*
12 *ner as the Librarian shall provide by regulation. Each such*
13 *arbitrator is an independent contractor acting on behalf of*
14 *the United States, and shall be hired pursuant to a signed*
15 *agreement between the Library of Congress and the arbitra-*
16 *tor. Payments to the arbitrators shall be considered reason-*
17 *able costs incurred by the Library of Congress and the*
18 *Copyright Office for purposes of section 802(h)(1).”.*

19 (b) *PROCEEDINGS.—Section 802 of title 17, United*
20 *States Code, is amended—*

21 (1) *in subsection (c) by striking the last sentence;*
22 *and*

23 (2) *in subsection (h) by amending paragraph (1)*
24 *to read as follows:*

1 “(1) *DEDUCTION OF COSTS OF LIBRARY OF CON-*
2 *GRESS AND COPYRIGHT OFFICE FROM ROYALTY*
3 *FEES.—The Librarian of Congress and the Register of*
4 *Copyrights may, to the extent not otherwise provided*
5 *under this title, deduct from royalty fees deposited or*
6 *collected under this title the reasonable costs incurred*
7 *by the Library of Congress and the Copyright Office*
8 *under this chapter. Such deduction may be made be-*
9 *fore the fees are distributed to any copyright claim-*
10 *ants. In addition, all funds made available by an ap-*
11 *propriations Act as offsetting collections and avail-*
12 *able for deductions under this subsection shall remain*
13 *available until expended. In ratemaking proceedings,*
14 *the reasonable costs of the Librarian of Congress and*
15 *the Copyright Office shall be borne by the parties to*
16 *the proceedings as directed by the arbitration panels*
17 *under subsection (c).”.*

18 **SEC. 9. DIGITAL AUDIO RECORDING DEVICES AND MEDIA.**

19 *Section 1007(b) of title 17, United States Code, is*
20 *amended by striking “Within 30 days after” in the first*
21 *sentence and inserting “After”.*

22 **SEC. 10. CONFORMING AMENDMENT.**

23 *Section 4 of the Digital Performance Right in Sound*
24 *Recordings Act of 1995 (Public Law 104–39) is amended*
25 *by redesignating paragraph (5) as paragraph (4).*

1 **SEC. 11. MISCELLANEOUS TECHNICAL AMENDMENTS.**

2 (a) *AMENDMENTS TO TITLE 17, UNITED STATES*
 3 *CODE.*—*Title 17, United States Code, is amended as fol-*
 4 *lows:*

5 (1) *The table of chapters at the beginning of title*
 6 *17, United States Code, is amended—*

7 (A) *in the item relating to chapter 6, by*
 8 *striking “**Requirement**” and inserting “**Re-***
 9 *quirements”;*

10 (B) *in the item relating to chapter 8, by*
 11 *striking “**Royalty Tribunal**” and inserting*
 12 *“**Arbitration Royalty Panels**”;*

13 (C) *in the item relating to chapter 9, by*
 14 *striking “**semiconductor chip products**”*
 15 *and inserting “**Semiconductor Chip Prod-***
 16 *ucts”;* *and*

17 (D) *by inserting after the item relating to*
 18 *chapter 9 the following:*

“10. Digital Audio Recording Devices and Media 1001”.

19 (2) *The item relating to section 117 in the table*
 20 *of sections at the beginning of chapter 1 is amended*
 21 *to read as follows:*

“117. Limitations on exclusive rights: Computer programs.”.

22 (3) *Section 101 is amended in the definition of*
 23 *to perform or display a work “publicly” by striking*
 24 *“processs” and inserting “process”.*

1 (4) *Section 108(e) is amended by striking “pair”*
2 *and inserting “fair”.*

3 (5) *Section 109(b)(2)(B) is amended by striking*
4 *“Copyright” and inserting “Copyrights”.*

5 (6) *Section 110 is amended—*

6 (A) *in paragraph (8) by striking the period*
7 *at the end and inserting a semicolon;*

8 (B) *in paragraph (9) by striking the period*
9 *at the end and inserting “; and”; and*

10 (C) *in paragraph (10) by striking “4*
11 *above” and inserting “(4)”.*

12 (7) *Section 115(c)(3)(E) is amended—*

13 (A) *in clause (i) by striking “sections*
14 *106(1) and (3)” each place it appears and in-*
15 *serting “paragraphs (1) and (3) of section 106”;*
16 *and*

17 (B) *in clause (ii)(II) by striking “sections*
18 *106(1) and 106(3)” and inserting “paragraphs*
19 *(1) and (3) of section 106”.*

20 (8) *Section 119(c)(1) is amended by striking*
21 *“until unless” and inserting “unless”.*

22 (9) *Section 304(c) is amended in the matter pre-*
23 *ceding paragraph (1) by striking “the subsection*
24 *(a)(1)(C)” and inserting “subsection (a)(1)(C)”.*

1 (10) Section 405(b) is amended by striking “con-
2 dition or” and inserting “condition for”.

3 (11) Section 407(d)(2) is amended by striking
4 “cost of” and inserting “cost to”.

5 (12) The item relating to section 504 in the table
6 of sections at the beginning of chapter 5 is amended
7 by striking “Damage” and inserting “Damages”.

8 (13) Section 504(c)(2) is amended by striking
9 “court it” and inserting “court in”.

10 (14) Section 509(b) is amended by striking
11 “merchandise; and baggage” and inserting “merchan-
12 dise, and baggage”.

13 (15) Section 601(a) is amended by striking
14 “nondramtic” and inserting “nondramatic”.

15 (16) Section 601(b)(1) is amended by striking
16 “subsustantial” and inserting “substantial”.

17 (17) The item relating to section 710 in the table
18 of sections at the beginning of chapter 7 is amended
19 by striking “Reproductions” and inserting “Repro-
20 duction”.

21 (18) The item relating to section 801 in the table
22 of sections at the beginning of chapter 8 is amended
23 by striking “establishment” and inserting “Establish-
24 ment”.

25 (19) Section 801(b) is amended—

1 (A) by striking “shall be—” and inserting
2 “shall be as follows:”;

3 (B) in paragraph (1) by striking “to make”
4 and inserting “To make”;

5 (C) in paragraph (2)—

6 (i) by striking “to make” and inserting
7 “To make”; and

8 (ii) in subparagraph (D) by striking
9 “adjustment; and” and inserting “adjust-
10 ment.”; and

11 (D) in paragraph (3) by striking “to dis-
12 tribute” and inserting “To distribute”.

13 (20) Section 803(b) is amended in the second
14 sentence by striking “subsection subsection” and in-
15 serting “subsection”.

16 (21) The item relating to section 903 in the table
17 of sections at the beginning of chapter 9 is amended
18 to read as follows:

 “903. Ownership, transfer, licensure, and recordation.”.

19 (22) Section 909(b)(1) is amended—

20 (A) by striking “force” and inserting
21 “work”; and

22 (B) by striking “sumbol” and inserting
23 “symbol”.

1 (23) Section 910(a) is amended in the second
2 sentence by striking “as used” and inserting “As
3 used”.

4 (24) Section 1006(b)(1) is amended by striking
5 “Federation Television” and inserting “Federation of
6 Television”.

7 (25) Section 1007 is amended—

8 (A) in subsection (a)(1) by striking “the
9 calendar year in which this chapter takes effect”
10 and inserting “calendar year 1992”; and

11 (B) in subsection (b) by striking “the year
12 in which this section takes effect” and inserting
13 “1992”.

14 (b) RELATED PROVISIONS.—

15 (1) Section 1(a)(1) of the Act entitled “An Act
16 to amend chapter 9 of title 17, United States Code,
17 regarding protection extended to semiconductor chip
18 products of foreign entities”, approved November 9,
19 1987 (17 U.S.C. 914 note), is amended by striking
20 “originating” and inserting “originating”.

21 (2) Section 2319(b)(1) of title 18, United States
22 Code, is amended by striking “last 10” and inserting
23 “least 10”.

1 **SEC. 12. EFFECTIVE DATES.**

2 (a) *IN GENERAL.*—*Except as provided in subsections*
3 *(b) and (c), the amendments made by this Act shall take*
4 *effect on the date of the enactment of this Act.*

5 (b) *SATELLITE HOME VIEWER ACT.*—*The amend-*
6 *ments made by section 1 shall be effective as if enacted as*
7 *part of the Satellite Home Viewer Act of 1994 (Public Law*
8 *103–369).*

9 (c) *TECHNICAL AMENDMENT.*—*The amendment made*
10 *by section 11(b)(1) shall be effective as if enacted on Novem-*
11 *ber 9, 1987.*

6)