

S. 646

[Report No. 92-72]

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8 (legislative day, JANUARY 26), 1971

Mr. McCLELLAN (for himself, Mr. SCOTT, Mr. BAKER, and Mr. TOWER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

APRIL 20, 1971

Reported by Mr. McCLELLAN, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend title 17 of the United States Code to provide for the creation of a limited copyright in sound recordings for the purpose of protecting against unauthorized duplication and piracy of sound recording, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 That title 17 of the United States Code is amended in the

4 following respects:

5 (a) In section 1, title 17, of the United States Code,

6 add a subsection (f) to read:

7 "To reproduce and distribute to the public by sale or

8 other transfer of ownership, or by rental, lease, or lending,

9 reproductions of the copyrighted work if it be a sound record-

1 ing: *Provided*, That the exclusive right of the owner of a
 2 copyright in a sound recording to reproduce it is limited
 3 to the right to duplicate the sound recording in a tangible
 4 form that directly or indirectly recaptures the actual sounds
 5 fixed in the recording: *Provided further*, That this right
 6 does not extend to the making or duplication of another sound
 7 recording that is an independent fixation of other sounds,
 8 even though such sounds imitate or simulate those in the
 9 copyrighted sound recording; or to ~~single ephemeral record-~~
 10 ~~ings reproductions~~ made by transmitting organizations *ex-*
 11 *clusively* for their own use.”

12 (b) In section 5, title 17, of the United States Code, add
 13 a subsection (n) to read:

14 “Sound recordings ~~other than~~ fixations of sound ac-
 15 ~~companying a motion picture.~~”

16 (c) In section 19, title 17, of the United States Code,
 17 add the following at the end of the section: “In the case of
 18 reproductions of works specified in subsection (n) of section
 19 5 of this title, the notice shall consist of the symbol P (the
 20 letter P in a circle), the year of first publication of the sound
 21 recording, and the name of the owner of copyright in the
 22 sound recording, or an abbreviation by which the name can
 23 be recognized, or a generally known alternative designation
 24 of the owner: *Provided*, That if the producer of the sound
 25 recording is named on the labels or containers of the repro-

1 duction, and if no other name appears in conjunction with
2 the notice, his name shall be considered a part of the notice.”

3 (d) In section 20, title 17, of the United States Code,
4 amend the first sentence to read: “The notice of copyright
5 shall be applied, in the case of a book or other printed pub-
6 lication, upon its title page or the page immediately follow-
7 ing, or if a periodical either upon the title page or upon the
8 first page of text of each separate number or under the title
9 heading, or if a musical work either upon its title page or the
10 first page of music, or if a sound recording on the surface of
11 *reproductions* thereof or on the label or container in such
12 manner and location as to give reasonable notice of the claim
13 of copyright.”

14 (e) In section 26, title 17, of the United States Code,
15 add the following at the end of the section: “For the pur-
16 poses of this section and sections 10, 11, 13, 14, 21, 101,
17 106, 109, 209, 215, but not for any other purpose, a repro-
18 duction of a work described in subsection 5(n) shall be
19 considered to be a copy thereof. “*Sound recordings*” are
20 *works that result from the fixation of a series of musical,*
21 *spoken, or other sounds, but not including the sounds accom-*
22 *panying a motion picture. “Reproductions of sound record-*
23 *ings” are material objects in which sounds other than those*
24 *accompanying a motion picture are fixed by any method now*
25 *known or later developed, and from which the sounds can be*

1 *perceived, reproduced, or otherwise communicated, either*
2 *directly or with the aid of a machine or device, and include*
3 *the “parts of instruments serving to reproduce mechanically*
4 *the musical work,” “mechanical reproductions,” and “inter-*
5 *changeable parts, such as discs or tapes for use in mechanical*
6 *music-producing machines” referred to in sections 1(e) and*
7 *101(e) of this title.*

8 *SEC. 2. That title 17 of the United States Code is fur-*
9 *ther amended in the following respect:*

10 *In section 101, title 17 of the United States Code, de-*
11 *lete subsection (e) in its entirety and substitute the following:*

12 *“(e) INTERCHANGEABLE PARTS FOR USE IN ME-*
13 *CHANICAL MUSIC-PRODUCING MACHINES.—Interchange-*
14 *able parts, such as discs or tapes for use in mechanical music-*
15 *producing machines adapted to reproduce copyrighted musical*
16 *works, shall be considered copies of the copyrighted musical*
17 *works which they serve to reproduce mechanically for the*
18 *purposes of this section 101 and sections 106 and 109 of*
19 *this title, and the unauthorized manufacture, use, or sale of*
20 *such interchangeable parts shall constitute an infringement*
21 *of the copyrighted work rendering the infringer liable in ac-*
22 *cordance with all provisions of this title dealing with in-*
23 *fringements of copyright and, in a case of willful infringe-*
24 *ment for profit, to criminal prosecution pursuant to section*
...

1 ~~104~~ of this title. Whenever any person, in the absence of a
2 license agreement, intends to use a copyrighted musical com-
3 position upon the parts of instruments serving to reproduce
4 mechanically the musical work, relying upon the compulsory
5 license provision of this title, he shall serve notice of such
6 intention, by registered mail, upon the copyright proprietor at
7 his last address disclosed by the records of the copyright office,
8 sending to the copyright office a duplicate of such notice.”

9 ~~SEC. 2.~~ SEC. 3. This Act shall take effect ~~three~~ four
10 months after its enactment *except that section 2 of this Act*
11 *shall take effect immediately upon its enactment.* The provi-
12 sions of title 17 of the United States Code *as amended by*
13 *section 1 of this Act*, shall apply only to sound recordings
14 fixed, published, and copyrighted on and after the effective
15 date of this Act and nothing in title 17 of the United
16 States Code shall be applied retroactively or be construed
17 as affecting in any way any rights with respect to sound
18 recordings fixed before that date.

Calendar No. 74

92^D CONGRESS
1ST SESSION

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