

**The original documents are located in Box 18, folder “1974/12/31 S3976 Copyright Legislation” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.**

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**THE WHITE HOUSE**

**WASHINGTON**

Although this bill is not due until  
Saturday, January 4, action is  
required by Tuesday, December 31  
due to the expiration of two copy-  
rights on the 31st.

APPROVED  
DEC 31 1974

12/31

ACTION

THE WHITE HOUSE  
WASHINGTON

Last Day: January 4

December 28, 1974

*Printed in Colorado 12/31/74*

*To ARCHIVES  
1/3/75*

MEMORANDUM FOR THE PRESIDENT  
FROM: KEN COLE  
SUBJECT: Enrolled Bill S. 3976  
Copyright Legislation

Attached for your consideration is S. 3976, sponsored by Senator McClellan, Senator Scott of Pennsylvania and Senator Baker, which would amend the United States Code to:

- Extend the term of certain expiring copyrights to December 31, 1976;
- increase the criminal penalties for piracy and counterfeiting of sound recordings; and
- establish a National Commission on New Technological Uses of Copyrighted Works. (Commission)

OMB recommends approval and provides additional background information in its enrolled bill report (Tab A).

Max Friedersdorf and Phil Areeda both recommend approval.

RECOMMENDATION

That you sign S. 3976 (Tab B).



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

DEC 26 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3976 - Copyright legislation  
Sponsors - Sen. McClellan (D) Arkansas, Sen. Scott  
(R) Pennsylvania and Sen. Baker (R) Tennessee

Last Day for Action

January 4, 1975 - Saturday

Purpose

To permanently prohibit the piracy of sound recordings; extend the term of expiring copyrights; and establish a National Commission on New Technological Uses of Copyrighted Works.

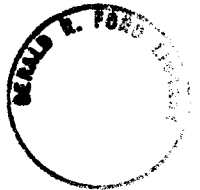
Agency Recommendations

Office of Management and Budget	Approval
Library of Congress	Approval
Department of Justice	Approval
Civil Service Commission	Approval
Department of Commerce	Approval

Discussion

S. 3976 deals with three copyright matters. It would:

- permanently prohibit the piracy of sound recordings and set maximum fine and imprisonment penalties for willfull counterfeiting of recordings for profit
- extend the term of certain expiring copyrights to December 31, 1976, and
- establish a National Commission on New Technological Uses of Copyrighted Works. (Commission)



### Piracy provisions

The House Committee on Judiciary reports allegations of widespread unauthorized reproduction of phonograph records and tapes. "Trade sources had estimated the annual volume of such piracy to be in excess of \$100 million and the annual value of legitimate prerecorded tape sales at approximately \$300 million.

Piracy of sound recordings not only deprives legitimate manufacturers of substantial income, but also denies artists and musicians of royalties and contributions to pension and welfare funds.

In 1972 legislation was passed protecting sound recordings fixed, published and copyrighted between February 15, 1972, and January 1, 1975. The terminal date was established to allow Congress to consider the effects of the legislation. The enrolled bill would remove the expiration date for a limited copyright in sound recordings. The Library of Congress in its views letter on the enrolled bill states that:

"Failure to extend the anti-piracy amendment on a permanent basis would create an extremely confused legal situation, especially in view of the international obligations undertaken by the United States when it ratified the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms."

Furthermore, the bill would establish maximum penalties of \$25,000 and/or imprisonment of one year for the first offense and \$50,000 and/or imprisonment for two years for subsequent offenses.

### Copyright extensions

In view of the pending general revision of copyright laws which would give all existing copyrights a total term of 75 years, Congress has authorized since 1962, eight other interim extensions of the term of expiring copyrights. The Committee report states that approximately 124,000 works will expire on December 31 of this year unless an interim extension of the term is passed. The Senate passed S. 3976 by 70 to 1.

National Commission on New Technological  
Uses of Copyrighted Works (Commission)

The bill would establish a Commission to study and make recommendations respecting improvement in the law relating to the use of copyrighted works in both computer systems and library photocopying. The new Commission would be created in the Library of Congress with 13 members appointed by the President. Four members would be from each of the following groups:

1. authors and copyright owners
2. copyright users
3. the general public

plus the Librarian of Congress. Within three years a final Commission report would be submitted to the President and Congress with recommendations for changes in the copyright law. An interim report would be due within one year after the first Commission meeting. Furthermore, 60 days after submission of the final report, the Commission would be dissolved.

The Commission would be responsible to study and compile data on the use of copyrighted works "in conjunction with automatic systems capable of storing, processing, retrieving, and transferring information," and by various forms of machine reproduction, except for use as teaching aids.

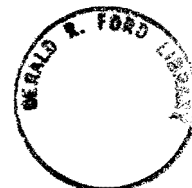
In its enrolled bill letter, the Library of Congress states that:

"all of the provisions of S. 3976 are important to the orderly development of the law of intellectual property within the United States... I therefore strongly recommend that the President of the United States sign this legislation into law."

*Walter H. Roumel*

Assistant Director for  
Legislative Reference

Enclosures



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 853

Date: December 27, 1974

Time: 12:00 noon

FOR ACTION: Geoff Shepard *ok* cc (for information): Warren Hendriks  
Max Friedersdorf *ol* Jerry Jones  
Phil Areeda *no obj*

FROM THE STAFF SECRETARY

DUE: Date: Friday, December 27

Time: 2:00 p.m.

SUBJECT:

Enrolled Bill S. 3976 - Copyright legislation

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Two of the copyrights in this bill will expires on December 31. Therefore, this bill must go to Vail early tomorrow morning.

Thank you.

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

\_\_\_\_\_  
K. R. COLE, JR.  
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 853

Date: December 27, 1974

Time: 12:00 noon

FOR ACTION: Geoff Shepard ✓  
Max Friedersdorf  
Phil Areeda

cc (for information): Warren Hendriks  
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Friday, December 27

Time: 2:00 p.m.

SUBJECT:

Enrolled Bill S. 3976 - Copyright legislation

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Two of the copyrights in this bill will expires on December 31. Therefore, this bill must go to Vail early tomorrow morning.

Thank you.

Please return to Judy Johnston, Ground Floor West Wing

*Approval  
H.C.S.*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks  
For the President



THE WHITE HOUSE  
WASHINGTON

December 27, 1974

MEMORANDUM FOR: WARREN HENDRIKS  
FROM: *Max L. Friedersdorf* MAX L. FRIEDERSDORF  
SUBJECT: Action Memorandum - Log No. 853  
Enrolled Bill S. 3976  
Copyright legislation

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment

Date: December 27, 1974

Time: 12:00 noon

FOR ACTION: Geoff Shepard  
Max Friedersdorf  
Phil Areedacc (for information): Warren Hendriks  
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Friday, December 27

Time: 2:00 p.m.

## SUBJECT:

Enrolled Bill S. 3976 - Copyright legislation

## ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

## REMARKS:

Two of the copyrights in this bill will expires on December 31. Therefore, this bill must go to Vail early tomorrow morning.

Thank you.

Please return to Judy Johnston, Ground Floor West Wing

*No objection  
P Areeda*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks  
For the President



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

December 26, 1974

MEMORANDUM FOR ROBERT D. LINDER

Subject: Enrolled Bill S. 3976 - Copyrights

Two of the major provisions in this bill involve copyright protections which expire on December 31, 1974, and which would be extended by the bill. Attached is a copy of a letter from Mr. Fitzpatrick to Mr. Lazarus which urges that the President act on the legislation before the expiration of the provisions on December 31.

A handwritten signature in cursive script, reading "Neil R. Powell".

Assistant Director for  
Legislative Reference

ARNOLD & PORTER

1229 NINETEENTH STREET, N.W.

WASHINGTON, D. C. 20036

TELEPHONE: (202) 872-6700

CABLE: "ARPOPO"

TELEX: 89-2733

December 23, 1974

THURMAN ARNOLD (1891-1969)

PAUL A. PORTER  
MILTON V. FREEMAN  
NORMAN DIAMOND  
WILLIAM L. MCGOVERN  
CAROLYN E. AGGER  
G. DUANE VIETH  
REED MILLER  
ABE KRASH  
WILLIAM D. ROGERS  
B. HOWELL HILL  
JULIUS M. GREISMAN  
EDGAR H. BRENNER  
DENNIS G. LYONS  
STUART J. LAND  
ROBERT E. HERZSTEIN  
JAMES R. McALEE  
MITCHELL ROGOVIN  
WALTER J. ROCKLER  
CLIFFORD L. ALEXANDER, JR.  
WERNER KRONSTEIN  
PAUL S. BERGER  
JAMES F. FITZPATRICK  
MELVIN C. GARSOW  
BRUCE L. MONTGOMERY  
JOHN D. HAWKE, JR.  
MURRAY H. BRING  
DANIEL A. REZNECK  
GERALD M. STERN  
MELVIN SPAETH  
DAVID R. KENTOFF  
DAVID H. LLOYD  
RICHARD S. EWING  
PETER K. BLEAKLEY  
ALEXANDER E. BENNETT  
RICHARD J. WERTHEIMER  
HARRY HUGG  
JACK L. LIPSON  
JEROME I. CHAPMAN  
MYRON P. CURZAN  
JAMES A. DOBKIN  
STEPHEN L. HESTER  
MICHAEL N. SOHN

BY HAND

Kenneth L. Lazarus, Esquire  
Associate Counsel to the President  
The White House  
Washington, D. C. 20001

Re: S. 3976

Dear Ken:

This letter is written on behalf of our client the Recording Industry Association of America which represents the manufacturers of the major portion of sound recordings and tapes sold in the United States. We have strongly supported S. 3976 which passed both the House and Senate last Thursday, December 18, and which we understand will be delivered in enrolled form to the White House today. This bill has broad bipartisan legislative support, the endorsement of Justice, Commerce and State, and the backing of record manufacturers, record distributors, and organized labor.

This bill contains two emergency elements. First, it provides copyright protection against record piracy for sound recordings issued after December 31, 1974. The present law (P.L. 92-140) provides protection only for sound recordings released by the

RONALD E. HAYDANEK  
BROOKSLEY LANDAU  
ANDREW S. KRULWICH  
PATRICK F. J. MACRORY  
IRVIN B. NATHAN  
ROBERT H. WINTER  
NANCY K. HINTZ  
NORTON F. TENNILLE, JR.  
ROBERT D. ROSENBAUM  
J. BRADWAY BUTLER  
RICHARD L. HUBBARD  
KENNETH A. LETZLER  
DOUGLAS G. ROBINSON  
STEPHEN M. SACKS  
THOMAS J. MCGREW  
MARK J. SPOONER  
G. PHILIP NOWAK  
DAVID BONDERRMAN  
STEVEN P. LOCKMAN  
JEFFREY A. BURT  
CARY H. SHERMAN  
SIMON LAZARUS III  
THOMAS E. SILFEN  
DANIEL M. LEWIS  
RONALD S. NATHAN  
GARY G. GERLACH  
LANNY J. DAVIS  
PAUL S. RYERSON  
THOMAS D. NURNI  
LAWRENCE C. MAISEL  
JOHN M. FEGGERS  
RICHARD A. GOLDSTEIN  
THOMAS B. WILNER  
DIANA D. CLARK  
STEVEN BRODSKY  
IVOR C. ARMISTEAD III  
JAMES W. JONES  
STEVEN M. SCHATZ  
ROBERT S. THORPE  
ROBERT H. WOOD  
ROSALIND C. COHEN  
PAUL S. REICHLER  
LINDA F. BLUMENFELD  
LEONARD H. BECKER

MARTIN RIGER  
ROBERT PITOFSKY  
OF COUNSEL



ARNOLD & PORTER

Kenneth L. Lazarus, Esquire  
December 23, 1974  
Page Two

the end of the year. Thus, it is imperative that this legislation be signed promptly, and in any event before the end of the year. Otherwise, the large number of sound recordings issued in early 1975 would be subject to illegitimate and unfair record piracy.

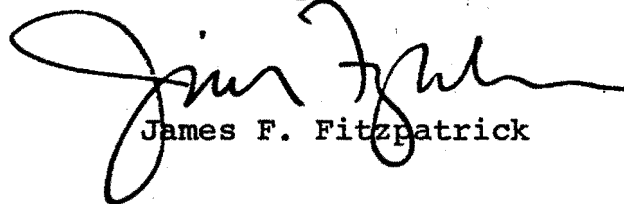
Second, the bill contains an extension of term for expiring copyrights of authors and composers. This extension of term must also be concluded by the end of the year. This extension has been necessitated by the failure of Congress to enact general copyright revision legislation which would itself have extended the term of copyright protection for authors and composers.

As you can see, there is great urgency in securing the President's signature to this legislation.

If you need to discuss this further, I will be happy to provide you with additional information.

Best wishes,

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Fitzpatrick", written in a cursive style.

James F. Fitzpatrick



THE LIBRARIAN OF CONGRESS

WASHINGTON, D.C. 20540

December 24, 1974

Dear Mr. Rommel:

The purpose of this letter is to recommend that S. 3976 be signed into law by the President of the United States.

S. 3976 consists of three items: (1) provisions making permanent the 1972 copyright legislation protecting sound recordings against unauthorized duplication, and increasing the criminal penalties for record and tape piracy and counterfeiting; (2) a provision extending until December 31, 1976, the term of subsisting renewal copyrights that would otherwise expire before that date; and (3) the creation of a National Commission on New Technological Uses of Copyrighted Works.

The provisions of the bill relating to the copyright protection of sound recordings represent a matter of compelling national concern. Public Law 92-140, which established the possibility of limited federal copyright protection for sound recordings, was aimed at the serious and growing problem of record and tape piracy in this country. Statutes and the common law of some of the states have proved ineffective to deal with this phenomenon. Enactment of the bill for general revision of the copyright law, which would provide permanent federal protection for sound recordings, had been delayed for other reasons, and separate copyright legislation at the federal level to cope with the unauthorized duplication of records and tapes was urgently needed.

The 1971 legislation for this purpose was limited to sound recordings fixed, published and copyrighted on and after February 15, 1972, and before January 1, 1975. The terminal date was established in order to allow Congress to consider the effects of the legislation in the light of experience, and in anticipation that the general revision bill containing parallel provisions would have been enacted by the end of 1974.

Nearly two years of experience with federal anti-piracy legislation have proved the justice of the case for permanent copyright protection and have fully vindicated the claims by authors of sound recordings to recognition under the U. S. copyright statute. Although the general revision bill passed the Senate on September 9, 1974, insufficient time remained for consideration of the omnibus measure in the 94th Congress. Failure to extend the anti-piracy amendment on a permanent basis would create an extremely confused legal situation, especially in view of the international obligations undertaken by the United States when it ratified the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms. The increases in criminal penalties for record piracy and counterfeiting provided by S. 3976 are reasonable and justified.

The second of the three major provisions of S. 3976 represents the ninth in a series of interim extensions of the renewal term of expiring copyrights. The first of these extensions was provided in 1962, and cumulatively the number of copyrights affected by S. 3976 now totals approximately 153,500. The principal justification for these extensions has been the pendency of legislation for general revision of the copyright law, which would give all subsisting copyrights a total term of 75 years. The Library of Congress has supported these temporary extensions, based on our view that a total 75-year term for subsisting copyrights is fully justified and that, as long as the revision bill is progressing toward enactment, it is unfair to allow subsisting copyrights to expire in the meantime. Authors and their families are the direct beneficiaries of royalties from the large majority of these copyrights; the problems that delayed enactment of the general revision bill involved controversial matters such as the copyright liability of cable television systems, and had nothing to do with the length of the copyright term.

Title II of S. 3976 would create a National Commission on New Technological Uses of Copyrighted Works in the Library of Congress. This study commission was first proposed in a separate bill in the Senate, S. 2216, and passed that body in the first session of the 90th Congress. The proposal was later included as Title II of the bill for general revision of the copyright law. The provision establishing the National Commission passed the Senate twice on September 9 of this year; first as part of the copyright general revision bill, S. 1361, and then as Title II of S. 3976, the present interim package.

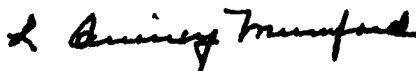
Mr. Wilfred H. Rommel  
Office of Management and Budget

- 3 -

The Commission would study and compile data on the use of copyrighted works "in conjunction with automatic systems capable of storing, processing, retrieving, and transferring information, and ... by various forms of machine reproduction, not including reproduction by or at the request of instructors for use in face-to-face teaching activities." It would also study "the creation of new works by the application or intervention of such automatic systems or machine reproduction." In singling these matters out for independent study, Congress has recognized that neither the present law nor the revision bill are adequate to deal with the range of problems arising from the collisions between copyright protection on the one side and both reprography and automated information systems on the other. Both of these important public issues urgently need to be probed deeply and reviewed broadly by an organized body representing all of the interests affected. It is for this reason that the Library of Congress has supported creation of a National Commission as part of the general revision bill or, as in this instance, by separate legislation.

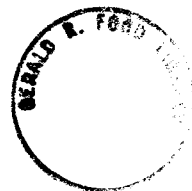
In summary, all of the provisions of S. 3976 are important to the orderly development of the law of intellectual property within the United States and, the case of the provisions dealing with record piracy, are needed to satisfy our international treaty obligations. I therefore strongly recommend that the President of the United States sign this legislation into law.

Sincerely yours,



L. Quincy Mumford  
Librarian of Congress

Mr. Wilfred H. Rommel  
Assistant Director for  
Legislative Reference  
Office of Management and Budget  
New Executive Office Building - Room 7201  
726 Jackson Place, N. W.  
Washington, D. C. 20503





**Department of Justice**  
**Washington, D.C. 20530**

DEC 24 1974

Honorable Roy L. Ash  
Director, Office of Management  
and Budget  
Washington, D.C. 20503

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 3976, "To amend title 17 of the United States Code to remove the expiration date for a limited copyright in sound recordings, to increase the criminal penalties for piracy and counterfeiting of sound recordings, to extend the duration of copyright protection in certain cases, to establish a National Commission on New Technological Uses of Copyrighted Works, and for other purposes.

The Department of Justice recommends Executive approval of this bill.

Sincerely,



W. Vincent Rakestraw  
Assistant Attorney General





UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

December 26, 1974

Honorable Roy L. Ash, Director  
Office of Management and Budget  
Washington, D.C. 20503

Attention: Assistant Director for  
Legislative Reference

Dear Mr. Ash:

This is in response to your request for the Commission's views on enrolled S. 3976, a bill "To amend title 17 of the United States Code to remove the expiration date for a limited copyright in sound recordings, to increase the criminal penalties for piracy and counterfeiting of sound recordings, to extend the duration of copyright protection in certain cases, to establish a National Commission on New Technological Uses of Copyrighted Works, and for other purposes."

We are limiting our comments to the personnel provisions of this bill.

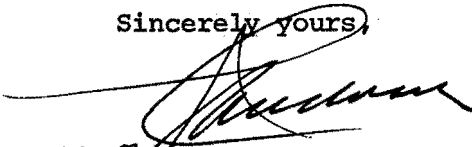
Enrolled S. 3976 establishes a temporary Commission within the Library of Congress, composed of 12 members appointed by the President according to criteria specified in the bill, and the Librarian of Congress. The purpose of the Commission is to study the reproduction and use of copyrighted works and to recommend changes in law or procedure to the Congress.

The bill authorizes the newly established Commission to appoint a staff which is to be an administrative part of the Library of Congress. The bill provides for compensating members of the Commission who are not Federal employees, as well as experts and consultants, at the rate of \$100 per day. Since this amount may not be adequate to attract the kinds of top level talent the bill seems to require, we believe an amount equivalent to the rate for GS-18--the amount customarily authorized similar personnel in the executive branch--would have been more appropriate.

The new Commission and its staff would be in the legislative branch and would, consequently, not be subject to competitive appointment procedures governing appointments in the competitive service. We have no objection to the personnel provisions in this bill. From the standpoint of the personnel provisions, we recommend that the President sign enrolled S. 3976.

By direction of the Commission:

Sincerely yours,

  
Acting Chairman





**THE UNDER SECRETARY OF COMMERCE**  
Washington, D.C. 20230

DEC 26 1974

Honorable Roy L. Ash  
Director, Office of Management  
and Budget  
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Ash:

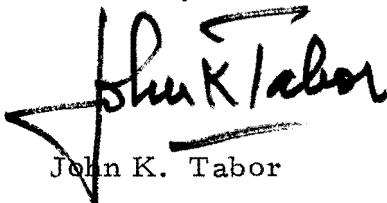
This is in reply to your request for the views of this Department concerning S. 3976, an enrolled enactment

"To amend title 17 of the United States Code to remove the expiration date for a limited copyright in sound recordings, to increase the criminal penalties for piracy and counterfeiting of sound recordings, to extend the duration of copyright protection in certain cases, to establish a National Commission on New Technological Uses of Copyrighted Works, and for other purposes."

This Department recommends Presidential approval of S. 3976.

Enactment of this legislation will not involve any additional expenditure of funds by this Department.

Sincerely,

A handwritten signature in black ink, reading "John K. Tabor". The signature is written in a cursive style with a large initial "J".

John K. Tabor



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

To -  
James Mueller  
12-26-74  
7:00 p.m.

December 26, 1974

MEMORANDUM FOR ROBERT D. LINDER

Subject: Enrolled Bill S. 3976 - Copyrights

Two of the major provisions in this bill involve copy-  
right protections which expire on December 31, 1974, and  
which would be extended by the bill. Attached is a copy  
of a letter from Mr. Fitzpatrick to Mr. Lazarus which  
urges that the President act on the legislation before the  
expiration of the provisions on December 31.

*Neil Rorem*

Assistant Director for  
Legislative Reference

Dear Sir:

This letter is written to you on behalf of the Recording Industry Association of America which represents the manufacturers of the major portion of sound recordings and tapes sold in the United States. We have strongly supported S. 3976 which passed both the House and Senate last Thursday, December 14, and which we understand will be delivered in enrolled form to the White House today. This bill has broad bipartisan legislative support, the endorsement of Justice, Commerce and State, and the backing of record manufacturers, record distributors, and organized labor.

This bill contains two emergency elements. First, it provides copyright protection against record piracy for sound recordings issued after Decem-  
ber 31, 1974. The present law (P.L. 93-140) provides protection only for sound recordings released by the

## COPYRIGHT MISCELLANY

DECEMBER 12, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. KASTENMEIER, from the Committee on the Judiciary,  
submitted the following

### REPORT

together with

### DISSENTING VIEWS

[To accompany S. 3976]

The Committee on Judiciary, to whom was referred the bill (S. 3976) to amend title 17 of the United States Code to remove the expiration date for a limited copyright in sound recordings, to increase the criminal penalties for piracy and counterfeiting of sound recordings, to extend the duration of copyright protection in certain cases, to establish a National Commission on New Technological Uses of Copyrighted Works, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

1. On page 2, line 12, and on page 2, line 19, strike out "three years" and insert in lieu thereof "one year".

2. On page 2, line 14, and on page 2, line 21, strike out "seven years" and insert in lieu thereof "two years".

3. On page 4, line 18, strike out the semicolon and insert in lieu thereof a comma and the following new language:

"with at least one member selected from among experts in consumer protection affairs;"

4. On page 6, line 8, after the word "title" strike out the period and insert in lieu thereof the following new language:

"until June 30, 1976."

### PURPOSE OF THE AMENDMENTS

Amendments Nos. 1 and 2 provide a new maximum penalty of imprisonment for the willful infringement for profit of a copyright in a

sound recording and for knowingly and fraudulently transporting in commerce records carrying counterfeit labels (18 United States Code, sec. 2318). The new maximum is one year for a first offense and two years for subsequent offenses. This compares with maximum imprisonment for three years for a first offense and seven years for a second offense proposed by the bill as introduced. No change is made in the maximum fine provided by the bill as introduced, which remains at \$25,000 for a first offense and \$50,000 for subsequent offenses. Existing law provides for a fine of not less than \$100 nor more than \$1,000 or imprisonment of not more than one year, or both, for willful infringements for profit of copyrights generally and irrespective of whether the offense is a first or a subsequent offense (title 17 United States Code, sec. 104).

Amendment No. 3 is intended to assure at least minimal attention on the part of the National Commission on New Technological Uses of Copyrighted Works to the interests of consumers.

Amendment No. 4 expresses the Committee's wish to exercise legislative oversight of the Commission's activities with respect to authorizations to appropriate funds for periods subsequent to June 30, 1976.

#### PURPOSE OF THE AMENDED BILL

S. 3976, which passed the Senate on September 9, 1974, deals with three major matters:

1. It would render permanent the expiring prohibition against piracy of sound recordings and maximum existing imprisonment penalties for willful infringement for profit and for counterfeiting of sound recordings (sections 101, 102, and 103);
2. It would extend the duration of expiring copyrights in certain cases (section 104), and
3. It would establish a National Commission on New Technological Uses of Copyrighted Works (sections 201-208).

#### STATEMENT

##### PIRACY PROVISIONS

Sections 101, 102, and 103 of S. 3976, as amended are identical in effect with the provisions of H.R. 13364, as amended, which passed the House on October 8, 1974, and has since been pending in the Senate Judiciary Committee. For parliamentary reasons it has now become desirable for the House to pass the identical provisions (also amended as to penalties) in enacting S. 3976. No reason appears, moreover, why we should not adopt the statement made in the report on H.R. 13364 (H. Rept. 93-1389) which in part reads as follows:

##### (1) ELIMINATION OF TERMINATION DATE

During the 92nd Congress the Committee became aware of allegations of widespread unauthorized reproduction of phonograph records and tapes. Trade sources had estimated the annual volume of such piracy to be in excess of \$100 million and the annual value of legitimate prerecorded tape sales at approximately \$300 million. In this context the Committee

reported that the pirating of records and tapes was not only depriving legitimate manufacturers of substantial income, but of equal importance, that it was denying performing artists and musicians of royalties and contributions to pension and welfare funds (Sen. Rept. 92-487, Sept. 22, 1971, p. 2). For these reasons, the Committee recommended and the Congress enacted Public Law 92-140. The grant of a copyright in sound recordings, was, however, limited to sound recordings fixed, published, and copyrighted on and after February 15, 1972 (the effective date of the bill), and before January 1, 1975.

"The Committee explained that the purpose of the terminal limitation was to "provide a period for further consideration of various alternatives for solving the problems in this area, before resorting to permanent legislative enactment." It also observed that by January 1, 1975, the protection of sound recordings might be part of a copyright law revision.

"Since the enactment of Public Law 92-140, no satisfactory alternative to the approach taken in that measure has presented itself. Moreover, although the other body has now passed a copyright revision bill (S. 1361) which incorporated the provisions of H.R. 13364 dealing with sound recordings, it is not realistic to expect that a completed copyright law revision measure containing permanent sound recordings legislation will have passed both Houses in identical form by the end of the calendar year.

The Subcommittee hearing on H.R. 13364, at which the legislation was supported by the Department of State, Justice Commerce, by the Register of Copyrights, and by witnesses on behalf of the private sector, disclosed no reason why the protection of sound recordings should be permitted to lapse. Indeed the Department of State predicts that a lapse in protection may trigger an increase in piracy and confront the industry with disastrous economic consequences.

Concerning the perpetuation of protection without lapse, the Register of Copyrights testified:

"Both record producers and performers benefit from this legislation since their respective creative contributions, typically governed by contracts, are recognized and protected. There is no question in my mind that tape piracy is fundamentally anticompetitive. As I stated in my testimony before the predecessor of your Subcommittee in 1971, piracy tends to increase the price of legitimate recordings; this is because the record producers lose sales volume on their 'hit records,' which must return sufficient gross to cover losses on other recordings. No pirate duplicates a loser. The public pays for piracy in the end. The Copyright Office firmly believes that what the public pays for recorded music should go to creators rather than scavengers."

The perpetuation of protection without lapse cannot await enactment of a revision bill. It requires separate legislation that can be promptly enacted.

Beyond this, the Government witnesses have called to the attention of the Subcommittee that the United States has become the eighth state to become a member of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (Phonogram Convention). This treaty requires the contracting states to protect the nationals of other contracting states against piracy of sound recordings. The Department of State reports that H.R. 13364 is the implementing legislation for the Phonogram Convention and is essential for meeting of international commitments. The first paragraph of H.R. 13364, by repealing the January 1, 1975, expiration date of Public Law 92-140, meets these commitments.

#### (2) PENALTY CHANGES

Beside removing the expiration date in Public Law 92-140 H.R. 13364 would increase the penalty for infringing sound recordings willfully and for profit, and for knowingly and fraudulently transporting records carrying counterfeit labels (18 U.S. Code, sec. 2318). Present law punishes such behavior by a fine of not less than \$100 or more than \$1,000 or imprisonment of more than one year, or both. H.R. 13364 would impose a maximum imprisonment of three years or a maximum fine of \$25,000, or both, for a first offense and a maximum imprisonment of seven years or a maximum fine of \$50,000 or both, for subsequent offenses.

The reason given in support of this very substantial proposed increase in penalties is that record piracy is so profitable that ordinary penalties fail to deter prospective offenders.

The Committee recognizes the force of the argument and agrees that the economic penalties should be substantial. It accordingly adopts the provisions creating maximum fines of \$25,000 and \$50,000, for first and subsequent offenses respectively.

With respect to the penalty of imprisonment, however, the Committee is reluctant to sanction the proposed maxima of three years and seven years for what is essentially an economic offense. We believe that the present one year maximum imprisonment should be retained for cases involving a first offense. With respect to subsequent offenses, however, we believe this maximum may appropriately be doubled. The Subcommittee thus recommends a two-year maximum for offenses subsequent to the first.

#### SECTION-BY-SECTION ANALYSIS

The first section of H.R. 13364, as amended, amends section 3 of Public Law 92-140 by eliminating the December 31, 1974, expiration date of the newly created copyright protection of sound recordings. The subject legislation does not affect the existing exclusion from coverage of sound recordings fixed, published, and copyrighted before February 15, 1972 (the effective date of P.L. 92-140).

Section 2 of H.R. 13364, as amended, amends the copyright law (17 U.S. Code, sec. 104,) making the willful infringement for profit of sound recordings subject to a fine of not more than \$25,000 or imprisonment of not more than one year, or both, for a first offense and a fine of not more than \$50,000 or imprisonment of not more than two years, or both, for a subsequent offense. Existing penalties, applicable to willful infringements for profit of copyrights generally, prescribes imprisonment for not exceeding one year or a fine of not less than \$100 nor more than \$1,000, or both.

Section 3 of H.R. 13364, as amended, makes an identical change in identical provisions of title 18, United States Code, section 2318. Under the amendment, whoever knowingly and with fraudulent intent transfers in commerce a phonograph record bearing a counterfeit label will be subject to a fine of not more than \$25,000 or imprisonment of not more than one year, or both, for a first offense and a fine of not more than \$50,000 or imprisonment of not more than two years, or both, for a subsequent offense.

#### EXTENSION OF EXPIRING COPYRIGHTS

Section 104 of Title I of the legislation would extend until December 31, 1976 the copyright in works now in their second term of copyright and due to expire on December 31, 1974. This section will not result in any cost to the United States. The Committee is advised that copyright in approximately 124,000 works will expire on December 31 of this year unless an interim extension of the term is passed. Of this total, approximately two-thirds are musical compositions. The Copyright Office estimates that an additional 13,350 copyrights are due to expire in calendar year 1975 and 15,300 in calendar year 1976. By the end of 1976 the total of copyrights affected by interim extension legislation would be approximately 153,500.

If section 104 is enacted, it will be the ninth in a series of interim extensions of the renewal term of expiring copyrights, which began with Public Law 87-668 in 1962. The first three-year interim extension was followed by a two-year extension, Public Law 89-142, then by five successive one-year extensions, Public Laws 90-141, 90-416, 90-147, 91-555, and 92-170, and finally by another two-year extension, Public Law 92-566, which expires at the end of this year. S. 3976 would add another two-year extension, ending on December 31, 1976.

The principal justification for the extensions has been the bill for general revision of the copyright law, which would add 19 years to the renewal term of all subsisting copyrights, making a total term of 75 years. In the past, support of these temporary extensions was thought warranted under the view that a total 75-year term for subsisting copyrights was fully justified. As long as the revision bill providing a 75-year term was progressing toward enactment, it was thought undesirable to allow subsisting copyrights to expire while the bill was moving through the necessary legislative process. Families of authors and in a few instances authors themselves, as well as assignees and successors of assignees are direct beneficiaries of the royalties from the majority of these copyrights, and it seemed drastic to permit their



works to fall into the public domain during active legislative consideration of a bill that would definitively extend the term in all subsisting copyrights. It should be noted that in no case would any of these works be given protection longer than the 75-year term which is established as the norm under the revision bill, S. 1361, which passed the Senate on the same day as did S. 3976.

The revision bill became stalled in the Senate because of a dispute over rights in cable television transmissions, an issue completely unrelated to the length of copyright term.

Senate passage of S. 1361 on September 9, 1974, by a margin of 70 to 1, warrants the view that considerable legislative momentum has been regained by the revision project. Indeed the prospect for revision seems brighter than at any time since 1967.

A total of 150,000 copyright properties are caught up in the question of extension by the end of 1976. About two-thirds of these works are musical compositions, and in the bulk of these cases the families of composer-authors or their heirs, as well as a few authors and assignees will benefit personally from royalty payments flowing from these works.

In short, the Committee believes that the status and prospects of the general revision bill do provide the justification for another interim extension.

#### NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS

Title II of S. 3976 would create a National Commission on New Technological Uses of Copyrighted Works in the Library of Congress. This study commission was first proposed in a separate bill in the Senate, S. 2216, and passed that body in the first session of the 90th Congress. The proposal was later included as Title II of a package bill (including the copyright revision bill as Title I and the design protection bill as Title III) in the Senate Judiciary Committee print of S. 543 in December, 1969. This same format has been followed in the successive copyright general revision bills in the Senate. The National Commission proposal passed the Senate twice on September 9 of this year: first as part of the copyright general revision package, S. 1361, and then as Title II of S. 3976, the bill under consideration.

The Commission would study and compile data on the use of copyrighted works "in conjunction with automatic systems capable of storing, processing, retrieving, and transferring information, and . . . by various forms of machine reproduction, not including reproduction by or at the request of instructors for use in face-to-face teaching activities."

Twelve members of the Commission would be appointed by the President with four each from among three groups:

1. Authors and copyright owners;
2. Copyright users; and
3. The general public. The Committee's amendment No. 3 requires that at least one of the four public members shall be selected from among experts in consumer protection affairs. The Librarian of Congress would serve as the thirteenth voting member, and the Register of Copyrights would serve *ex officio* as a nonvoting member. The support-

ing staff, headed by an Executive Director, would be an administrative part of the Library of Congress.

Within three years enactment of the bill, a final Commission Report would be made, including recommendations for changes in the copyright law for the twin purposes of assuring access to copyrighted works while providing appropriate recognition of proprietary interests. An interim report would be due within one year after the first Commission meeting.

The inadequacy of the present law to deal with the range of problems arising from the use of copyrighted works in computer systems is well-recognized. Moreover, even though section 108 of the revision bill deals with certain aspects of library photocopying, and other aspects of the problem are now before the Supreme Court in the *Williams and Wilkins* case, neither enactment of the revision bill nor a definitive decision in the lawsuit can be expected to solve the copyright problems presented by library photocopying or reprography generally. Both of these important public issues urgently need to be studied in depth by recognized experts, and to be reviewed by a commission or other organized body representing all of the interests affected. It is for this reason the Committee is advised that the Copyright Office has supported creation of a National Commission either as part of the general revision bill or, if necessary, as separate legislation.

The Committee agrees that it is not necessary to await enactment of the general revision package before undertaking the studies and consultations contemplated in Title II of S. 3976. We share the hope of the Register of Copyrights that the studies and consultations needed to provide solutions to the copyright problems presented by reprography and the storage and transfer of information will be undertaken without further delay, and that they may be considered independent of the general revision bill itself.

#### SECTIONAL ANALYSIS OF TITLE II

An analysis of the provisions of Title II (sections 201-208) follows:

Section 201(a) establishes the Commission in the Library of Congress. Section 201(b) defines the purpose of the Commission as the study and compilation of data on the reproduction and use of copyrighted works (1) in automatic systems capable of storing, processing, retrieving, and transferring information, and by various forms of machine reproductions, not including reproduction by instructors for use in face-to-face teaching activities; (2) and the creation of new works by the application or intervention of automatic systems or machine reproduction. It is further provided that the Commission shall make recommendation as to such changes in copyright law or procedures that may be necessary to assure for such purposes access to copyrighted works, and to provide recognition of the rights of copyright owners.

Section 202(a) provides that the Commission shall be composed of 13 members as follows: four members, selected from authors and other copyright owners; four members selected from users of copyrighted works; four nongovernmental members selected from the public generally [at this point the Committee's amendment No. 3 requires at least one of the public members shall be selected from among ex-

pers in consumer protection affairs], all to be appointed by the President; and the Librarian of Congress.

Section 202(b) provides that the President shall appoint a Chairman and Vice Chairman from among the four members selected from the public and the Register of Copyrights shall serve as a nonvoting member of the Commission.

Section 202(c) defines a quorum. Section 202(d) provides for the filling of vacancies on the Commission.

Section 203(a) specifies the compensation to be received by members of the Commission. Section 203(b) provides that officers or employees of the Federal Government shall serve on the Commission without compensation, other than expenses.

Section 204(a) authorizes the Commission to appoint a staff which shall be an administrative part of the Library of Congress. This staff shall be under the exclusive control of the Commission and its Executive Director. The staff should be composed of individuals who are knowledgeable in those areas which are relevant to the work of the Commission and should not be limited solely to specialist in copyright law. Section 204(b) authorizes the Commission to procure temporary and intermittent services.

Section 205 authorizes the appropriations of such sums as may be necessary to carry out the provisions of this legislation [at this point the Committee's amendment No. 4 limits the authorization to appropriate funds to funds for the period preceding June 30, 1976].

Section 206(a) requires that the Commission shall submit to the President and the Congress within 1 year of its first meeting a preliminary report on its activities. Section 206(b) directs the Commission to submit a final report within 3 years after the effective date of this legislation. Section 206(c) authorizes the Commission to publish certain interim reports.

Section 207(a) authorizes the Commission to hold hearings, administer oaths and require, by subpoena or otherwise, the attendance of witnesses and the production of documents. Section 207(b) provides authorization for various meetings, seminars or conferences.

Section 208 provides that the Commission shall terminate 60 days after the submission of its final report.

#### COST TO THE UNITED STATES

With respect to the piracy provisions (sections 101, 102, and 103), the Library of Congress advises the Committee as follows:

Sections 101, 102, and 103 of Title I would make the sound recording copyright a permanent feature of title 17 U.S.C., increase the criminal penalties for infringement of a sound recording copyright, under section 104 of that title, and increase the criminal penalties for counterfeit records under title 18 U.S.C. The Copyright Office estimates that claims to copyright in 15,000 sound recordings will be registered per year, and that approximately \$216,000 will be needed to support this operation. There will be a return of \$90,000 in fees to the Copyright Office, based on the present registration fee

of \$6.00. In addition to the fees, 30,000 deposit copies will be received with an estimated value of \$150,000.

The enactment of the interim extension of renewal terms (section 104) will entail no cost to the United States.

With respect to the Commission, the Librarian has advised as follows:

Title II of S. 3976 would create a National Commission on New Technological Uses of Copyrighted Works, with the mandate to examine these uses and to recommend changes in the copyright law to deal with them. The Commission would report on the problem of machine reproduction of copyrighted works by photocopying machines and similar methods after one year, and would complete its work within three years.

In estimating the cost to the United States of this Commission, the Copyright Office has projected a staff of 45 technical, legal, and clerical personnel to support the work of the 13 Commission members. However, the full complement of staff would not be reached until the final year of the Commission; hence the cost the first year is slightly over half the cost for the third and final year of the Commission's life. The Copyright Office has prepared the following estimate of the cost to the United States for the salaries of the 12 nongovernmental Commission members and the supporting staff and for all expenses, including travel, space, furniture, equipment, utilities, supplies, and printing:

	1st year	2d year	3d year
Salaries.....	\$476, 800	\$692, 800	\$929, 800
Other expenses.....	108, 000	111, 500	142, 500
Total.....	584, 800	804, 300	1, 072, 300

Note: Total 3-year cost, \$2,461,400.

Although the Committee recognizes that cost estimates of this character must often be rough, and although it tentatively accepts and adopts these estimates, the Committee serves notice that it intends to exercise its oversight function and to keep itself informed with respect to these substantial expenditures. Expenditures of the magnitude of those here involved cannot be allowed to occur without close legislative scrutiny.

#### RECORD VOTE

The Committee decided to report S. 3976 favorably to the House as above amended by roll call vote at a meeting held on December 11, 1974, at which 21 members voted "Aye" and seven members voted "Nay."

#### COMMUNICATION

Attached hereto and made part hereof is a copy of a letter dated November 18, 1974, from the Librarian of Congress to the Chairman of the Committee on the Judiciary, dealing with S. 3976.

THE LIBRARIAN OF CONGRESS,  
Washington, D.C., November 18, 1974.

HON. PETER W. RODINO, JR.,  
Chairman, Committee on the Judiciary, U.S. House of Representatives,  
Washington, D.C.

DEAR MR. RODINO: In accordance with your request, conveyed on your behalf by Mr. Fuchs, the Register of Copyrights has prepared an estimate of the cost to the United States if S. 3976 is enacted.

S. 3976 consists of two titles. Section 101, 102, and 103 of Title I would make the sound recording copyright a permanent feature of title 17 U.S.C., increase the criminal penalties for infringement of a sound recording copyright, under section 104 of that title, and increase the criminal penalties for counterfeit records under title 18 U.S.C. The Copyright Office estimates that claims to copyright in 15,000 sound recordings will be registered per year, and that approximately \$216,000 will be needed to support this operation. There will be a return of \$90,000 in fees to the Copyright Office, based on the present registration fee of \$6.00. In addition to the fees, 30,000 deposit copies will be received with an estimated value of \$150,000.

Section 104 of Title I of the legislation would extend until December 31, 1976 the copyright in works now in their second term of copyright and due to expire on December 31, 1974. This section will not result in any cost to the United States. The Committee may be interested to know that copyright in approximately 124,000 works will expire on December 31 of this year unless an interim extension of the term is passed. Of this total, approximately two-thirds are musical compositions. The Copyright Office estimates that an additional 13,350 copyrights are due to expire in calendar year 1975 and 15,300 in calendar year 1976. By the end of 1976 the total of copyrights affected by interim extension legislation would be approximately 153,500.

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Salaries.....	\$476,800	\$692,800	\$929,800
Other expenses.....	108,000	111,500	142,500
Total.....	584,800	804,300	1,072,300

Note: Total 3 year cost, \$2,461,400.

If I can be of further assistance, please contact me.

Sincerely yours,

L. QUINCY MUMFORD,  
Librarian of Congress.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 3 OF PUBLIC LAW 92-140

SEC. 3. This Act shall take effect four months after its enactment except that section 2 of this Act shall take effect immediately upon its enactment. The provisions of title 17, United States Code, as amended by section 1 of this Act, shall apply only to sound recordings fixed, published, and copyrighted on and after the effective date of this Act [and before January 1, 1975], and nothing in title 17, United States Code, as amended by section 1 of this Act, shall be applied retroactively or be construed as affecting in any way any rights with respect to sound recordings fixed before the effective date of this Act.

\* \* \* \* \*

SECTION 104 OF TITLE 17 OF THE UNITED STATES CODE

§ 104. Willful infringement for profit.

Any person who willfully and for profit shall infringe any copyright secured by this title, or who shall knowingly and willfully aid or abet such infringement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not exceeding one year or by a fine of not less than \$100 nor more than \$1,000, or both, in the discretion of the court: *Provided, however*, That nothing in this title shall be so construed as to prevent the performance of religious or secular works such as oratorios, cantatas, masses, or octavo choruses by public schools, church choirs, or vocal societies, rented, borrowed, or obtained from some public library, public school, church choir, school choir, or vocal society, provided

the performance is given for charitable or educational purposes and not for profit. *Any person who willfully and for profit shall infringe any copyright provided by subsection 1(f) of title 17 of the United States Code as amended, or who should knowingly and willfully aid or abet such infringement, shall be fined not more than \$25,000 or imprisoned for not more than one year, or both, for the first offense and shall be fined not more than \$50,000 or imprisoned not more than two years, or both, for any subsequent offense.*

\* \* \* \* \*

#### SECTION 2318 OF TITLE 18 OF THE UNITED STATES CODE

##### § 2318. Transportation, sales, or receipt of phonograph records bearing forged or counterfeit labels.

Whoever knowingly and with fraudulent intent, transports, causes to be transported, receives, sells, or offers for sale in interstate or foreign commerce any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, to which or upon which is stamped, pasted, or affixed any forged or counterfeited label, knowing the label to have been falsely made, forged, or counterfeited[,] shall be fined not more than ~~[\$1,000]~~ *\$25,000* or imprisoned for not more than one year, or both, *for the first such offense, and shall be fined not more than \$50,000 or imprisoned not more than two years, or both, for any subsequent offense.*

#### CHANGES MADE IN EXISTING LAW BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

#### SECTION 3 OF PUBLIC LAW 92-140

SEC. 3. This Act shall take effect four months after its enactment except that section 2 of this Act shall take effect immediately upon its enactment. The provisions of title 17, United States Code, as amended by section 1 of this Act, shall apply only to sound recordings fixed, published, and copyrighted on and after the effective date of this Act [and before January 1, 1975], and nothing in title 17, United States Code, as amended by section 1 of this Act, shall be applied retroactively or be construed as affecting in any way any rights with respect to sound recordings fixed before the effective date of this Act.

\* \* \* \* \*

#### SECTION 104 OF TITLE 17 OF THE UNITED STATES CODE

##### § 104. Willful infringement for profit.

Any person who willfully and for profit shall infringe any copyright secured by this title, or who shall knowingly and willfully aid or abet such infringement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for

not exceeding one year or by a fine of not less than \$100 nor more than \$1,000, or both, in the discretion of the court: *Provided, however, That nothing in this title shall be so construed as to prevent the performance of religious or secular works such as oratorios, cantatas, masses, or octavo choruses by public schools, church choirs, or vocal societies, rented, borrowed, or obtained from some public library, public school, church choir, school choir, or vocal society, provided the performance is given for charitable or educational purposes and not for profit. Any person who willfully and for profit shall infringe any copyright provided by subsection 1(f) of title 17 of the United States Code as amended, or who should knowingly and willfully aid or abet such infringement, shall be fined not more than \$25,000 or imprisoned for not more than one year, or both, for the first offense and shall be fined not more than \$50,000 or imprisoned not more than two years, or both, for any subsequent offense.*

\* \* \* \* \*

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**VIEWS OF HONORABLE ROBERT W. KASTENMEIER  
DISSENTING IN PART**

The foregoing report conveys the views of the Committee majority as I understood them. For reasons often stated (e.g., in House Reports 92-605 and 92-1449) I cannot concur in the action of my colleagues in ordering a further extension of expiring renewal terms of copyright. It continues to be my belief that in too many instances the measure will operate to provide an unjustifiable windfall at the expense of the public domain.

**ROBERT W. KASTENMEIER.**

## VIEWS OF HONORABLE ROBERT F. DRINAN DISSENTING IN PART TO S. 3976

If the only purpose of this bill were to extend existing copyrights for two more years. I would have no serious objection to it. To be sure, there is some doubt whether such an extension is calculated to promote "the Progress of Science and useful Arts" by giving artists exclusive rights to their works "for limited Times." That constitutional directive is somewhat obscured when it is considered that many of the inventors and authors, whose product we seek to protect, have been dead for a very long time. Because the Subcommittee on Courts, Civil Liberties, and the Administration of Justice has placed revision of the entire copyright law high on its agenda for the 94th Congress, I support the two year extension as a matter of equity, fully aware that the 93rd Congress is about to adjourn.

But copyright extension is not the only aim of S.3976. It also seeks to perpetuate protection for sound recordings, and to establish a "National Commission on New Technological Uses of Copyrighted Works." First, with respect to the sound recording provisions—the so-called "anti-piracy" sections—I have previously set forth my views at some length. A few weeks ago, this Committee passed H.R. 13364, a bill which is nearly identical to Sections 101-103 of S. 3976.

In House Report No. 93-1389, filed on September 30, 1974, I explicated my reasons for opposing the bill to continue protection of sound recordings. In that report at pages 13-17, I explored fully my objections to the measure. I concluded that I could not "support this bill in its present form principally for three reasons: (1) we have not adequately examined the impact of this measure on the competitive aspects of the recording industry, on consumer prices, and on artistic freedom; (2) the criminal penalties in the bill are too severe; and (3) the proposal does not contain an expiration date." Since that occasion, no evidence has been presented to this Committee which would cause me to alter my view on the matter.

Second, S. 3976 also would establish a National Commission on New Technological Uses of Copyrighted Works. This 13 member commission would study the innovative aspects of copyright usage and report back to the Congress and the President. All members of the commission would be appointed by the President, and it is estimated that it would cost approximately \$2,461,400 to support its work for three years.

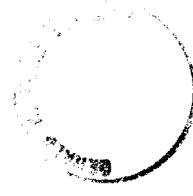
I cannot vote in favor of this provision because it gives to the President the sole power of appointment. Even the usual check of requiring the "advice and consent" of the Senate is absent. This arrangement is particularly objectionable when it is considered that the commission staff will be "an administrative part of the Library of Congress." It is quite beyond me why we should lodge exclusive control over the commission members with the Chief Executive. Furthermore, at least eight of its members are required to be chosen from persons who have

a vested interest in preserving and extending copyrights. If anything is needed at this time, it is an independent judgment of the utility of the assumed benefits of copyright protection.

In addition the estimated cost for the three year work of the commission appears excessive. Almost \$2.5 million will be spent to examine new, emerging, and technical areas of copyrights. I think we could save the public a great deal of money if we merely authorized funds to support independent research on the subject. That would surely accomplish our aim, and reap the additional advantage of securing truly independent judgments about the applicability of copyrights in these new areas.

From what has been said here and in House Report No. 93-1389, it is quite plain that I cannot vote in favor of S. 3976. My objections to the "anti-piracy" sections and to the establishment of a national commission far outweigh my support for the two year extension of existing copyrights.

ROBERT F. DRINAN.



# Ninety-third Congress of the United States of America

## AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,  
one thousand nine hundred and seventy-four*

### An Act

To amend title 17 of the United States Code to remove the expiration date for a limited copyright in sound recordings, to increase the criminal penalties for piracy and counterfeiting of sound recordings, to extend the duration of copyright protection in certain cases, to establish a National Commission on New Technological Uses of Copyrighted Works, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### TITLE I—AMEND TITLE 17 UNITED STATES CODE, AND FOR OTHER PURPOSES

SEC. 101. Section 3 of the Act of October 15, 1971 (85 Stat. 391), is amended by striking out “and before January 1, 1975”.

SEC. 102. Section 104 of title 17, United States Code, is amended—

- (1) by striking out “Any person” and inserting in lieu thereof “(a) Except as provided in subsection (b), any person”; and
- (2) by adding at the end thereof the following new subsection:  
“(b) Any person who willfully and for profit shall infringe any copyright provided by section 1(f) of this title, or who should knowingly and willfully aid or abet such infringement, shall be fined not more than \$25,000 or imprisoned not more than one year, or both, for the first offense and shall be fined not more than \$50,000 or imprisoned not more than two years, or both, for any subsequent offense.”

SEC. 103. Section 2318 of title 18, United States Code, is amended by striking out all after “fined” and inserting in lieu thereof “not more than \$25,000 or imprisoned for not more than one year, or both, for the first offense and shall be fined not more than \$50,000 or imprisoned not more than two years, or both, for any subsequent offense.”

SEC. 104. In any case in which the renewal term of copyright subsisting in any work on the date of approval of this bill, or the term thereof as extended by Public Law 87-668, by Public Law 89-142, by Public Law 90-141, by Public Law 90-416, by Public Law 91-147, by Public Law 91-555, by Public Law 92-170, or by Public Law 92-566 (or by all or certain of said laws), would expire prior to December 31, 1976, such term is hereby continued until December 31, 1976.

#### TITLE II—NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS

##### ESTABLISHMENT AND PURPOSE OF COMMISSION

SEC. 201. (a) There is hereby created in the Library of Congress a National Commission on New Technological Uses of Copyrighted Works (hereafter called the Commission).

(b) The purpose of the Commission is to study and compile data on:  
(1) the reproduction and use of copyrighted works of authorship—

- (A) in conjunction with automatic systems capable of storing, processing, retrieving, and transferring information, and
- (B) by various forms of machine reproduction, not including reproduction by or at the request of instructors for use in face-to-face teaching activities; and

(2) the creation of new works by the application or intervention of such automatic systems or machine reproduction.

(c) The Commission shall make recommendations as to such changes



in copyright law or procedures that may be necessary to assure for such purposes access to copyrighted works, and to provide recognition of the rights of copyright owners.

MEMBERSHIP OF THE COMMISSION

SEC. 202. (a) The Commission shall be composed of thirteen voting members, appointed as follows:

- (1) Four members, to be appointed by the President, selected from authors and other copyright owners;
- (2) Four members, to be appointed by the President, selected from users of copyright works;
- (3) Four nongovernmental members to be appointed by the President, selected from the public generally, with at least one member selected from among experts in consumer protection affairs;
- (4) The Librarian of Congress.

(b) The President shall appoint a Chairman, and a Vice Chairman who shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office, from among the four members selected from the public generally, as provided by clause (3) of subsection (a). The Register of Copyrights shall serve ex officio as a nonvoting member of the Commission.

(c) Seven voting members of the Commission shall constitute a quorum.

(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner as the original appointment was made.

COMPENSATION OF MEMBERS OF COMMISSION

SEC. 203. (a) Members of the Commission, other than officers or employees of the Federal Government, shall receive compensation at the rate of \$100 per day while engaged in the actual performance of Commission duties, plus reimbursement for travel, subsistence, and other necessary expenses in connection with such duties.

(b) Any members of the Commission who are officers or employees of the Federal Government shall serve on the Commission without compensation, but such members shall be reimbursed for travel, subsistence, and other necessary expenses in connection with the performance of their duties.

STAFF

SEC. 204. (a) To assist in its studies, the Commission may appoint a staff which shall be an administrative part of the Library of Congress. The staff shall be headed by an Executive Director, who shall be responsible to the Commission for the Administration of the duties entrusted to the staff.

(b) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed \$100 per day.

EXPENSES OF THE COMMISSION

SEC. 205. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this title until June 30, 1976.

REPORTS

SEC. 206. (a) Within one year after the first meeting of the Commission it shall submit to the President and the Congress a preliminary report on its activities.

(b) Within three years after the enactment of this Act the Commission shall submit to the President and the Congress a final report on its study and investigation which shall include its recommendations and such proposals for legislation and administrative action as may be necessary to carry out its recommendations.

(c) In addition to the preliminary report and final report required by this section, the Commission may publish such interim reports as it may determine, including but not limited to consultant's reports, transcripts of testimony, seminar reports, and other Commission findings.

POWERS OF THE COMMISSION

SEC. 207. (a) The Commission or, with the authorization of the Commission, any three or more of its members, may, for the purpose of carrying out the provisions of this title, hold hearings, administer oaths, and require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of documentary material.

(b) With the consent of the Commission, any of its members may hold any meetings, seminars, or conferences considered appropriate to provide a forum for discussion of the problems with which it is dealing.

TERMINATION

SEC. 208. On the sixtieth day after the date of the submission of its final report, the Commission shall terminate and all offices and employment under it shall expire.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*

December 24, 1974

Dear Mr. Director:

The following bills were received at the White House on December 24th:

S.J. Res. 40	S. 3481	H.R. 8958	H.R. 14600
S.J. Res. 133	S. 3548	H.R. 8981	H.R. 14689
S.J. Res. 262	S. 3934	H.R. 9182	H.R. 14718
S. 251	S. 3943	H.R. 9199	H.R. 15173
S. 356	S. 3976	H.R. 9588	H.R. 15223
S. 521	S. 4073	H.R. 9654	H.R. 15229
S. 544	S. 4206	H.R. 10212	H.R. 15322
S. 663	H.J. Res. 1178	H.R. 10701	H.R. 15977
S. 754	H.J. Res. 1180	H.R. 10710	H.R. 16043
S. 1017	H.R. 421	H.R. 10827	H.R. 16215
S. 1083	H.R. 1715	H.R. 11144	H.R. 16596
S. 1296	H.R. 1820	H.R. 11273	H.R. 16925
S. 1418	H.R. 2208	H.R. 11796	H.R. 17010
S. 2149	H.R. 2933	H.R. 11802	H.R. 17045
S. 2446	H.R. 3203	H.R. 11847	H.R. 17085
S. 2807	H.R. 3339	H.R. 11897	H.R. 17468
S. 2854	H.R. 5264	H.R. 12044	H.R. 17558
S. 2888	H.R. 5463	H.R. 12113	H.R. 17597
S. 2994	H.R. 5773	H.R. 12427	H.R. 17628
S. 3022	H.R. 7599	H.R. 12884	H.R. 17655
S. 3289	H.R. 7684	H.R. 13022	
S. 3358	H.R. 7767	H.R. 13296	
S. 3359	H.R. 8214	H.R. 13869	
S. 3394 ✓	H.R. 8322	H.R. 14449	
S. 3433	H.R. 8591	H.R. 14461	

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder  
Chief Executive Clerk

The Honorable Roy L. Ash  
Director  
Office of Management and Budget  
Washington, D. C.