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105TH CONGRESS  
1ST SESSION

# S. 1121

To amend Title 17 to implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

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IN THE SENATE OF THE UNITED STATES

JULY 31, 1997

Mr. HATCH (for himself, Mr. LEAHY, Mr. THOMPSON, and Mr. KOHL) (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend Title 17 to implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

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

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “WIPO Copyright and  
5 Performances and Phonograms Treaty Implementation  
6 Act of 1997”.

7 **SEC. 2. TECHNICAL AMENDMENTS.**

8       (a) Section 101 of title 17, United States Code, is  
9 amended—

1 (1) by deleting the definition of “Berne Conven-  
2 tion work”;

3 (2) in the definition of “The ‘country of origin’  
4 of a Berne Convention work”, by deleting “The  
5 ‘country of origin’ of a Berne Convention work,”,  
6 capitalizing the first letter of the word “for”, delet-  
7 ing “is the United States” after “For purposes of  
8 section 411,”, and inserting “a work is a ‘United  
9 States work’ only” after “For purposes of section  
10 411,”;

11 (3) in subsection (1)(B) of the definition of  
12 “The ‘country of origin’ of a Berne Convention  
13 work”, by inserting “treaty party or parties” and  
14 deleting “nation or nations adhering to the Berne  
15 Convention”;

16 (4) in subsection (1)(C) of the definition of  
17 “The ‘country of origin’ of a Berne Convention  
18 work”, by inserting “is not a treaty party” and de-  
19 leting “does not adhere to the Berne Convention”;

20 (5) in subsection (1)(D) of the definition of  
21 “The ‘country of origin’ of a Berne Convention  
22 work”, by inserting “is not a treaty party” and de-  
23 leting “does not adhere to the Berne Convention”;

24 (6) in section (3) of the definition of “The  
25 ‘country of origin’ of a Berne Convention work”, by

1 deleting “For the purposes of section 411, the ‘country  
2 of origin’ of any other Berne Convention work is  
3 not the United States.”;

4 (7) after the definition for “fixed”, by inserting  
5 “The ‘Geneva Phonograms Convention’ is the Con-  
6 vention for the Protection of Producers of  
7 Phonograms Against Unauthorized Duplication of  
8 Their Phonograms, concluded at Geneva, Switzer-  
9 land on October 29, 1971.”;

10 (8) after the definition for “including”, by in-  
11 serting “An ‘international agreement’ is—

12 “(1) the Universal Copyright Convention;

13 “(2) the Geneva Phonograms Convention;

14 “(3) the Berne Convention;

15 “(4) the WTO Agreement;

16 “(5) the WIPO Copyright Treaty;

17 “(6) the WIPO Performances and Phonograms  
18 Treaty; and

19 “(7) any other copyright treaty to which the  
20 United States is a party.”;

21 (9) after the definition for “transmit”, by in-  
22 serting “A ‘treaty party’ is a country or intergovern-  
23 mental organization other than the United States  
24 that is a party to an international agreement.”;

1 (10) after the definition for “widow”, by insert-  
2 ing “The ‘WIPO Copyright Treaty’ is the WIPO  
3 Copyright Treaty concluded at Geneva, Switzerland,  
4 on December 20, 1996.”;

5 (11) after the definition for “The ‘WIPO Copy-  
6 right Treaty’”, by inserting “The ‘WIPO Perform-  
7 ances and Phonograms Treaty’ is the WIPO Per-  
8 formances and Phonograms Treaty concluded at Ge-  
9 neva, Switzerland on December 20, 1996.”; and

10 (12) by inserting, after the definition for “work  
11 for hire”, “The ‘WTO Agreement’ is the Agreement  
12 Establishing the World Trade Organization entered  
13 into on April 15, 1994. The terms ‘WTO Agree-  
14 ment’ and ‘WTO member country’ have the mean-  
15 ings given those terms in paragraphs (9) and (10)  
16 respectively of section 2 of the Uruguay Round  
17 Agreements Act.”.

18 (b) Section 104 of title 17, United States Code, is  
19 amended—

20 (1) in section (b)(1), by deleting “foreign nation  
21 that is a party to a copyright treaty to which the  
22 United States is also a party” and inserting “treaty  
23 party”;

1           (2) in section (b)(2) by deleting “party to the  
2           Universal Copyright Convention” and inserting  
3           “treaty party”;

4           (3) by renumbering the present section (b)(3)  
5           as (b)(5) and moving it to its proper sequential loca-  
6           tion and inserting a new section (b)(3) to read:

7           “(3) the work is a sound recording that was  
8           first fixed in a treaty party; or”;

9           (4) in section (b)(4) by deleting “Berne Con-  
10          vention work” and inserting “pictorial, graphic or  
11          sculptural work that is incorporated in a building or  
12          other structure, or an architectural work that is em-  
13          bodied in a building and the building or structure is  
14          located in the United States or a treaty party”;

15          (5) by renumbering present section (b)(5) as  
16          (b)(6);

17          (6) by inserting a new section (b)(7) to read:

18          “(7) For purposes of paragraph (2), a work  
19          that is published in the United States or a treaty  
20          party within thirty days of publication in a foreign  
21          nation that is not a treaty party shall be considered  
22          first published in the United States or such treaty  
23          party as the case may be.”; and

24          (7) by inserting a new section (d) to read:

1       “(d) EFFECT OF PHONOGRAMS TREATIES.—Not-  
 2 withstanding the provisions of subsection (b), no works  
 3 other than sound recordings shall be eligible for protection  
 4 under this title solely by virtue of the adherence of the  
 5 United States to the Geneva Phonograms Convention or  
 6 the WIPO Performances and Phonograms Treaty.”.

7       (c) Section 104A(h) of title 17, United States Code,  
 8 is amended—

9           (1) in paragraph (1), by deleting “(A) a nation  
 10 adhering to the Berne Convention or a WTO mem-  
 11 ber country; or (B) subject to a Presidential procla-  
 12 mation under subsection (g),” and inserting—

13                   “(A) a nation adhering to the Berne Con-  
 14 vention;

15                   “(B) a WTO member country;

16                   “(C) a nation adhering to the WIPO Copy-  
 17 right Treaty;

18                   “(D) a nation adhering to the WIPO Per-  
 19 formances and Phonograms Treaty; or

20                   “(E) subject to a Presidential proclamation  
 21 under subsection (g)”;

22           (2) paragraph (3) is amended to read as fol-  
 23 lows:

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

1           “(A) becomes a WTO member country  
2           after the date of enactment of the Uruguay  
3           Round Agreements Act;

4           “(B) on the date of enactment is, or after  
5           the date of enactment becomes, a nation adher-  
6           ing to the Berne Convention;

7           “(C) adheres to the WIPO Copyright  
8           Treaty;

9           “(D) adheres to the WIPO Performances  
10          and Phonograms Treaty; or

11          “(E) after such date of enactment becomes  
12          subject to a proclamation under subsection  
13          (g).”;

14          (3) in paragraph (6)(C)(iii), by deleting “and”  
15          after “eligibility”;

16          (4) at the end of paragraph (6)(D), by deleting  
17          the period and inserting “; and”;

18          (5) by adding the following new paragraph  
19          (6)(E):

20                 “(E) if the source country for the work is  
21                 an eligible country solely by virtue of its adher-  
22                 ence to the WIPO Performances and  
23                 Phonograms Treaty, is a sound recording.”;



1 (6) in paragraph (8)(B)(i), by inserting “of  
2 which” before “the majority” and striking “of eligi-  
3 ble countries”; and

4 (7) by deleting paragraph (9).

5 (d) Section 411 of title 17, United States Code, is  
6 amended—

7 (1) in subsection (a), by deleting “actions for  
8 infringement of copyright in Berne Convention  
9 works whose country of origin is not the United  
10 States and”; and

11 (2) in subsection (a), by inserting “United  
12 States” after “no action for infringement of the  
13 copyright in any”.

14 (e) Section 507(a) of title 17, United States Code,  
15 is amended by adding at the beginning, “Except as ex-  
16 pressly provided elsewhere in this title,”.

17 **SEC. 3. COPYRIGHT PROTECTION SYSTEMS AND COPY-  
18 RIGHT MANAGEMENT INFORMATION.**

19 Title 17, United States Code, is amended by adding  
20 the following new chapter:

21 **“CHAPTER 12—COPYRIGHT PROTECTION AND  
22 MANAGEMENT SYSTEMS**

“Sec.

“1201. Circumvention of copyright protection systems.

“1202. Integrity of copyright management information.

“1203. Civil remedies.

“1204. Criminal offenses and penalties.

1 **“§ 1201. Circumvention of copyright protection sys-**  
2 **tems**

3 “(a)(1) No person shall circumvent a technological  
4 protection measure that effectively controls access to a  
5 work protected under title 17.

6 “(2) No person shall manufacture, import, offer to  
7 the public, provide or otherwise traffic in any technology,  
8 product, service, device, component, or part thereof that—

9 “(A) is primarily designed or produced for the  
10 purpose of circumventing a technological protection  
11 measure that effectively controls access to a work  
12 protected under title 17,

13 “(B) has only limited commercially significant  
14 purpose or use other than to circumvent a techno-  
15 logical protection measure that effectively controls  
16 access to a work protected under title 17, or

17 “(C) is marketed by that person or another act-  
18 ing in concert with that person for use in cir-  
19 cumventing a technological protection measure that  
20 effectively controls access to a work protected under  
21 title 17.

22 “(3) As used in this subsection—

23 “(A) ‘circumvent a technological protection  
24 measure’ means to descramble a scrambled work, to  
25 decrypt an encrypted work, or otherwise to avoid,  
26 bypass, remove, deactivate, or impair a technological

1 protection measure, without the authority of the  
2 copyright owner;

3 “(B) a technological protection measure ‘effec-  
4 tively controls access to a work’ if the measure, in  
5 the ordinary course of its operation, requires the ap-  
6 plication of information, or a process or a treatment,  
7 with the authority of the copyright owner, to gain  
8 access to the work.

9 “(b)(1) No person shall manufacture, import, offer  
10 to the public, provide or otherwise traffic in any tech-  
11 nology, product, service, device, component, or part there-  
12 of that—

13 “(A) is primarily designed or produced for the  
14 purpose of circumventing protection afforded by a  
15 technological protection measure that effectively pro-  
16 tects a right of a copyright owner under title 17 in  
17 a work or a portion thereof;

18 “(B) has only limited commercially significant  
19 purpose or use other than to circumvent protection  
20 afforded by a technological protection measure that  
21 effectively protects a right of a copyright owner  
22 under title 17 in a work or a portion thereof; or

23 “(C) is marketed by that person or another act-  
24 ing in concert with that person for use in cir-  
25 cumventing protection afforded by a technological

1 protection measure that effectively protects a right  
2 of a copyright owner under title 17 in a work or a  
3 portion thereof.

4 “(2) As used in this subsection—

5 “(A) ‘circumvent protection afforded by a tech-  
6 nological protection measure’ means avoiding, by-  
7 passing, removing, deactivating, or otherwise impair-  
8 ing a technological protection measure;

9 “(B) a technological protection measure ‘effec-  
10 tively protects a right of a copyright owner under  
11 title 17’ if the measure, in the ordinary course of its  
12 operation, prevents, restricts, or otherwise limits the  
13 exercise of a right of a copyright owner under title  
14 17.

15 “(c) The importation into the United States, the sale  
16 for importation, or the sale within the United States after  
17 importation by the owner, importer or consignee of any  
18 technology, product, service, device, component, or part  
19 thereof as described in this section shall be actionable  
20 under section 1337 of title 19.

21 “(d) Nothing in this section shall affect rights, rem-  
22 edies, limitations, or defenses to copyright infringement,  
23 including fair use, under title 17.

24 “(e) This section does not prohibit any lawfully au-  
25 thorized investigative, protective, or intelligence activity of

1 a law enforcement agency of the United States, a State,  
2 or a political subdivision of a State, or of an intelligence  
3 agency of the United States.

4 **“§ 1202. Integrity of copyright management informa-**  
5 **tion**

6 “(a) FALSE COPYRIGHT MANAGEMENT INFORMA-  
7 TION.—No person shall knowingly—

8 “(1) provide copyright management information  
9 that is false, or

10 “(2) distribute or import for distribution copy-  
11 right management information that is false, with the  
12 intent to induce, enable, facilitate or conceal an in-  
13 fringement of any right under title 17.

14 “(b) REMOVAL OR ALTERATION OF COPYRIGHT  
15 MANAGEMENT INFORMATION.—No person shall, without  
16 the authority of the copyright owner or the law—

17 “(1) intentionally remove or alter any copyright  
18 management information,

19 “(2) distribute or import for distribution copy-  
20 right management information knowing that the  
21 copyright management information has been re-  
22 moved or altered without authority of the copyright  
23 owner or the law, or

24 “(3) distribute, import for distribution, or pub-  
25 licly perform works, copies of works, or

1 phonorecords knowing that copyright management  
2 information has been removed or altered without au-  
3 thority of the copyright owner or the law,  
4 knowing, or, with respect to civil remedies under section  
5 1203, having reasonable grounds to know, that it will in-  
6 duce, enable, facilitate or conceal an infringement of any  
7 right under title 17.

8 “(c) DEFINITION.—As used in this chapter, ‘copy-  
9 right management information’ means the following infor-  
10 mation conveyed in connection with copies or phonorecords  
11 of a work or performances or displays of a work, including  
12 in digital form—

13 “(1) the title and other information identifying  
14 the work, including the information set forth on a  
15 notice of copyright;

16 “(2) the name of, and other identifying infor-  
17 mation about, the author of a work;

18 “(3) the name of, and other identifying infor-  
19 mation about, the copyright owner of the work, in-  
20 cluding the information set forth in a notice of copy-  
21 right;

22 “(4) terms and conditions for use of the work;

23 “(5) identifying numbers of symbols referring  
24 to such information or links to such information; or

1           “(6) such other information as the Register of  
2           Copyrights may prescribe by regulation, except that  
3           the Register of Copyrights may not require the pro-  
4           vision of any information concerning the user of a  
5           copyrighted work.

6           “(d) This section does not prohibit any lawfully au-  
7           thorized investigative, protective, or intelligence activity of  
8           a law enforcement agency of the United States, a State,  
9           or a political subdivision of a State, or of an intelligence  
10          agency of the United States.

11       **“§ 1203. Civil remedies**

12          “(a) CIVIL ACTIONS.—Any person injured by a viola-  
13          tion of section 1201 or 1202 may bring a civil action in  
14          an appropriate United States district court for such viola-  
15          tion.

16          “(b) POWERS OF THE COURT.—In an action brought  
17          under subsection (a), the court—

18               “(1) may grant temporary and permanent in-  
19               junctions on such terms as it deems reasonable to  
20               prevent or restrain a violation;

21               “(2) at any time while an action is pending,  
22               may order the impounding, on such terms as it  
23               deems reasonable, of any device or product that is  
24               in the custody or control of the alleged violator and

1 that the court has reasonable cause to believe was  
2 involved in a violation;

3 “(3) may award damages under subsection (c);

4 “(4) in its discretion may allow the recovery of  
5 costs by or against any party other than the United  
6 States or an officer thereof;

7 “(5) in its discretion may award reasonable at-  
8 torney’s fees to the prevailing party; and

9 “(6) may, as part of a final judgment or decree  
10 finding a violation, order the remedial modification  
11 or the destruction of any device or product involved  
12 in the violation that is in the custody or control of  
13 the violator or has been impounded under subsection  
14 (2).

15 “(c) AWARD OF DAMAGES.—

16 “(1) IN GENERAL.—Except as otherwise pro-  
17 vided in this chapter, a person committing a viola-  
18 tion of section 1201 or 1202 is liable for either—

19 “(A) the actual damages and any addi-  
20 tional profits of the violator, as provided by  
21 subsection (2), or

22 “(B) statutory damages, as provided by  
23 subsection (3).

24 “(2) ACTUAL DAMAGES.—The court shall  
25 award to the complaining party the actual damages



1 suffered by the party as a result of the violation,  
2 and any profits of the violator that are attributable  
3 to the violation and are not taken into account in  
4 computing the actual damages, if the complaining  
5 party elects such damages at any time before final  
6 judgment is entered.

7 “(3) STATUTORY DAMAGES.—

8 “(A) At any time before final judgment is  
9 entered, a complaining party may elect to re-  
10 cover an award of statutory damages for each  
11 violation of section 1201 in the sum of not less  
12 than \$200 or more than \$2,500 per act of cir-  
13 cumvention, device, product, component, offer  
14 or performance of service, as the court consid-  
15 ers just.

16 “(B) At any time before final judgment is  
17 entered, a complaining party may elect to re-  
18 cover an award of statutory damages for each  
19 violation of section 1202 in the sum of not less  
20 than \$2,500 or more than \$25,000.

21 “(4) REPEATED VIOLATIONS.—In any case in  
22 which the injured party sustains the burden of prov-  
23 ing, and the court finds, that a person has violated  
24 section 1201 or 1202 within three years after a final  
25 judgment was entered against the person for another

1 such violation, the court may increase the award of  
 2 damages up to triple the amount that would other-  
 3 wise be awarded, as the court considers just.

4 “(5) INNOCENT VIOLATIONS.—The court in its  
 5 discretion may reduce or remit the total award of  
 6 damages in any case in which the violator sustains  
 7 the burden of proving, and the court finds, that the  
 8 violator was not aware and had no reason to believe  
 9 that its acts constituted a violation.

10 **“§ 1204. Criminal offenses and penalties**

11 “(a) Any person who violates section 1201 or 1202  
 12 willfully and for purposes of commercial advantage or pri-  
 13 vate financial gain shall be fined not more than \$500,000  
 14 or imprisoned for not more than 5 years, or both for the  
 15 first offense and shall be fined not more than \$1,000,000  
 16 or imprisoned for not more than 10 years, or both for any  
 17 subsequent offense.

18 “(b) Notwithstanding section 507(a) of this title, no  
 19 criminal proceeding shall be brought under section 1204  
 20 unless such proceeding is commenced within five years  
 21 after the cause of action arose.”

22 **SEC. 4. CONFORMING AMENDMENTS.**

23 The table of chapters for Title 17, United States  
 24 Code, is amended by adding at the end the following:

“12. Copyright Protection and Management Systems ..... 1201”

1 **SEC. 5. EFFECTIVE DATE.**

2       The amendments made by this Act shall take effect  
3 on the date of the enactment of this Act, except clause  
4 (5) of the definition of “international agreement” as  
5 amended by section 2(a)(8) of this Act, section 2(a)(10)  
6 of this Act, clause (C) of section 104(h)(1) of title 17 as  
7 amended by section 2(c)(1) of this Act and clause (C) of  
8 section 104(h)(3) of title 17 as amended by section 2(c)(2)  
9 of this Act shall take effect upon entry into force of the  
10 WIPO Copyright Treaty with respect to the United States,  
11 and clause (6) of the definition of “international agree-  
12 ment” as amended by section 2(a)(8) of this Act, section  
13 2(a)(11) of this Act, section 2(b)(7) of this Act, clause  
14 (D) of section 104A(h)(1) of title 17 as amended by sec-  
15 tion 2(c)(2) of this Act, and sections 2(c)(4) and 2(c)(5)  
16 of this Act shall take effect upon entry into force of the  
17 WIPO Performances and Phonograms Treaty with respect  
18 to the United States.

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## **Document No. 82**

