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107TH CONGRESS
1ST SESSION

S. 487

To amend chapter 1 of title 17, United States Code, relating to the exemption of certain performances or displays for educational uses from copyright infringement provisions, to provide that the making of a single copy of such performances or displays is not an infringement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 7, 2001

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

A BILL

To amend chapter 1 of title 17, United States Code, relating to the exemption of certain performances or displays for educational uses from copyright infringement provisions, to provide that the making of a single copy of such performances or displays is not an infringement, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Technology, Education
5 and Copyright Harmonization Act of 2001”.

1 **SEC. 2. EXEMPTION OF CERTAIN PERFORMANCES AND DIS-**
2 **PLAYS FOR EDUCATIONAL USES.**

3 Section 110(2) of title 17, United States Code, is
4 amended—

5 (1) by striking the matter preceding subpara-
6 graph (A) and inserting the following:

7 “(2) except with respect to a work produced
8 primarily for instructional use or a performance or
9 display that is given by means of a copy that is not
10 lawfully made and acquired under this title, and the
11 transmitting governmental body or nonprofit edu-
12 cational institution knew or had reason to believe
13 was not lawfully made and acquired, the perform-
14 ance of a nondramatic literary or musical work or
15 reasonable and limited portions of any other work,
16 or display of a work, by or in the course of a trans-
17 mission, reproduction of such work in transient cop-
18 ies or phonorecords created as a part of the auto-
19 matic technical process of a digital transmission,
20 and distribution of such copies or phonorecords in
21 the course of such transmission, to the extent tech-
22 nologically necessary to transmit the performance or
23 display, if—”;

24 (2) in subparagraph (A) by striking all begin-
25 ning with “the performance” through “regular” and
26 inserting the following: “the performance or display

1 is made by or at the direction of an instructor as an
2 integral part of a class session offered as a regular”;

3 (3) by striking subparagraph (C) and inserting
4 the following:

5 “(C) the transmission is made solely for,
6 and, to the extent technologically feasible, the
7 reception of such transmission is limited to—

8 “(i) students officially enrolled in the
9 course for which the transmission is made;

10 or

11 “(ii) officers or employees of govern-
12 mental bodies as part of their official du-
13 ties or employment; and”;

14 (4) by adding at the end the following:

15 “(D) any transient copies are retained for
16 no longer than reasonably necessary to complete
17 the transmission; and

18 “(E) the transmitting body or
19 institution—

20 “(i) institutes policies regarding copy-
21 right, provides informational materials to
22 faculty, students, and relevant staff mem-
23 bers that accurately describe, and promote
24 compliance with, the laws of the United
25 States relating to copyright, and provides

1 notice to students that materials used in
2 connection with the course may be subject
3 to copyright protection; and

4 “(ii) in the case of digital trans-
5 missions, applies technological measures
6 that reasonably prevent unauthorized ac-
7 cess to and dissemination of the work, and
8 does not intentionally interfere with tech-
9 nological measures used by the copyright
10 owner to protect the work.”.

11 **SEC. 3. EPHEMERAL RECORDINGS.**

12 (a) IN GENERAL.—Section 112 of title 17, United
13 States Code, is amended—

14 (1) by redesignating subsection (f) as sub-
15 section (g); and

16 (2) by inserting after subsection (e) the fol-
17 lowing:

18 “(f) Notwithstanding the provisions of section 106,
19 and without limiting the application of subsection (b), it
20 is not an infringement of copyright for a governmental
21 body or other nonprofit educational institution entitled to
22 transmit a performance or display of a work that is in
23 digital form under section 110(2) to make copies or
24 phonorecords embodying the performance or display to be

1 used for making transmissions authorized under section
2 110(2), if—

3 “(1) such copies or phonorecords are retained
4 and used solely by the body or institution that made
5 them, and no further copies or phonorecords are re-
6 produced from them, except as authorized under sec-
7 tion 110(2);

8 “(2) such copies or phonorecords are used sole-
9 ly for transmissions authorized under section
10 110(2); and

11 “(3) the body or institution does not inten-
12 tionally interfere with technological measures used
13 by the copyright owner to protect the work.”.

14 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
15 Section 802(e) of title 17, United States Code, is amended
16 in the third sentence by striking “section 112(f)” and in-
17 serting “section 112(g)”.

18 **SEC. 4. IMPLEMENTATION BY COPYRIGHT OFFICE.**

19 (a) **REPORT.**—Not later than 2 years after the date
20 of enactment of this Act, the Copyright Office shall con-
21 duct a study and submit a report to Congress on the sta-
22 tus of—

23 (1) licensing by private and public educational
24 institutions of copyrighted works for digital distance
25 education programs, including—

1 (A) live interactive distance learning class-
2 es;

3 (B) faculty instruction recorded without
4 students present for later transmission; and

5 (C) asynchronous delivery of distance
6 learning over computer networks; and

7 (2) the use of copyrighted works in such pro-
8 grams.

9 (b) CONFERENCE.—Not later than 2 years after the
10 date of enactment of this Act, the Copyright Office shall—

11 (1) convene a conference of interested parties,
12 including representatives of copyright owners, non-
13 profit educational institutions and nonprofit libraries
14 and archives to develop guidelines for the use of
15 copyrighted works for digital distance education
16 under the fair use doctrine and section 110 (1) and
17 (2) of title 17, United States Code;

18 (2) to the extent the Copyright Office deter-
19 mines appropriate, submit to the Committees on the
20 Judiciary of the Senate and the House of Represent-
21 atives such guidelines, along with information on the
22 organizations, Government agencies, and institutions
23 participating in the guideline development and en-
24 dorsing the guidelines; and

1 (3) post such guidelines on an Internet website
2 for educators, copyright owners, libraries, and other
3 interested persons.

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[Report No. 107-31]

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JUNE 5, 2001

Reported with an amendment

