

102D CONGRESS
1ST SESSION

H. R. 2372

IN THE SENATE OF THE UNITED STATES

NOVEMBER 26 (legislative day, NOVEMBER 23), 1991

Received

NOVEMBER 27 (legislative day, NOVEMBER 23), 1991

Read twice and referred to the Committee on the Judiciary

AN ACT

To amend title 17, United States Code, with respect to copyright renewal, to reauthorize the National Film Preservation Board, 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 “Copyright Amend-
5 ments Act of 1991”.

6 **TITLE I—RENEWAL OF COPYRIGHT**

7 **SEC. 101. SHORT TITLE.**

8 This title may be referred to as the “Copyright Re-
9 newal Act of 1991”.

1 **SEC. 102. COPYRIGHT RENEWAL PROVISIONS.**

2 (a) DURATION OF COPYRIGHT: SUBSISTING COPY-
3 RIGHTS.—Section 304(a) of title 17, United States Code,
4 is amended to read as follows:

5 “(a) COPYRIGHTS IN THEIR FIRST TERM ON JANU-
6 ARY 1, 1978.—(1)(A) Any copyright, the first term of
7 which is subsisting on January 1, 1978, shall endure for
8 28 years from the date it was originally secured.

9 “(B) In the case of—

10 “(i) any posthumous work or of any periodical,
11 cyclopedic, or other composite work upon which the
12 copyright was originally secured by the proprietor
13 thereof, or

14 “(ii) any work copyrighted by a corporate body
15 (otherwise than as assignee or licensee of the indi-
16 vidual author) or by an employer for whom such
17 work is made for hire,

18 the proprietor of such copyright shall be entitled to a re-
19 newal and extension of the copyright in such work for the
20 further term of 47 years.

21 “(C) In the case of any other copyrighted work, in-
22 cluding a contribution by an individual author to a periodi-
23 cal or to a cyclopedic or other composite work—

24 “(i) the author of such work, if the author is
25 still living,

1 “(ii) the widow, widower, or children of the au-
2 thor, if the author is not living,

3 “(iii) the author’s executors, if such author,
4 widow, widower, or children are not living, or

5 “(iv) the author’s next of kin, in the absence of
6 a will of the author,

7 shall be entitled to a renewal and extension of the copy-
8 right in such work for a further term of 47 years.

9 “(2)(A) At the expiration of the original term of
10 copyright in a work specified in paragraph (1)(B) of this
11 subsection, the copyright shall endure for a renewed and
12 extended further term of 47 years, which—

13 “(i) if an application to register a claim to such
14 further term has been made to the Copyright Office
15 within 1 year before the expiration of the original
16 term of copyright, and the claim is registered, shall
17 vest, upon the beginning of such further term, in the
18 proprietor of the copyright who is entitled to claim
19 the renewal of copyright at the time the application
20 is made; or

21 “(ii) if no such application is made or the claim
22 pursuant to such application is not registered, shall
23 vest, upon the beginning of such further term, in the
24 person or entity that was the proprietor of the

1 copyright as of the last day of the original term of
2 copyright.

3 “(B) At the expiration of the original term of copy-
4 right in a work specified in paragraph (1)(C) of this sub-
5 section, the copyright shall endure for a renewed and ex-
6 tended further term of 47 years, which—

7 “(i) if an application to register a claim to such
8 further term has been made to the Copyright Office
9 within 1 year before the expiration of the original
10 term of copyright, and the claim is registered, shall
11 vest, upon the beginning of such further term, in
12 any person who is entitled under paragraph (1)(C)
13 to the renewal and extension of the copyright at the
14 time the application is made; or

15 “(ii) If no such application is made or the claim
16 pursuant to such application is not registered, shall
17 vest, upon the beginning of such further term, in
18 any person entitled under paragraph (1)(C), as of
19 the last day of the original term of copyright, to the
20 renewal and extension of the copyright.

21 “(3)(A) An application to register a claim to the re-
22 newed and extended term of copyright in a work may be
23 made to the Copyright Office—

24 “(i) within 1 year before the expiration of the
25 original term of copyright by any person entitled

1 under paragraph (1)(B) or (C) to such further term
2 of 47 years; and

3 “(ii) at any time during the renewed and ex-
4 tended term by any person in whom such further
5 term vested, under paragraph (2)(A) or (B), or by
6 any successor or assign of such person, if the appli-
7 cation is made in the name of such person.

8 In the case of applications made under clause (i) for works
9 not originally registered, the Register may, in accordance
10 with regulations, require an original term registration as
11 a condition to the registration for the renewed and ex-
12 tended term, except in the case of a Berne Convention
13 work whose country of origin is not the United States.

14 “(B) Such an application is not a condition of the
15 renewal and extension of the copyright in a work for a
16 further term of 47 years.

17 “(4)(A) If an application to register a claim to
18 the renewed and extended term of copyright in a
19 work is not made within 1 year before the expiration
20 of the original term of copyright in a work, or if the
21 claim pursuant to such application is not registered,
22 then a derivative work prepared under authority of
23 a grant of a transfer or license of copyright that is
24 made before the expiration of the original term of
25 copyright, may continue to be used under the terms

1 of the grant during the renewed and extended term
2 of copyright without infringing the copyright, except
3 that such use does not extend to the preparation
4 during such renewed and extended term of other de-
5 rivative works based upon the copyrighted work cov-
6 ered by such grant.

7 “(B) If an application to register a claim to the re-
8 newed and extended term of copyright in a work is made
9 within 1 year before its expiration, and the claim is reg-
10 istered, the certificate of such registration shall constitute
11 prima facie evidence as to the validity of the copyright
12 during its renewed and extended term and of the facts
13 stated in the certificate. The evidentiary weight to be ac-
14 corded the certificates of a registration of a renewed and
15 extended term of copyright made after the end of that 1-
16 year period shall be within the discretion of the court.

17 “(C) If an application to register a claim in the first
18 term of copyright is not made before expiration of the first
19 term, the remedies of actual and statutory damages, attor-
20 ney’s fees, and seizure and forfeiture otherwise provided
21 by sections 504, 505, 509, respectively, shall not be avail-
22 able to the copyright owner for any act of infringement
23 that commences before registration is made of a claim in
24 the renewed and extended term of copyright, even if the
25 infringing conduct continues after registration is made.”.

1 (b) LEGAL EFFECT OF RENEWAL OF COPYRIGHT
2 UNCHANGED.—The renewal and extension of a copyright
3 for a further term of 47 years as provided under para-
4 graphs (1) and (2) of section 304(a) of title 17, United
5 States Code, (as amended by subsection (a) of this sec-
6 tion) shall have the same effect with respect to any grant,
7 before the effective date of this section, of a transfer or
8 license of the further term as did the renewal of a copy-
9 right before the effective date of this section under the
10 law in effect at the time of such grant.

11 (c) CONFORMING AMENDMENT.—Section 304(c) of
12 title 17, United States Code, is amended in the matter
13 preceding paragraph (1) by striking “second proviso of
14 subsection (a)” and inserting “subsection (a)(1)(C)”.

15 (d) REGISTRATION PERMISSIVE.—Section 408(a) of
16 title 17, United States Code, is amended by striking “At”
17 and all that follows through “unpublished work,” and in-
18 serting “At any time during the subsistence of the first
19 term of copyright in any published or unpublished work
20 in which the copyright was secured before January 1,
21 1978, and during the subsistence of any copyright secured
22 on or after that date,”.

23 (e) FALSE REPRESENTATION.—Section 506(e) of
24 title 17, United States Code, is amended by inserting after

1 “409,” the following: “in the application for a renewal reg-
2 istration,”.

3 (f) COPYRIGHT OFFICE FEES.—Section 708(a)(2) of
4 title 17, United States Code, is amended—

5 (1) by striking “in its first term”; and

6 (2) by striking “\$12” and inserting “\$20”.

7 (g) EFFECTIVE DATE; COPYRIGHTS AFFECTED BY
8 AMENDMENT.—(1) Subject to paragraphs (2) and (3),
9 this section and the amendments made by this section
10 shall take effect on the date of the enactment of this Act.

11 (2) The amendments made by this section shall apply
12 only to those copyrights secured between January 1, 1963,
13 and December 31, 1977. Copyrights secured before Janu-
14 ary 1, 1963, shall be governed by the provisions of section
15 304(a) of title 17, United States Code, as in effect on the
16 day before the effective date of this section.

17 (3) This section and the amendments made by this
18 section shall not affect any court proceedings pending on
19 the effective date of this section.

20 **TITLE II—NATIONAL FILM PRESERVATION**

21 **SEC. 201. SHORT TITLE.**

22 This title may be cited as the “National Film Preser-
23 vation Act of 1991”.

1 **SEC. 202. NATIONAL FILM REGISTRY OF THE LIBRARY OF**
2 **CONGRESS.**

3 The Librarian of Congress (hereinafter in this title
4 referred to as the “Librarian”) shall establish a National
5 Film Registry pursuant to the provisions of this title, for
6 the purpose of maintaining and preserving films that are
7 culturally, historically, or aesthetically significant.

8 **SEC. 203. DUTIES OF THE LIBRARIAN OF CONGRESS.**

9 (a) **STUDY OF FILM PRESERVATION.**—(1) The Li-
10 brarian shall, after consultation with the Board estab-
11 lished pursuant to section 204, conduct a study on the
12 current state of film preservation and restoration activi-
13 ties, including the activities of the Library of Congress
14 and the other major film archives in the United States.
15 The Librarian shall, in conducting the study—

16 (A) take into account the objectives of the na-
17 tional film preservation program set forth in clauses
18 (i) through (iii) of subsection (b)(1)(A); and

19 (B) consult with film archivists, educators and
20 historians, copyright owners, film industry rep-
21 resentatives, including those involved in the preser-
22 vation of film, and others involved in activities relat-
23 ed to film preservation.

24 (2) Not later than 1 year after the date of the enact-
25 ment of this Act, the Librarian shall submit to the Con-

1 gress a report containing the results of the study con-
2 ducted under paragraph (1).

3 (b) POWERS.—(1) The Librarian shall, after con-
4 sultation with the Board, do the following:

5 (A) After completion of the study required by
6 subsection (a), the Librarian shall, taking into ac-
7 count the results of the study, establish a com-
8 prehensive national film preservation program for
9 motion pictures, in conjunction with other film ar-
10 chivists and copyright owners. The objectives of such
11 a program shall include—

12 (i) coordinating activities to assure that ef-
13 forts of archivists and copyright owners, and
14 others in the public and private sector, are ef-
15 fective and complementary;

16 (ii) generating public awareness of and
17 support for those activities; and

18 (iii) increasing accessibility of films for
19 educational purposes, and improving nationwide
20 activities in the preservation of works in other
21 media such as videotape.

22 (B) The Librarian shall establish guidelines and
23 procedures under which films may be included in the
24 National Film Registry, except that no film shall be

1 eligible for inclusion in the National Film Registry
2 until 10 years after such film's first publication.

3 (C) The Librarian shall establish procedures
4 under which the general public may make rec-
5 ommendations to the Board regarding the inclusion
6 of films in the National Film Registry.

7 (D) The Librarian shall establish procedures
8 for the examination by the Librarian of prints of
9 films named for inclusion in the National Film Reg-
10 istry to determine their eligibility for the use of the
11 seal of the National Film Registry under paragraph
12 (3).

13 (E) The Librarian shall determine which films
14 satisfy the criteria established under subparagraph
15 (B) and qualify for inclusion in the National Film
16 Registry, except that the Librarian shall not select
17 more than 25 films each year for inclusion in the
18 Registry.

19 (2) The Librarian shall publish in the Federal Reg-
20 istry the name of each film that is selected for inclusion
21 in the National Film Registry.

22 (3) The Librarian shall provide a seal to indicate that
23 a film has been included in the National Film Registry
24 and is the Registry version of that film.

1 (4) The Librarian shall publish in the Federal Reg-
2 ister the criteria used to determine the Registry version
3 of a film.

4 (5) The Librarian shall submit to the Congress a re-
5 port, not less than once every two years, listing films in-
6 cluded in the National Film Registry and describing the
7 activities of the Board.

8 (c) SEAL.—The seal provided under subsection (b)(3)
9 may be used on any copy of the Registry version of a film.
10 Such seal may be used only after the Librarian has exam-
11 ined and approved the print from which the copy was
12 made. In the case of copyrighted works, only the copyright
13 owner or an authorized licensee of the copyright may place
14 or authorize the placement of the seal on a copy of a film
15 selected for inclusion in the National Film Registry, and
16 the Librarian may place the seal on any print or copy of
17 the film that is maintained in the National Film Registry
18 Collection of the Library of Congress. The person author-
19 ized to place the seal on a copy of a film selected for inclu-
20 sion in the National Film Registry may accompany such
21 seal with the following language: “This film is included
22 in the National Film Registry, which is maintained by the
23 Library of Congress, and was preserved under the Na-
24 tional Film Preservation Act of 1991.”.

1 (d) DEVELOPMENT OF STANDARDS.—The Librarian
2 shall develop standards or guidelines by which to assess
3 the preservation or restoration of films that will qualify
4 films for use of the seal under this section.

5 **SEC. 204. NATIONAL FILM PRESERVATION BOARD.**

6 (a) NUMBER AND APPOINTMENT.—(1) The Librar-
7 ian shall establish in the Library of Congress a National
8 Film Preservation Board to be comprised of up to 18
9 members, who shall be selected by the Librarian in accord-
10 ance with the provisions of this section. Subject to sub-
11 paragraphs (C) and (O), the Librarian shall request each
12 organization listed in subparagraphs (A) through (P) to
13 submit to the Librarian a list of not less than 3 candidates
14 qualified to serve as a member of the Board. Except for
15 the members-at-large appointed under paragraph (2), the
16 Librarian shall appoint 1 member from each such list sub-
17 mitted by such organizations, and shall designate from
18 that list an alternate who may attend those meetings to
19 which the individual appointed to the Board cannot at-
20 tend. The organizations are the following:

21 (A) The Academy of Motion Pictures Arts and
22 Sciences.

23 (B) The Directors Guild of America.

24 (C) The Writers Guild of America. The Writers
25 Guild of America East and the Writers Guild of

1 America West shall each nominate not less than 3
2 candidates, and a representative from 1 such organi-
3 zation shall be selected as the member and a rep-
4 resentative from the other such organization as the
5 alternate.

6 (D) The National Society of Film Critics.

7 (E) The Society for Cinema Studies.

8 (F) The American Film Institute.

9 (G) The Department of Theatre, Film and Tel-
10 evision of the College of Fine Arts at the University
11 of California, Los Angeles.

12 (H) The Department of Film and Television of
13 the Tisch School of the Arts at New York Univer-
14 sity.

15 (I) The University Film and Video Association.

16 (J) The Motion Picture Association of America.

17 (K) The National Association of Broadcasters.

18 (L) The Alliance of Motion Picture and Tele-
19 vision Producers.

20 (M) The Screen Actors Guild of America.

21 (N) The National Association of Theater Own-
22 ers.

23 (O) The American Society of Cinematographers
24 and the International Photographers Guild, which

1 shall jointly submit 1 list of candidates from which
2 a member and alternate will be selected.

3 (P) The United States members of the Inter-
4 national Federation of Film Archives.

5 (2) In addition to the Members appointed under
6 paragraph (1), the Librarian shall appoint up to 2 mem-
7 bers-at-large. The Librarian shall select the at-large mem-
8 bers from names submitted by organizations in the film
9 industry, creative artists, producers, film critics, film pres-
10 ervation organizations, academic institutions with the film
11 study programs, and others with knowledge of copyright
12 law and of the importance, use, and dissemination of
13 films. The Librarian shall, in selecting 1 such member-
14 at-large, give preference to individuals who are commercial
15 film archivists. The Librarian shall also select from the
16 names submitted under this paragraph an alternate for
17 each member-at-large, who may attend those meetings to
18 which the member-at-large cannot attend.

19 (b) CHAIRPERSON.—The Librarian shall appoint 1
20 member of the Board to serve as Chairperson.

21 (c) TERM OF OFFICE.—(1) The term of each member
22 of the Board shall be 3 years, except that there shall be
23 no limit to the number of terms that any individual mem-
24 ber may serve.

1 (2) A vacancy in the Board shall be filled in the man-
2 ner in which the original appointment was made under
3 subsection (a), except that the Librarian may fill the va-
4 cancy from a list of candidates previously submitted by
5 the organization or organizations involved. Any member
6 appointed to fill a vacancy before the expiration of the
7 term for which his or her predecessor was appointed shall
8 be appointed only for the remainder of such term.

9 (d) QUORUM.—9 members of the Board shall con-
10 stitute a quorum but a lesser number may hold hearings.

11 (e) BASIC PAY.—Members of the Board shall serve
12 without pay. While away from their home or regular places
13 of business in the performance of functions of the Board,
14 members of the Board shall be allowed travel expenses,
15 including per diem in lieu of subsistence, in the same man-
16 ner as persons employed intermittently in Government
17 service are allowed expenses under section 5701 of title
18 5, United States Code.

19 (f) MEETINGS.—The Board shall meet at least once
20 each calendar year. Meetings shall be at the call of the
21 Librarian.

22 (g) CONFLICT OF INTEREST.—The Librarian shall
23 establish rules and procedures to address any potential
24 conflict of interest between a member of the Board and
25 the responsibilities of the Board.

1 **SEC. 205. RESPONSIBILITIES AND POWERS OF BOARD.**

2 (a) **IN GENERAL.**—The Board shall review nomina-
3 tions of films submitted to it for inclusion in the National
4 Film Registry and shall consult with the Librarian, as pro-
5 vided in section 203, with respect to the inclusion of such
6 films in the Registry and the preservation of these and
7 other films that are culturally, historically, or aesthetically
8 significant.

9 (b) **NOMINATION OF FILMS.**—The Board shall con-
10 sider, for inclusion in the National Film Registry, nomina-
11 tions submitted by the general public as well as rep-
12 resentatives of the film industry, such as the guilds and
13 societies representing actors, directors, screenwriters,
14 cinematographers and other creative artists, producers,
15 film critics, film preservation organizations, and rep-
16 resentatives of academic institutions with film study pro-
17 grams. The Board shall nominate not more than 25 films
18 each year for inclusion in the Registry.

19 (c) **GENERAL POWERS.**—The Board may, for the
20 purpose of carrying out its duties, hold such hearings, sit
21 and act at such times and places, take such testimony,
22 and receive such evidence, as the Librarian and the Board
23 considers appropriate.

1 **SEC. 206. NATIONAL FILM REGISTRY COLLECTION OF THE**
2 **LIBRARY OF CONGRESS.**

3 (a) **ACQUISITION OF ARCHIVAL QUALITY COPIES.—**

4 The Librarian shall endeavor to obtain, by gift from the
5 owner, an archival quality copy of the Registry version of
6 each film included in the National Film Registry. When-
7 ever possible, the Librarian shall endeavor to obtain the
8 best surviving materials, including preprint materials.

9 (b) **ADDITIONAL MATERIALS.—**The Librarian shall
10 endeavor to obtain, for educational and research purposes,
11 additional materials related to each film included in the
12 National Film Registry, such as background materials,
13 production reports, shooting scripts (including continuity
14 scripts) and other similar materials.

15 (c) **PROPERTY OF UNITED STATES.—**All copies of
16 films on the National Film Registry that are received by
17 the Librarian and other materials received by the Librar-
18 ian under subsection (b) shall become the property of the
19 United States Government, subject to the provisions of
20 title 17, United States Code.

21 (d) **NATIONAL FILM REGISTRY COLLECTION.—**All
22 copies of films on the National Film Registry that are re-
23 ceived by the Librarian and other materials received by
24 the Librarian under subsection (b) shall be maintained in
25 a special collection in the Library of Congress to be known
26 as the “National Film Registry Collection of the Library

1 of Congress". The Librarian shall, by regulation, and in
2 accordance with title 17, United States Code, provide for
3 reasonable access to films in such collection for scholarly
4 and research purposes.

5 **SEC. 207. SEAL OF THE NATIONAL FILM REGISTRY.**

6 (a) USE OF THE SEAL.—(1) No person shall know-
7 ingly distribute or exhibit to the public a version of a film
8 which bears the seal described in section 203(b)(3) if such
9 film—

10 (A) is not included in the National Film Reg-
11 istry; or

12 (B) is included in the National Film Registry,
13 but such copy was not made from a print that was
14 examined and approved for the use of the seal by the
15 Librarian under section 203(c).

16 (2) No person shall knowingly use the seal described
17 in section 203(b)(3) to promote any version of a film other
18 than a Registry version.

19 (b) EFFECTIVE DATE OF THE SEAL.—The use of the
20 seal described in section 203(b)(3) shall be effective for
21 each film after the Librarian publishes in the Federal Reg-
22 ister the name of that film as selected for inclusion in the
23 National Film Registry.

1 **SEC. 208. REMEDIES.**

2 (a) *JURISDICTION*.—The several district courts of the
3 United States shall have jurisdiction, for cause shown, to
4 prevent and restrain violations of section 207(a).

5 (b) *RELIEF*.—(1) Except as provided in paragraph
6 (2), relief for a violation of section 207(a) shall be limited
7 to the removal of the seal of the National Film Registry
8 from the film involved in the violation.

9 (2) In the case of a pattern or practice of the willful
10 violation of section 207(a), the United States district
11 courts may order a civil fine of not more than \$10,000
12 and appropriate injunctive relief.

13 **SEC. 209. LIMITATIONS OF REMEDIES.**

14 The remedies provided in section 208 shall be the ex-
15 clusive remedies under this title, or any other Federal or
16 State law, regarding the use of the seal described in sec-
17 tion 203(b)(3).

18 **SEC. 210. STAFF OF BOARD; EXPERTS AND CONSULTANTS.**

19 (a) *STAFF*.—The Librarian may appoint and fix the
20 pay of such personnel as the Librarian considers appro-
21 priate to carry out this title.

22 (b) *EXPERTS AND CONSULTANTS*.—The Librarian
23 may, in carrying out this title, procure temporary and
24 intermittent services under section 3109(b) of title 5,
25 United States Code, but at rates for individuals not to
26 exceed the daily equivalent of the maximum rate of basic

1 pay payable for GS-15 of the General Schedule. In no case
2 may a member of the Board be paid as an expert or con-
3 sultant under such section.

4 **SEC. 211. DEFINITIONS.**

5 As used in this title—

6 (1) the term “Librarian” means the Librarian
7 of Congress;

8 (2) the term “Board” means the National Film
9 Preservation Board;

10 (3) the term “film” means a “motion picture”
11 as defined in section 101 of title 17, United States
12 Code, except that such term does not include any
13 work not originally fixed on film stock, such as a
14 work fixed on videotape or laser disks;

15 (4) the term “publication” means “publication”
16 as defined in section 101 of title 17, United States
17 Code; and

18 (5) the term “Registry version” means, with re-
19 spect to a film, the version of the film first pub-
20 lished, or as complete a version as the bona fide
21 preservation and restoration activities by the Librar-
22 ian, an archivist other than the Librarian, or the
23 copyright owner can compile in those cases where
24 the original material has been irretrievably lost.

1 **SEC. 212. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to the Li-
3 brarian to carry out the purposes of this title—

4 (1) \$300,000 for fiscal year 1992, and

5 (2) \$300,000 for each of the fiscal years 1993
6 and 1994, plus such additional amount, for each
7 such fiscal year, as reflects any increase in the
8 Consumer Price Index, as determined by the Sec-
9 retary of Labor, occurring since the beginning of fis-
10 cal year 1992.

11 **SEC. 213. EFFECTIVE DATE.**

12 The provisions of this title shall apply to any copy
13 of any film, including those copies of films selected for
14 inclusion in the National Film Registry under the Na-
15 tional Film Preservation Act of 1988, except that any film
16 so selected under such Act shall be deemed to have been
17 selected for the National Film Registry under this title.

18 **SEC. 214. REPEAL.**

19 The National Film Preservation Act of 1988 (2
20 U.S.C. 178 and following) is repealed.

Passed the House of Representatives November 25,
1991.

Attest: DONNALD K. ANDERSON,
Clerk.