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REPORT
No. 83

COPYRIGHT LAW REVISION

MARCH 8, 1967.—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

[To accompany H.R. 2512]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2512) for the general revision of the copyright laws, title 17 of the United States Code, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of H.R. 2512 is to enact a general revision of the U.S. copyright law, constituting title 17 of the United States Code, in light of the profound technological and commercial changes that have taken place since the 1909 revision. The present bill is an outgrowth of H.R. 4347 which was introduced on February 4, 1965, in the 89th Congress. After extensive hearings and thorough deliberations on H.R. 4347 by Subcommittee No. 3, the committee reported favorably an amended version of H.R. 4347 (H. Rept. No. 2237, 89th Cong., second sess., Oct. 12, 1966). The present bill is substantially identical with H.R. 4347 as so amended and reported by the committee. The changes proposed by the committee from H.R. 4347 as introduced, reflected consideration of a number of the issues as they became clarified by the hearings and subsequent discussions. The purpose of these proposed changes is indicated below in the sections of this report captioned "Summary of Principal Provisions" and "Sectional Analysis and Discussion." A comparative print showing (1) the reported bill, (2) existing law, and (3) the provisions of H.R. 4347, 89th Congress as introduced will be found in the section captioned "Changes in Existing Law."

copyright infringement even where one performer deliberately sets out to simulate another's performance as exactly as possible.

Section 114(c) state explicitly that nothing in the provisions of section 114 should be construed to "limit or impair the exclusive right to perform publicly, by means of a phonorecord, any of the works specified by section 106(4)." This principle is already implicit in the bill, but it is restated to avoid the danger of confusion between rights in a sound recording and rights in the musical composition or other work embodied in the recording.

SECTION 115. COMPULSORY LICENSE FOR PHONORECORDS

The provisions of section 1(e) and 101(e) of the present law, establishing a system of compulsory licensing for the making and distribution of phonorecords of copyrighted music, are retained with a number of modifications and clarifications in section 115 of the bill. Under these provisions, which represented a compromise of the most controversial issue in the 1909 act, a musical composition that has been reproduced in phonorecords with the permission of the copyright owner may generally be reproduced in phonorecords by anyone else if he notifies the copyright owner and pays a specified royalty.

As explained at pages 53 to 54 of the Register's Supplementary Report, the fundamental question of whether to retain the compulsory license or to do away with it altogether was a major issue during earlier stages of the program for general revision of the copyright law. At the hearings it was apparent that the argument on this point had shifted, and the real issue was not whether to retain the compulsory license but how much the royalty rate under it should be. Nevertheless, before considering the details of the compulsory licensing system, the committee considered the arguments for and against retaining the system itself.

On this question the record producers argued vigorously that the compulsory license system must be retained. They asserted that the record industry is a half-billion-dollar business of great economic importance in the United States and throughout the world; records today are the principal means of disseminating music, and this creates special problems, since performers need unhampered access to musical material on nondiscriminatory terms. Historically, the record producers pointed out, there were no recording rights before 1909 and the 1909 statute adopted the compulsory license as a deliberate anti-monopoly condition on the grant of these rights. They argued that the result has been an outpouring of recorded music, with the public being given lower prices, improved quality, and a greater choice. The position of the record producers is that the compulsory license has avoided antitrust problems that have plagued the performing rights field, and for the same reasons has been adopted (and recently retained) in a number of foreign countries. They maintained that the dangers of monopolies and discriminatory practices still exist, and repeal would result in a great upheaval of the record industry with no benefit to the public.

The counterargument of the music publishers was that compulsory licensing is no longer needed to meet the special antitrust problems existing in 1909, and that there is no reason why music, alone of all copyrighted works, should be subject to this restriction. They main