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REPEAL OF THE MANUFACTURING CLAUSE

JUNE 11 (legislative day, JUNE 9), 1986.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 1822]

The Committee on Finance, to which was referred the bill (S. 1822) from the Committee on the Judiciary, to amend the Copyright Act in section 601 of title 17, United States Code, to provide for the manufacturing and public distribution of certain copyright material, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill as amended do pass.

I. SUMMARY

The committee bill would repeal the manufacturing clause of the copyright law, 17 U.S.C. section 601, effective July 1, 1986. Under current law, the manufacturing clause requires, with certain exceptions, that copies of works (1) preponderantly of nondramatic literary material, (2) in the English language, (3) by U.S. citizens or domiciliaries, and (4) of copyrightable material, be manufactured in the United States or Canada in order to obtain U.S. copyright protection. The manufacturing clause is set to expire on June 30, 1986.

Section 2 of the Committee bill would require that the United States Trade Representative identify barriers to, or distortions of, trade in printed material and submit a report containing its findings to the Committee on Finance and the Ways and Means Committee of the House of Representatives by February 1, 1987.

II. GENERAL EXPLANATION

From 1790, when the first U.S. copyright law was passed, until the end of the 19th century, the United States provided no copy-

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right protection to foreign authors. These authors, particularly British authors of the Victorian era, were enormously popular with American audiences. Without copyright protection, their works were freely copied and distributed. Few, if any, royalties were ever paid.

U.S. authors suffered too. As long as the Victorian writers were popular and their works could be reproduced without paying royalties, printers and publishers had little incentive to take chances on native writers who were not well-known. As a result, the development of American literature suffered.

In 1891 Congress amended the copyright law to permit foreign nationals to obtain copyright protection in the United States. The price of the printers' agreement was a new requirement that all copyrighted books be made from plates that were typeset in the United States.

The scope of the manufacturing clause has been narrowed over time, but it continues to present a formidable non-tariff barrier to the importation of books in English by American authors.

The Committee believes that repeal of the clause is apporpriate for several reasons.

The American printing industry is large and efficient. There is simply no basis for believing that this industry is more deserving of protection from foreign competition than a number of weaker industries which do not enjoy such protection. Furthermore, this industry has received protection through the manufacturing clause for 95 years. The Committee believes that it is time for this protective to expire.

Few if any American industries have attained such extended protection.

Estimates vary of the impact on job opportunities of terminating the clause. The Committee believes that the impact on the industry and job opportunities of terminating the clause, if any, should be addressed under existing trade remedy laws. The Committee is concerned that extension of the manufacturing clause based on the fear of import competition undermines the mechanism already available under section 201 of the Trade Act of 1974 for obtaining import relief from imports which are a substantial cause, or threat thereof, of serious injury to a domestic industry.

The Committee recognizes that foreign barriers to trade in printed material have been cited by the printing industry in arguing for the extension of the manufacturing clause. However, the Committee prefers an aggressive policy of removing foreign trade barriers under the established procedures of U.S. trade laws, such as section 301 of the Trade Act of 1974, and believes that the ad hoc creation or retention of U.S. trade barriers like the manufacturing clause hinders efforts to remove such foreign barriers.

In connection with the removal of foreign barriers to trade in printed material, the Committee amendment will require a study and report on such barriers by the United States Trade Representative. The Committee notes that Canada has failed to implement the informal commitments it made to remove tariff barriers to printed materials from the United States and expects these barriers to be removed through the trade negotiations now underway with Canada or otherwise. The Committee is particularly con-

cerned that the United States Trade Representative identify and correct inadequate protection for U.S. copyright and intellectual property rights in foreign countries. Ambassador Yeutter, the United States Trade Representative, renewed his assurances in this regard in the following letter:

THE U.S. TRADE REPRESENTATIVE,
EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, DC, June 11, 1986.

Hon. JOHN C. DANFORTH,
U.S. Senate,
Washington, DC.

DEAR JACK: This is a follow-up to the Senate Finance Committee hearing yesterday on the "manufacturing clause," and to our discussions later in the day on that subject. I deeply appreciate your personal interest (and that of other Members of the Finance Committee as well) in the intellectual property issue, which is rapidly becoming one of our highest negotiating priorities. I know that all of you have been skeptical about the merits of this legislation, but have hoped that it might provide some leverage for me on the negotiating scene.

Notwithstanding those good intentions I want you to know that extension of the manufacturing clause will not be helpful and, in fact, will assuredly be harmful. It cuts the rug out from under my efforts to: (1) convince the LDCs to abandon in a timely way import restrictions based on infant industry arguments; (2) persuade our GATT trading partners that intellectual property should be one of the priority negotiating objectves of a new GATT round; and (3) credible appeal to the major violators of copyright protection (primarily nations of the Pacific Rim) to correct their errant ways. It also puts us in the position of flagrantly ignoring a GATT finding against us at the very time that we are attempting to make the GATT dispute settlement mechanism more credible. In light of all these conerns, I hope the Congress will permit this legislation the demise it deserves.

At the same time I want you also to know that I am committed to correcting the damaging trade practices of other nations which spawned much of the support for this legislation. The offending nations should consider themselves on notice that expiration of the manufacturing clause will in no way dimish our zeal in dealing with copyright and other intellectual property issues of concern to us. As you know, we already have intellectual property negotiations underway with about 30 nations and we will continue to pursue those bilateral negotiations with vigor. In addition, we will insist on the development of multilateral approaches to this trying problem in the forthcoming round of GATT negotiations.

Finally, since you have expressed particular concern with respect to the inadequacy of market access and intellectual property protection in Canada, I assure you that these will be among our foremost negotiating objectives. We are prepared to respond to your concerns through normal bilateral contacts as well as in the forthcoming comprehensive negotiations that are about to begin between our two countries, whichever offers the most expeditious and decisive solution to these problems.

You have asked what we might do if our U.S.-Canada bilateral efforts are not successful. My answer is that we will pursue whatever additional actions might be necessary to resolve the issue, culminating in a further discussion of legislative alternatives if that be required.

Many thanks for your diligent pursuit of reciprocal justice on this and other issues.

Sincerely,

CLAYTON YEUTTER.

Finally the Committee believes that termination of the manufacturing clause is appropriate in light of decision of the Contracting Parties to the General Agreement on Tariffs and Trade (GATT). In May, 1984, the GATT Council concluded that the 1982 extension of the manufacturing clause was new legislation, unprotected by the exception for "existing legislation" provided in paragraph 1(b) of the GATT Protocol of Provisional Application. The Council recommended to the United States that it bring its practice into conformity with GATT within a reasonable time.

Extension of the manufacturing clause in knowing disregard of international obligations and commitment of the United States would undermine the credibility of United States efforts to strengthen the settlement of disputes in the GATT and would entitle other GATT parties to withdraw trade concessions made to the United States. Although the Committee believes that the amount of concessions which could be appropriately withdrawn would be small, it sees no reason for other United States producers to bear any additional burden as a result of the extension of the manufacturing clause.

Finally, the Committee believes that improved international protection for intellectual property rights should be a high priority for the United States, and that extension of the manufacturing clause would hinder rather than advance such United States efforts in this regard.

III. THE COMMITTEE BILL

S. 1822, as amended by the Committee, would delete the manufacturing clause, 17 USC section 601, and make conforming amendments in other portions of the Copyright Act.

Section 2 of the bill requires the United States Trade Representative (USTR) to conduct a study identifying and analyzing all barriers to or distortions of trade in printed materials which exist in Canada, the European Communities, Japan, Taiwan, the Republic of Korea, Singapore, and any other country designated by the USTR. A report of the USTR's study is to be submitted by February 1, 1987 to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives. The report is to contain a list for each country of the trade barriers and distortions identified.

IV. Vote of the Committee in Reporting the Bill

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that the bill was ordered favorably reported without objection.

V. Budgetary Impact of the Bill

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the cost and budgetary impact of the bill:

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 11, 1986.

Hon. Bob Packwood,
Chairman, Committee on Finance, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1822, the Manufacture and Public Distribution of Certain Copyrighted Material Act, as ordered reported by the Senate Committee on Finance, June 11, 1986.

S. 1822 would amend the Copyright Act of 1976 to repeal the act's manufacturing clause after July 1, 1986. The bill would also require the U.S. Trade Representative to submit to the Congress by February 1, 1987, a report identifying and analyzing barriers to foreign trade in U.S. printed material.

CBO estimates that enactment of this bill would not result in significant additional costs to the federal government and would not affect the budgets of state of local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

Rudolph G. Penner.

VI. Regulatory Impact of the Bill

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that the provisions of the committee bill will impose no new regulatory burdens on any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no new paperwork requirements.

VIII. Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, 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):

UNITED STATES CODE

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TITLE 17—COPYRIGHTS

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CHAPTER 4—COPYRIGHT NOTICE, DEPOSIT, AND REGISTRATION

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§ 409. Application for copyright registration

The application for copyright registration shall be made on a form prescribed by the Register of Copyrights and shall include—

(1) the name and address of the copyright claimant;

(2) in the case of a work other than an anonymous or pseudonymous work, the name and nationality or domicile of the author or authors, and, if one or more of the authors is dead, the dates of their deaths;

(3) if the work is anonymous or pseudonymous, the nationality or domicile of the author or authors;

(4) in the case of a work made for hire, a statement to this effect;

(5) if the copyright claimant is not the author, a brief statement of how the claimant obtained ownership of the copyright;

(6) the title of the work, together with any previous or alternative titles under which the work can be identified;

(7) the year in which creation of the work was completed;

(8) if the work has been published, the date and nation of its first publication;

(9) in the case of a compilation or derivative work, an identification of any preexisting work or works that it is based on or incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered; *and*

[(10) in the case of a published work containing material of which copies are required by section 601 to be manufactured in the United States, the names of the persons or organizations who performed the processes specified by subsection (c) of section 601 with respect to that material, and the places where those processes were preformed; and**]**

[(11)**]***(10)* any other information regarded by the Register of Copyrights as bearing upon the preparation of identification of the work or the existence, ownership, or duration of the copyright.

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CHAPTER 6—MANUFACTURING REQUIREMENTS AND IMPORTATION

[§ 601. Manufacture, importation, and public distribution of certain copies

[(a) Prior to July 1, 1986, and except as provided by subsection (b), the importation into or public distribution in the United States of copies of a work consisting preponderantly of nondramatic literary material that is in the English language and is protected under this title is prohibited unless the portions consisting of such material have been manufactured in the United States or Canada.

[(b) The provisions of subsection (a) do not apply—

[(1) where, on the date when importation is sought or public distribution in the United States is made, the author of any substantial part of such material is neither a national nor a domiciliary of the United States or, if such author is a national of the United States, he or she has been domiciled outside the United States for a continuous period of at least one year immediately preceding that date; in the case of a work made for hire, the exemption provided by this clause does not apply unless a substantial part of the work was prepared for an employer or other person who is not a national or domiciliary of the United States or a domestic corporation or enterprise;

[(2) where the United States Customs Service is presented with an import statement issued under the seal of the Copyright Office, in which case a total of no more than two thousand copies of any one such work shall be allowed entry; the emport statement shall be issued upon request to the copyright owner or to a person designated by such owner at the time of registration for the work under section 408 or at any time thereafter;

[(3) where importation is sought under the authority or for the use, other than in schools, of the Government of the United States or of any State or political subdivision of a State;

[(4) where importation, for use and not for sale, is sought—

[(A) by any person with respect to no more than one copy of any work at any one time;

[(B) by any person arriving from outside the United States, with respect to copies forming part of such person's personal baggage; or

[(C) by an organization operated for scholary, educational, or religious purposes and not for private gain, with repsect to copies intended to form a part of its library;

[(5) where the copies are reproduced in raised characters for the use of the blind; or

[(6) where, in addition to copies imported under clauses (3) and (4) of this subsection, no moore than two thousand copies of any one such work, which have not been manufactured in

the United States or Canada, are publicly distributed in the United States; or

[(7) where, on the date when importation is sought or public distribution in the United States is made—

[(A) the author of any substantial part of such material is an individual and receives compensation for the transfer or license of the right to distribute the work in the United States; and

[(B) the first publication of the work has previously taken place outside the United States under a transfer or license granted by such author to a transferee or licensee who was not a national or domiciliary of the United States or a domestic corporation or enterprise; and

[(C) there has been no publication of an authorized edition of the work of which the copies were manufactured in the United States; and

[(D) the copies were reproduced under a transfer or license granted by such author or by the transferee or licensee of the right of first publication as mentioned in subclause (B), and the transferee or the licnesee of the right of reproduction was not a national or domiciliary of the United States or a domestic corporation or enterprise.

[(c) The requirement of this section that copies be manufactured in the United States or Canada is satisfied if—

[(1) in the case where the copies are printed directly from type that has been set, or directly from plates made from such type, the setting of the type and the making of the plates have been performed in the United States or Canada; or

[(2) in the case where the making of plates by a lithographic or photoengraving process is a final or intermediate step preceding the printing of the copies, the making of the plates has been performed in the United States or Canada ; and

[(3) in any case, the printing or other final process of producing multiple copies and any binding of the copies have been performed in the United States or Canada.

[(d) Importation or public distribution of copies in violation of this section does not invalidate protection for a work under this title. However, in any civil action criminal proceeding for infringement of the exclusive rights to reproduce and distribute copies of the work, the infringer has a complete defense with respect to all of the nondramatic literary material comprised in the work and any other parts of the work in which the exclusive rights to reproduce and distribute copies are owned by the same person who owns such exclusive rights in the nondramatic literary material, if the infringer proves—

[(1) that copies of the work have been imported into or publicly distributed in the United States in violation of this section by or with the authority of the owner of such exclusive rights; and

[(2) that the infringing copies were manufactured in the United States or Canada in accordance with the provisions of subsection (c); and

[(3) that the infringement was commenced before the effective date of registration for an authorized edition of the work,

the copies of which have been manufactured in the United States or Canada in accordance with the provisions of subsection (c).

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[(e) In any action for infringement of the exclusive rights to reproduce and distribute copies of a work containing material required by this section to be manufactured in the United States or Canada, the copyright owner shall set forth in the complaint the names of the persons or organizations who performed the processes specified by subsection (c) with respect to that material, and the places where those processes were performed.]

§ 602. Infringing importation of copies or phonorecords

(b) In a case where the making of the copies or phonorecords would have constituted an infringement of copyright if this title had been applicable, their importation is prohibited. In a case where the copies or phonorecords were lawfully made, the United States Customs Service has no authority to prevent their importation [unless the provisions of section 601 are applicable]. In either case, the Secretary of the Treasury is authorized to prescribe, by regulation, a procedure under which any person claiming an interest in the copyright in a particular work may, upon payment of a specified fee, be entitled to notification by the Customs Service of the importation of articles that appear to be copies or phonorecords of the work.

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§ 704. Retention and disposition of articles deposited in Copyright Office

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(e) The depositor of copies, phonoreocrds, or identifying material under section 408, or the copyright owner of record, may request retention, under the control of the Copyright Office, of one or more of such articles for the full term of copyright in the work. The Register of Copyrights shall prescribe, by regulation, the conditions under which such requests are to be made and granted, and shall fix the fee to be charged under section 708(a)[(11)] *(10)* if the request is granted.

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§ 708. Copyright Office fees

(a) The following fees shall be paid to the Register of Copyrights:

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[(7) for the issuance, under section 601, of an import statement, $3;]

[(8)] *(7)* for the issuance, under section 706, of an additional certificate or registration, $4;

[(9)] *(8)* for the issuance of any other certification, $4; the Register of Copyrights has discretion, on the basis of their cost, to fix the fees for preparing copies of Copyright Office records, whether they are to be certified or not;

[(10)] *(9)* for the making and reporting of a search as provided by section 705, and for any related services, $10 for each hour or fraction of an hour consumed;

[(11)] *(10)* for any other special services requiring a substantial amount of time or expense, such fees as the Register of Copyrights may fix on the basis of the cost of providing the service.

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TRADE ACT OF 1974, AS AMENDED

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CHAPTER 8—BARRIERS TO MARKET ACCESS

§181. Actions concerning barriers to market access

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(d) SPECIAL REPORT ON BARRIERS TO PRINTED MATERIALS.—

(1) IN GENERAL.—The United States Trade Representative shall conduct a separate study which identifies and analyzes all acts, policies, and practices of—

(A) Canada,

(B) the European Communities,

(C) Japan,

(D) Taiwan,

(E) the Republic of Korea,

(F) Singapore, and

(G) any other foreign, country designated by the United States Trade Representative,

that constitute barriers to, or distortions of, trade in printed materials.

(2) REPORT.—By no later than February 1, 1987, the United States Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the study conducted under paragraph (1). Such report shall contain a separate list for each foreign country of all acts, policies, and practices described in paragraph (1).

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