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Legislative Epilogue

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LEGISLATIVE EPILOGUE

PATENT AND TRADEMARK CORPORATION ACT

Representative Carlos J. Moorhead, a Republican from California, introduced the Patent and Trademark Office Corporation Act on May 17, 1995. The pending bill, H.R. 1659, proposes a separation of the Patent and Trademark Office from the Department of Commerce. This separation would create an independent free-standing government corporation with greater autonomy.

Under the bill, the Patent and Trademark Office, as a corporation, would have the power to purchase, award contracts, and use its revenues without apportionment by the Office of Management and Budget. Appointed by the President for a six year term, the Commissioner of Patents and Trademarks would be able to manage the Patent and Trademark Office more like a private business. However, there still would be continued congressional oversight.

Under H.R. 1659, the Patent and Trademark Office would be exempt from statutory limits on the number or grade of the employees, although certain federal personnel statutes would continue to apply. *H.R. 1659, 104th Cong., 1st. Sess. (1995).*

INVENTOR PROTECTION ACT OF 1995

The proposed Inventor Protection Act was introduced on June 9, 1995, in the Senate by Senator Joseph Leiberman, a Democrat from Connecticut. This bill proposes to amend Title 35, Part I of the United States Code by requiring invention marketing corporations to register with the Patent and Trademark Office. The purpose of this bill is to provide greater protection for inventors from deceptive invention marketing services.

The new amendments would establish industry-wide requirements for invention development services which include standardized contract language and the listing of prior client references. In addition, the bill mandates action by the Patent and Trademark Office itself. The Patent and Trademark Office annually would have to register invention developers, but more important, the Office would monitor incompetent, deceptive, or negligent conduct of any invention marketing service. These findings would be available to the public so that inventors would be able to protect themselves from deceptive marketing scams. *S. 909, 104th Cong., 1st Sess. (1995).*

PROPOSAL TO MODIFY THE CURRENT "OFFICIAL" STATUS OF LEGAL CITATION SERVICES

On May 9, 1995, Representative Barney Frank, a Democrat from Massachusetts, introduced H.R. 1584 to curtail the "official" status the courts and other government agencies have conferred upon the legal citators.

The text of judicial opinions and statutes, both federal and state, are public domain materials which do not have access to copyright protection. However, publications that report and compile judicial opinions and statutory materials may be protectable in circumstances where a reporting service uses original material such as headnotes or indexes, or where the service uses a unique arrangement or compilation of the materials.

In 1992, Frank unsuccessfully introduced a bill which sought to withdraw copyright protection from legal materials. The current proposal is different in that the courts and other authorities would be barred from requiring the use of a specific or preferred legal citation format.

The bill seeks to reaffirm the public status of legal documents and to ensure that the public may use any reporting service when citing opinions. Subsequently, the strong-hold that West Publishing Company has the "official" legal citation service would diminish. *H.R. 1584, 104th Cong., 1st Sess. (1995).*

INTELLECTUAL PROPERTY AND THE NATIONAL INFORMATION INFRASTRUCTURE: A REPORT RELEASED BY THE UNITED STATES DEPARTMENT OF COMMERCE WITH PROPOSALS TO AMEND CURRENT COPYRIGHT LAW

On September 5, 1995, Information Infrastructure Task Force (IITF) released a report on Intellectual Property and the National Information Infrastructure which proposes amendments to the Copyright Act (Title 17 of the United States Code) to accommodate advances in computer technology. This report advocates stronger copyright protection for documents and programs moving through cyberspace. The focus of the report is on issues such as electronic reproduction and distribution.

The report suggests that text files, pictures, graphs and program code should be given the same legal status on the computer and Internet that they have on paper. As a result, these materials could not be copied or distributed without permission from the copyright holder. The concern is that this proposed copyright protection would hinder the computer network as it is known today. With permission required for downloading or copying documents from the bistream, many users' access would be limited if not eliminated.

On September 29, 1995, matching legislation was introduced in both the House of Representatives (H.R. 2441) and Senate (S. 1284) to implement the changes proposed in the task force's report. The legislation is titled the National Information Infrastructure Copyright Protection Act of 1995. *H.R. 2441, 104th Cong., 1st Sess. (1995); S. 1284, 104th Cong., 1st Sess. (1995).*

NEW ANTITRUST GUIDELINES FOR THE LICENSING OF INTELLECTUAL PROPERTY

Recently, the Department of Justice and the Federal Trade Commission jointly issued new Antitrust Guidelines for the Licensing of Intellectual Property. These guidelines address intellectual property issues such as licensing and acquisitions of patents, copyrights, and trade secrets and establish the agencies antitrust enforcement policy. The Department of Justice's guidelines indicate that the government will examine competitive impact and implications based upon not only

existing markets, but also what might be future theoretical technology markets which are known as the "innovation market."

DIGITAL PERFORMANCE RIGHTS IN SOUND RECORDINGS ACT OF 1995

Currently, United States copyright law does not protect performance rights in sound recordings. American performers whose recordings are played abroad do not share in foreign performance royalties. The Digital Performance Rights in Sound Recordings Act would amend section 106(6) of the Copyright Act to provide sound recording owners with an exclusive performance right in sound recordings that are performed by means of digital transmission.

The new right is limited to digital transmissions by subscription services. The bill would also clarify that compulsory license to make and distribute phonorecords under Title 17 United States Code, section 115, covers the digital "delivery" of sound recordings.

A new section 114(d)(3) of Title 17 places limits on the sound recording copyright owner's right to license interactive services. This provision responds to concerns among song writers and music publishers that the recording industry might become a "gate keeper" and limit opportunities for public performance of the musical works embodied in a sound recording. Licensing and royalty rates for the new performance rights will be determined under sections 114(e) through (i), added to Title 17 under the bill.

The legislation also amends section 115 to clarify how compulsory licensing and royalty payments for the production and distribution of phonorecords apply in the context of digital phonorecord "deliveries." *H.R. 1506, 104th Cong., 1st Sess. (1995); S. 227, 104th Cong., 1st Sess. (1995).*

COPYRIGHT TERM EXTENSION ACT OF 1995

On February 16, 1995, Carlos Moorhead, a Republican from California, introduced H.R. 989. If enacted, the Copyright Term Extension Act would extend the term of copyright protection by twenty years. Currently, the term of protection is determined by the author's life plus fifty years. If this bill is passed, the United States would be in conformity with the European Union standard. It is important to note that the increase in copyright term protection would be applied retrospectively. *H.R. 989, 104th Cong., 1st Sess. (1995).*

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