



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

July 22, 1998

H.R. 2281
Digital Millennium Copyright Act of 1998

As ordered reported by the House Committee on Commerce on June 17, 1998

SUMMARY

H.R. 2281 would amend existing copyright laws to implement two World Intellectual Property Organization (WIPO) treaties, limit the liability of Internet providers for copyright infringement by their customers, clarify the treatment of ephemeral recordings, and require the study of various issues related to copyrights and emerging technologies.

Assuming the appropriation of the necessary funds, CBO estimates that implementing H.R. 2281 would result in new federal spending of about \$2 million in fiscal year 1999 and less than \$250,000 a year over the 2000-2003 period. Enacting the bill would establish new criminal penalties and thus could affect both receipts and direct spending. Hence, pay-as-you-go procedures would apply, but CBO expects that any changes in receipts and direct spending would not be significant.

H.R. 2281 contains an intergovernmental and a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA), but the costs of the mandates would not exceed the thresholds in the law. (The thresholds are \$50 million and \$100 million in 1996, respectively, indexed annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

For the purpose of this estimate, CBO assumes that H.R. 2281 will be enacted by the end of fiscal year 1998, and that the estimated amounts will be appropriated by the start of each fiscal year. The costs of this legislation fall within budget function 370 (commerce and housing credit).

Title I of H.R. 2281 would amend U.S. copyright law to comply with two treaties produced by the December 1996 conference of the WIPO—one regarding the use of copyrighted material in digital environments and the other dealing with international copyright protection

of performers and producers of phonograms. Title II would limit the liability for copyright infringement of persons who are providers of on-line services or network access. Title III would clarify the treatment of ephemeral recordings and exempt libraries and archives from some provisions of this bill. Title IV would require the National Telecommunications and Information Administration (NTIA) to submit a report on encryption testing methods and mechanisms to encourage access protocols.

H.R. 2281 would require the Register of Copyrights, the Secretary of Commerce, the Assistant Secretary of Commerce for Communications and Information, and the NTIA to submit six reports on issues related to copyrights in the digital age, including encryption, distance learning, liability of educational institutions, personal identifying information, and electronic commerce. In addition, title I would require the Secretary of Commerce to issue regulations prohibiting any person from circumventing technological protection measures on copyrighted works. Assuming the appropriation of the necessary amounts, producing reports and promulgating regulations required by H.R. 2281 would increase federal spending by about \$2 million in fiscal year 1999 and less than \$250,000 a year over the 2000-2003 period.

The bill would establish new criminal penalties and thus could affect both receipts and direct spending; therefore, pay-as-you-go procedures would apply. Section 105 would establish criminal fines of up to \$1 million for anyone attempting to circumvent copyright protection systems, or falsifying or altering copyright management information. Enacting this provision could increase governmental receipts from the collection of fines, but we estimate that any such increase would be less than \$500,000 annually. Criminal fines are deposited in the Crime Victims Fund and are spent in the following year. Thus any change in direct spending from the fund would also amount to less than \$500,000 annually.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act specifies pay-as-you-go procedures for legislation affecting direct spending and receipts. Enacting H.R. 2281 could affect both direct spending and receipts, but CBO estimates that any such changes would be insignificant.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

Section 4 of UMRA excludes from the application of that act any legislative provisions that are necessary for the ratification or implementation of international treaty obligations. CBO has determined that title I of the bill fits within that exclusion because it is necessary for the

implementation of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

Title III of H.R. 2281, however, would impose a mandate on certain owners of copyrights who apply technical protections to works that prevent their reproduction. Title III would require copyright owners who employ mechanisms that prevent the reproduction of copyrighted works to make available to federally licensed broadcasters the necessary means to copy such works. Under current law, federally licensed broadcasters are authorized to reproduce copyright-protected material under specific conditions. Since this mandate would apply to both public and private entities that own copyrights, it would be considered both a private-sector and an intergovernmental mandate.

However, the use of reproduction protections envisioned in the bill is not yet widespread. Furthermore, copyright owners may claim economic hardship or technological infeasibility to avoid the new requirement, and the costs of providing federally licensed broadcasters with the means to copy technically protected works would likely be modest. Therefore, CBO estimates that the direct cost of the new mandates would be well below the statutory thresholds in UMRA.

PREVIOUS CBO ESTIMATE

On May 12, 1998, CBO transmitted an estimate of H.R. 2281 as ordered reported by the House Committee on the Judiciary on April 1, 1998. The Judiciary Committee's version of the bill included the first two titles, but did not require any of the reports required by the Commerce Committee's version. CBO estimated that enactment of the Judiciary Committee's version of H.R. 2281 would have no significant impact on the federal budget.

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