



CONGRESSIONAL BUDGET OFFICE  
COST ESTIMATE

May 11, 1998

**S. 2037**

**Digital Millennium Copyright Act of 1998**

*As reported by the Senate Committee on the Judiciary on May 6, 1998*

CBO estimates that enacting S. 2037 would have no significant impact on the federal budget. 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 we expect that any changes in receipts and direct spending would be insignificant. S. 2037 contains an intergovernmental and a private-sector mandate as defined in the Unfunded Mandates Reform Act of 1995 (UMRA), but the costs of the mandates would not exceed the thresholds in the law.

Title I of S. 2037 would amend U.S. copyright law to comply with two treaties produced by the December 1996 conference of the World Intellectual Property Organization—one regarding the use of copyrighted material in digital environments, and the other dealing with international copyright protection of performers and producers of phonograms. Section 103 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.

Title II would limit the liability for copyright infringement of persons who are providers of on-line services or network access. Title III would amend copyright law to allow copies of computer programs to be made for the purpose of repairing or maintaining a computer. Title IV would require copyright owners that protect their audio recordings with technical measures to prevent the reproduction of such work, to make available to transmitting organizations entitled to make a copy of such work the necessary means of making a copy, provided that it is technologically and economically feasible for the copyright owner to do so. The bill would direct the Copyright Office to make recommendations to the Congress concerning the liability for copyright infringement of nonprofit educational institutions when they are providers of Internet services. The bill also would seek recommendations from the

Copyright Office in using digital technologies to promote distance learning while protecting the rights of copyright owners. Based on information from the Copyright Office, CBO estimates that preparing these provisions would cost less than \$300,000.

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 IV of S. 2037 would impose a mandate on certain owners of copyrights who apply technical protections to works that prevent their reproduction. Title IV 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.

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.

The CBO staff contacts for this estimate are Kim Cawley (for federal costs), Pepper Santalucia (for the state and local impact), and Matthew Eyles (for the private-sector impact). This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.