

103^D CONGRESS
1ST SESSION

S. 1181

To amend the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, enacted July 5, 1946 (commonly known as the Lanham Act), to require certain disclosures relating to materially altered films.

IN THE SENATE OF THE UNITED STATES

JUNE 30, 1993

Mr. SIMPSON (for himself and Mr. METZENBAUM) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, enacted July 5, 1946 (commonly known as the Lanham Act), to require certain disclosures relating to materially altered films.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Film Disclosure Act
5 of 1993”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) motion pictures are an American art form
4 that uniquely captures and preserves our national
5 and cultural heritage;

6 (2) the integrity of a motion picture is com-
7 promised and diminished when the motion picture is
8 sold, leased, or exhibited in a materially altered
9 form;

10 (3) the public is misled when motion pictures
11 are sold, leased, or exhibited in a materially altered
12 form;

13 (4) the public has a right to know whether a
14 motion picture which is being sold, leased, or exhib-
15 ited has been materially altered;

16 (5) the reputation of the artistic author of a
17 motion picture may be harmed when the original
18 work is sold, leased, or exhibited in a materially al-
19 tered form;

20 (6) the artistic authors of a motion picture
21 must have the right to indicate their objections to
22 any material alterations made to their work because
23 otherwise the motion picture misrepresents their
24 work;

1 (7) the practice of materially altering motion
2 pictures can result in the discouragement of artistic
3 creation in the motion picture field; and

4 (8) the Government has an interest in the en-
5 couragement of artistic creation through protection
6 of an artistic author's reputation.

7 **SEC. 3. AMENDMENT TO THE LANHAM ACT.**

8 Section 43 of the Act entitled "An Act to provide for
9 the registration and protection of trademarks used in com-
10 merce, to carry out the provisions of certain international
11 conventions, and for other purposes", approved July 5,
12 1946, commonly known as the Lanham Act (15 U.S.C.
13 1125), is amended by adding at the end thereof the follow-
14 ing:

15 “(c)(1)(A) Each public exhibition of a materially al-
16 tered motion picture, and each copy of a materially altered
17 motion picture offered to the public through sale or lease
18 (including its film packaging), shall include a label which
19 clearly and conspicuously discloses the following:

20 “(i) The film has been materially altered from
21 the form in which it was first released to the public.

22 “(ii) The nature of the alteration.

23 “(iii) The fact of objection, if any, by the artis-
24 tic authors of the motion picture to any such alter-
25 ation.

1 “(B) Any distributor or network that proposes to ex-
2 plot a materially altered film in the manner set forth in
3 subparagraph (A) shall—

4 “(i) make a good faith effort to notify in writ-
5 ing and by registered mail and in a reasonable
6 amount of time prior to such exploitation those indi-
7 viduals described in paragraph (5)(B);

8 “(ii) determine the objections of any individual
9 so notified to any specific material alteration of the
10 motion picture;

11 “(iii) determine the objection of any individual
12 so notified by the questionnaire set forth in para-
13 graph (9) to any type of future material alterations
14 which are in addition to those specifically proposed
15 for the motion picture to be exploited;

16 “(iv) include or affix the label required under
17 subparagraph (A) prior to the public performance of
18 a materially altered motion picture already in dis-
19 tribution or the initial distribution of a materially al-
20 tered motion picture to any exhibitor or retail pro-
21 vider of motion pictures intended for home use; and

22 “(v) in the event of affirmative objections by
23 the artistic author to any future material alterations,
24 include or affix such objections to any copy of a mo-

1 tion picture distributed or transmitted to any exhibi-
2 tor or retail provider.

3 “(C) Whenever a distributor or network exploits a
4 motion picture which has already been materially altered,
5 such distributor or network shall not be required to satisfy
6 the obligations set forth in subparagraph (B) (i), (ii), and
7 (iii), if—

8 “(i) such distributor or network does not fur-
9 ther materially alter such motion picture; and

10 “(ii) such motion picture was materially altered
11 by another distributor or network that complied fully
12 with all of the obligations set forth in subparagraph
13 (B).

14 “(D)(i) The requirement of a good faith effort under
15 subparagraph (B)(i) is satisfied if a distributor or network
16 that has not previously been notified by each individual
17 in paragraph (5)(B)—

18 “(I) requests in writing the name and address
19 of each such individual from the appropriate Profes-
20 sional Guild Registry, indicating a response date of
21 no earlier than 30 days following the date of the re-
22 quest, by which the appropriate professional guild
23 must respond; and

24 “(II) upon receipt of such information from the
25 appropriate professional guild within the time speci-

1 fied in the request, notifies each such individual rea-
2 sonably in advance of the date upon which the mo-
3 tion picture is to be released into any secondary
4 market.

5 “(ii) The notice to the artistic author shall contain
6 a specific date, no earlier than 30 days following the date
7 of such notice, by which the individual so notified shall
8 respond in accordance with subparagraph (B)(ii). Failure
9 of the artistic author or the appropriate professional guild
10 to respond within the time period specified shall relieve
11 the distributor or network of all liability under subpara-
12 graph (B) (except for clause (iv) of such subparagraph);

13 “(E) The obligations of an exhibitor shall be limited
14 to—

15 “(i) broadcasting, cablecasting, exhibiting or
16 distributing all labels required under this section in
17 their entirety as included with or distributed by the
18 network or distributor of the motion picture; and

19 “(ii) including or affixing a label as described in
20 paragraphs (6) and (8) on a materially altered mo-
21 tion picture as required under paragraph (1)(A) for
22 any material alterations performed by the exhibitor
23 to which the individuals described in paragraph
24 (5)(B) have objected through the questionnaire pro-
25 cedure described in paragraph (1)(B)(iii).

1 “(F)(i) The provisions of this paragraph shall apply
2 with respect to motion pictures intended for home use
3 through either retail purchase or rental, except no require-
4 ment imposed under this paragraph shall apply to a mo-
5 tion picture which has been packaged for distribution to
6 retail providers before the effective date of this section.

7 “(ii) The obligations of a retail provider of motion
8 pictures intended for home use shall be limited to includ-
9 ing or distributing all labels required under this section
10 in their entirety as affixed or included by a distributor
11 or network.

12 “(G) There shall be no consideration in excess of one
13 dollar given in exchange for an artistic author’s waiver of
14 any objection or waiver of the right to object under this
15 subsection.

16 “(2)(A) Any artistic author of a motion picture pub-
17 licly exhibited or offered to the public through sale or lease
18 within the United States who believes he is or is likely
19 to be damaged by a violation of this subsection may obtain
20 appropriate relief with respect to any violation of this
21 paragraph without regard to the nationality or domicile
22 of the artistic author.

23 “(B)(i) In any action under subparagraph (A), the
24 court shall have power to grant injunctions, according to
25 the principles of equity and upon such terms as the court

1 may deem reasonable, to prevent the violation of any right
2 of an artistic author. Any such injunction may include a
3 provision directing the defendant to file with the court and
4 serve on the plaintiff within thirty days after the service
5 on the defendant of such injunction, or such extended pe-
6 riod as the court may direct, a report in writing under
7 oath setting forth in detail the manner and form in which
8 the defendant has complied with the injunction. Any such
9 injunction granted upon hearing, after notice to the de-
10 fendant, by any district court of the United States—

11 “(I) may be served on the parties against whom
12 such injunction is granted anywhere in the United
13 States where they may be found; and

14 “(II) shall be operative and may be enforced by
15 proceedings to punish for contempt, or otherwise, by
16 the court by which such injunction was granted, or
17 by any other United States district court in whose
18 jurisdiction the defendant may be found.

19 “(ii) When a violation of any right of an artistic au-
20 thor shall have been established in any civil action arising
21 under this section, the plaintiff shall be entitled to the
22 remedies provided under section 35(a).

23 “(iii) In any action under subparagraph (A), the
24 court may order that all film packaging of a materially
25 altered motion picture (including film packages of motion

1 pictures intended for home use through either retail pur-
2 chase or rental) that is the subject of the violation shall
3 be delivered up and destroyed.

4 “(C) No action shall be maintained under this sub-
5 section unless it is commenced within 1 year after the
6 claim accrues.

7 “(3) Any disclosure requirements imposed under the
8 common law or statutes of any State respecting the mate-
9 rial alteration of theatrical motion pictures are preempted.

10 “(4) To facilitate location of a potentially aggrieved
11 party, each individual identified in paragraph (5)(B) may
12 notify the copyright owner of the motion picture or, as
13 appropriate, one or more of the organizations maintaining
14 a Professional Guild Registry. These organizations may
15 maintain a current registry of persons so notifying them
16 and may make available such information in their posses-
17 sion to facilitate the location of any individual so reg-
18 istered for purposes of paragraph (1)(B). No cause of ac-
19 tion shall accrue against any of the professional guilds list-
20 ed in such section for failure to create or maintain a Pro-
21 fessional Guild Registry or for any failure to provide infor-
22 mation pursuant to paragraph (1)(B)(i).

23 “(5) As used in this subsection:

24 “(A) The term ‘film’ or ‘motion picture’ means
25 a theatrical motion picture after its publication.

1 “(B) The term ‘artistic author’ means—

2 “(i) the principal director, principal screen-
3 writer, and, to the extent a theatrical motion
4 picture is colorized or its photographic images
5 materially altered, the principal cinematog-
6 rapher of the film; or

7 “(ii) in the event that an individual listed
8 in clause (i) is deceased or incapacitated, the
9 heir or heirs of that individual.

10 “(C) The term ‘to colorize’ or ‘colorization’
11 means to add color, by whatever means, to a pub-
12 lished version of a theatrical motion picture origi-
13 nally made in black and white.

14 “(D) The term ‘distributor’ means any person,
15 vendor, or syndicator who engages in the wholesale
16 distribution of motion pictures to any exhibitor, net-
17 work, retail provider or other person who publicly
18 performs motion pictures by means of any tech-
19 nology, except such term shall not include labora-
20 tories or other providers of technical services to the
21 motion picture, video or television industry.

22 “(E) The term ‘heir’ means any person to
23 whom a right passes by bequest or by the applicable
24 laws of intestate succession.

1 “(F) The term ‘lexiconning’ means to alter the
2 sound track to conform the speed of the vocal or
3 musical portion of a theatrical motion picture which
4 has been the subject of time compression or expansion.
5 sion.

6 “(G) The term ‘exhibitor’ means any local
7 broadcast station, cable system, airline or motion
8 picture theatre or other person that publicly performs a motion picture by means of any technology.

9 “(H) The term ‘material alteration’ means any
10 change, with the exception of changes excluded by
11 this subparagraph, made to a motion picture after
12 its publication. Material alteration includes, but is
13 not limited to, the processes of colorization,
14 lexiconning, time compression or expansion, panning
15 and scanning and editing (purposeful or accidental
16 removal of existing material or insertion of new material). Material alteration does not include insertions for commercial breaks or public service announcements, editing to comply with the requirements of the Federal Communications Commission (in this subsection referred to as the ‘FCC’), transfer of film to videotape or any other secondary media now in existence or developed hereafter, preparation of a motion picture for foreign distribution

1 (subtitling and editing limited to those alterations
2 made under foreign standards which are no more
3 stringent than existing FCC standards) or legitimate
4 film preservation activities (the primary purpose of
5 which is the restoration of the motion picture to its
6 original version).

7 “(I) The term ‘network’ means any person who
8 distributes motion pictures to broadcasting stations
9 or cable systems on a regional or national basis for
10 public performance on an interconnected basis.

11 “(J) The term ‘panning and scanning’ means
12 the process by which a motion picture, composed for
13 viewing on theatre screens, is adapted for viewing on
14 television screens by modification of the aspect ratio
15 (ratio of width to height) of the motion picture and
16 the selection, by someone other than the motion pic-
17 ture’s principal director, of some portion of the en-
18 tire picture for viewing.

19 “(K) The term ‘Professional Guild Registry’
20 means a list of names and addresses of persons
21 readily available from the files of (i) in the case of
22 directors, the Directors Guild of America (DGA); (ii)
23 in the case of screenwriters, the Writers Guild of
24 America-West (WGA-W) and the Writers Guild of
25 America-East (WGA-E); and (iii) in the case of

1 cinematographers, the International Photographers
2 Guild (IPG), and the American Society of Cine-
3 matographers (ASC).

4 “(L) The term ‘publication’, with respect to a
5 motion picture, means the first paid public exhi-
6 bition of the work following previews, trial runs and
7 festivals.

8 “(M) The term ‘retail provider’ means the pro-
9 prietor of a retail outlet that sells or leases motion
10 pictures for home use.

11 “(N) The term ‘secondary media’ means any
12 medium, including but not limited to video cassette
13 or video disc, other than television broadcast or the-
14 atrical release, now in existence or hereafter devel-
15 oped, by which motion pictures are sold, leased, or
16 distributed to the public.

17 “(O) The term ‘syndicator’ means any person
18 who distributes a motion picture to a broadcast tele-
19 vision station, cable television system, or any other
20 means of distribution by which programming is de-
21 livered to television viewers.

22 “(P) The term ‘motion picture’ means a motion
23 picture of 60 minutes duration or greater, intended
24 for exhibition, public performance, public sale or
25 lease. Such term does not include episodic television

1 programs of less than 60 minutes duration (exclu-
2 sive of commercials), motion pictures prepared for
3 private commercial or industrial purposes, and ad-
4 vertisements.

5 “(Q) The terms ‘time compression’ and ‘time
6 expansion’ mean to alter the speed of a theatrical
7 motion picture or a portion thereof with the result
8 of shortening or lengthening the running time of the
9 work in order to fit the picture into a television
10 schedule, airline schedule, or secondary media
11 length.

12 “(R) The term ‘vendor’ means the wholesaler or
13 packager of a motion picture which is intended for
14 wholesale distribution to retail providers.

15 “(6)(A) A label for a materially altered version of a
16 theatrical motion picture intended for public performance
17 or home use shall consist of a panel card immediately pre-
18 ceding and adjacent to the commencement of the motion
19 picture, which bears one or more of the following state-
20 ments, as appropriate, in legible type and displayed on a
21 conspicuous and readable basis:

22 ‘THIS FILM IS NOT THE VERSION ORIGI-
23 NALLY RELEASED. _____ mins. and _____ secs.
24 have been cut [or, if appropriate, added]. The [insert, if
25 appropriate: heirs of the] director, _____

1 _____, and [insert, if appropriate: the
 2 heirs of the] screenwriter, _____
 3 _____, object because this alteration
 4 changes the narrative and/or characterization. It has
 5 (also) been panned and scanned. The director and [insert,
 6 if appropriate: the heirs of the] cinematographer,
 7 _____, object be-
 8 cause this alteration removes visual information and
 9 changes the composition of the images. It has (also) been
 10 colorized. Colors have been added by computer to the
 11 original black and white images. The director and cine-
 12 matographer object to this alteration because it eliminates
 13 the black and white photography and changes the photo-
 14 graphic images of the actors. It has (also) been electroni-
 15 cally speeded up (or slowed down). The director objects
 16 because this alteration changes the pace of the perform-
 17 ances.’

18 “(B) A label for a motion picture that has been mate-
 19 rially altered in a manner not described by any of the label
 20 elements set forth in subparagraph (A) shall contain a
 21 statement similar in form and substance to those set forth
 22 in subparagraph (A) which accurately describes the mate-
 23 rial alteration and the objection of the artistic author.

24 “(7) A label for a motion picture which has been ma-
 25 terially altered in multiple ways, or of which an individual

1 served as more than one artistic author, including the
2 principal director and principal screenwriter, need only
3 state the name of the artistic author once, in the first ob-
4 jection of the artistic author so listed. In addition, a label
5 for a motion picture which has been materially altered in
6 multiple ways needs only state once, at the beginning of
7 the label: THIS FILM IS NOT THE VERSION ORIGI-
8 NALLY RELEASED.

9 “(8) A label for a film package of a materially altered
10 motion picture shall consist of—

11 “(A) an area of a rectangle on the front of the
12 package which bears, as appropriate, one or more of
13 the statements listed in paragraph (6) in a conspicu-
14 ous and legible type in contrast by typography, lay-
15 out, or color with other printed matter on the pack-
16 age; and

17 “(B) an area of a rectangle on the side of the
18 package which bears, as appropriate, one or more of
19 the statements listed in paragraph (6) in a conspicu-
20 ous and legible type in contrast by typography, lay-
21 out, or color with other printed matter on the pack-
22 age.

23 “(9) The questionnaire required under paragraph
24 (1)(B)(iii) shall consist of the following statement and re-
25 lated questions:

1 ‘In order to conform [insert name of motion
 2 picture], of which you are an “artistic author” (or
 3 the heir thereto), to ancillary media such as tele-
 4 vision, airline exhibition, video cassettes, video discs,
 5 or any other media hereafter developed, do you ob-
 6 ject to:

7 ‘(a) Editing (purposeful or accidental deletion or ad-
 8 dition of program material)?

9 Yes_____ No_____

10 ‘(b) Time compression/time expansion/lexiconning?

11 Yes_____ No_____

12 ‘(c) Panning and scanning?

13 Yes_____ No_____

14 ‘(d) Colorization, if the motion picture was originally
 15 made in black and white?

16 Yes_____ No_____

17 ‘(e) If the artistic author of the motion picture listed
 18 above is deceased or incapacitated, are you the heir of the
 19 artistic author?

20

21 Yes_____ No_____’ ”.

22 **SEC. 4. EFFECTIVE DATE.**

23 (a) IN GENERAL.—Except as provided in subsection
 24 (b), this Act and the amendment made by this Act shall
 25 take effect on the date of enactment of this Act.

1 (b) SPECIAL RULE.—Paragraphs (1) and (2) of sec-
2 tion 43(c) of the Act entitled “An Act to provide for the
3 registration and protection of trademarks used in com-
4 merce, to carry out the provisions of certain international
5 conventions, and for other purposes”, approved July 5,
6 1946 (commonly known as the Lanham Act) (as added
7 by section 3 of this Act) shall take effect 180 days after
8 the date of the enactment of this Act.

○

S 1181 IS——2