

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4643

To provide for the special application of the antitrust laws to certain negotiations of freelance writers and freelance artists for the sale of their written and graphic material to publishers.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2002

Mr. CONYERS (for himself and Mr. CANNON) introduced the following bill;  
which was referred to the Committee on the Judiciary

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## A BILL

To provide for the special application of the antitrust laws to certain negotiations of freelance writers and freelance artists for the sale of their written and graphic material to publishers.

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 “Freelance Writers and  
5       Artists Protection Act of 2002”.

1 **SEC. 2. APPLICATION OF ANTITRUST LAWS TO FREELANCE**  
2 **WRITERS AND FREELANCE ARTISTS.**

3 The antitrust laws shall apply to freelance writers or  
4 freelance artists for purposes of negotiating the terms and  
5 conditions of contracts for the sale of written material or  
6 graphic material created by them to publishers, in the  
7 same manner as such laws apply to collective bargaining  
8 by employees who are members of a bargaining unit recog-  
9 nized under the National Labor Relations Act (29 U.S.C.  
10 151 et seq.) to engage in collective bargaining with an em-  
11 ployer.

12 **SEC. 3. COPYRIGHT REGISTRATION AS PREREQUISITE TO**  
13 **CERTAIN REMEDIES FOR INFRINGEMENT.**

14 Section 412(2) of title 17, United States Code, is  
15 amended to read as follows:

16 “(2) any infringement of copyright commenced  
17 after first publication of the work and before the ef-  
18 fective date of its registration, unless—

19 “(A) such registration is made within three  
20 months after the first publication of the work;  
21 or

22 “(B) if the work is not a work made for  
23 hire, and was first published as a contribution  
24 to a collective work, registration of the collective  
25 work was made within three months after the

1 first publication of the collective work or prior  
2 to the infringement.”.

3 **SEC. 4. DEFINITIONS.**

4 For purposes of this Act:

5 (1) ANTITRUST LAWS.—The term “antitrust  
6 laws”—

7 (A) has the meaning given it in subsection  
8 (a) of the first section of the Clayton Act (15  
9 U.S.C. 12(a)), except that such term includes  
10 section 5 of the Federal Trade Commission Act  
11 (15 U.S.C. 45) to the extent such section 5 ap-  
12 plies to unfair methods of competition; and

13 (B) includes any State law similar to any  
14 of the laws referred to in subparagraph (A).

15 (2) FREELANCE WRITER; FREELANCE ART-  
16 IST.—The terms “freelance writer” and “freelance  
17 artist” mean an individual who creates—

18 (A) an article, book, essay, poem, or other  
19 written material; or

20 (B) a photograph, graphic art work, de-  
21 sign, layout, chart, or other graphical material;  
22 for present or future compensation other than on a  
23 “work made for hire” basis, but excludes such an in-  
24 dividual to whom the National Labor Relations Act  
25 applies.

1           (3) PUBLISHER.—The term “publisher” means  
2           a person that produces any periodical, magazine,  
3           newspaper, book, manual, advertising materials, or  
4           other similar material, whether in printed, electronic,  
5           or other form.

6 **SEC. 5. CRIMINAL INFRINGEMENT.**

7           (a) TITLE 17, UNITED STATES CODE.—Section  
8           506(a)(2) of title 17, United States Code, is amended by  
9           inserting “or are unpublished,” after “\$1,000”.

10          (b) TITLE 18, UNITED STATES CODE.—Section  
11           2319(c)(3) of title 18, United States Code, is amended  
12           by inserting “or are unpublished,” after “\$1,000”.

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