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111TH CONGRESS
1ST SESSION

H. R. 801

To amend title 17, United States Code, with respect to works connected to certain funding agreements.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 2009

Mr. CONYERS (for himself, Mr. ISSA, Mr. WEXLER, Mr. FRANKS of Arizona, and Mr. COHEN) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title 17, United States Code, with respect to works connected to certain funding agreements.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fair Copyright in Research Works Act''.

SEC. 2. LIMITATIONS ON FEDERAL GOVERNMENT REGARDING EXTRINSIC WORKS.

(a) IN GENERAL.—Section 201 of title 17, United States Code, is amended by adding at the end the following new subsection:

"(f) LIMITATIONS ON THE FEDERAL GOVERNMENT.—

"(1) LIMITATIONS REGARDING FUNDING AGREEMENTS.—No Federal agency may, in connection with a funding agreement—

"(A) impose or cause the imposition of any term or condition that—

"(i) requires the transfer or license to or for a Federal agency of—

"(I) any right provided under paragraph (3), (4), or (5) of section 106 in an extrinsic work; or

"(II) any right provided under paragraph (1) or (2) of section 106 in an extrinsic work, to the extent that, solely for purposes of this subsection, such right involves the availability to the public of that work; or

"(ii) requires the absence or abandonment of any right described in subclause (I) or (II) of clause (i) in an extrinsic work;

"(B) impose or cause the imposition of, as a condition of a funding agreement, the waiver

of, or assent to, any prohibition under subparagraph (A); or

"(C) assert any rights under this title in material developed under any funding agreement that restrain or limit the acquisition or exercise of rights under this title in an extrinsic work.

Any term, condition, or assertion prohibited under subparagraph (A), (B), or (C) shall be given no effect under this title or otherwise.

"(2) CONSTRUCTION.—

"(A) CERTAIN OTHER RIGHTS NOT LIMITED.—Nothing in paragraph (1)(A)(i)(II) shall be construed to limit the rights provided to the copyright owner under paragraphs (1) and (2) of section 106.

"(B) NO NEW COPYRIGHT PROTECTION CREATED.—Nothing in this subsection provides copyright protection to any subject matter that is not protected under section 102.

"(3) DEFINITIONS.—In this subsection:

"(A) EXTRINSIC WORK.—The term 'extrinsic work' means any work, other than a work of the United States Government, that is based

upon, derived from, or related to, a funding agreement and—

"(i) is also funded in substantial part by one or more other entities, other than a Federal agency, that are not a party to the funding agreement or acting on behalf of such a party; or

"(ii) represents, reflects, or results from a meaningful added value or process contributed by one or more other entities, other than a Federal agency, that are not a party to the funding agreement or acting on behalf of such a party.

"(B) FEDERAL AGENCY.—The term 'Federal agency' means any department, agency, or instrumentality of the United States Government.

"(C) FUNDING AGREEMENT.—The term 'funding agreement' means any contract, grant, or other agreement entered into between a Federal agency and any person under which funds are provided by a Federal agency, in whole or in part, for the performance of experimental, developmental, or research activities.".

(b) APPLICABILITY.—The amendment made by subsection (a) applies to any funding agreement that is entered into on or after the date of the enactment of this Act.

(c) REPORT TO CONGRESSIONAL COMMITTEES.—Not later than the date that is 5 years after the date of the enactment of this Act, the Register of Copyrights shall, after consulting with the Comptroller General and with Federal agencies that provide funding under funding agreements and with publishers in the private sector, review and submit to the appropriate congressional committees a report on the Register's views on section 201(f) of title 17, United States Code, as added by subsection (a) of this section, taking into account the development of and access to extrinsic works and materials developed under funding agreements, including the role played by publishers in the private sector and others.

(d) DEFINITIONS.—In this section:

(1) EXTRINSIC WORK; FEDERAL AGENCY; FUNDING AGREEMENT.—The terms ''extrinsic work'', ''Federal agency'', and ''funding agreement'' have the meanings given those terms in section 201(f)(3) of title 17, United States Code, as added by subsection (a) of this section.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means the Committee on the Judiciary and the Committee on Appropriations of the House of Representatives and the Committee on the Judiciary and the Committee on Appropriations of the Senate.

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