

111TH CONGRESS  
1ST SESSION

# H. R. 801

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

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## 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.

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 “Fair Copyright in Re-  
5 search Works Act”.

6 **SEC. 2. LIMITATIONS ON FEDERAL GOVERNMENT REGARD-**  
7 **ING EXTRINSIC WORKS.**

8 (a) IN GENERAL.—Section 201 of title 17, United  
9 States Code, is amended by adding at the end the fol-  
10 lowing new subsection:

1       “(f) LIMITATIONS ON THE FEDERAL GOVERN-  
2 MENT.—

3               “(1) LIMITATIONS REGARDING FUNDING  
4 AGREEMENTS.—No Federal agency may, in connec-  
5 tion with a funding agreement—

6                       “(A) impose or cause the imposition of any  
7 term or condition that—

8                               “(i) requires the transfer or license to  
9 or for a Federal agency of—

10                                       “(I) any right provided under  
11 paragraph (3), (4), or (5) of section  
12 106 in an extrinsic work; or

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

19                                       “(ii) requires the absence or abandon-  
20 ment of any right described in subclause  
21 (I) or (II) of clause (i) in an extrinsic  
22 work;

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

1 of, or assent to, any prohibition under subpara-  
2 graph (A); or

3 “(C) assert any rights under this title in  
4 material developed under any funding agree-  
5 ment that restrain or limit the acquisition or  
6 exercise of rights under this title in an extrinsic  
7 work.

8 Any term, condition, or assertion prohibited under  
9 subparagraph (A), (B), or (C) shall be given no ef-  
10 fect under this title or otherwise.

11 “(2) CONSTRUCTION.—

12 “(A) CERTAIN OTHER RIGHTS NOT LIM-  
13 ITED.—Nothing in paragraph (1)(A)(i)(II) shall  
14 be construed to limit the rights provided to the  
15 copyright owner under paragraphs (1) and (2)  
16 of section 106.

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

21 “(3) DEFINITIONS.—In this subsection:

22 “(A) EXTRINSIC WORK.—The term ‘extrin-  
23 sic work’ means any work, other than a work  
24 of the United States Government, that is based

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

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

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

14 “(B) FEDERAL AGENCY.—The term ‘Fed-  
15 eral agency’ means any department, agency, or  
16 instrumentality of the United States Govern-  
17 ment.

18 “(C) FUNDING AGREEMENT.—The term  
19 ‘funding agreement’ means any contract, grant,  
20 or other agreement entered into between a Fed-  
21 eral agency and any person under which funds  
22 are provided by a Federal agency, in whole or  
23 in part, for the performance of experimental,  
24 developmental, or research activities.”

1 (b) APPLICABILITY.—The amendment made by sub-  
2 section (a) applies to any funding agreement that is en-  
3 tered into on or after the date of the enactment of this  
4 Act.

5 (c) REPORT TO CONGRESSIONAL COMMITTEES.—Not  
6 later than the date that is 5 years after the date of the  
7 enactment of this Act, the Register of Copyrights shall,  
8 after consulting with the Comptroller General and with  
9 Federal agencies that provide funding under funding  
10 agreements and with publishers in the private sector, re-  
11 view and submit to the appropriate congressional commit-  
12 tees a report on the Register’s views on section 201(f) of  
13 title 17, United States Code, as added by subsection (a)  
14 of this section, taking into account the development of and  
15 access to extrinsic works and materials developed under  
16 funding agreements, including the role played by pub-  
17 lishers in the private sector and others.

18 (d) DEFINITIONS.—In this section:

19 (1) EXTRINSIC WORK; FEDERAL AGENCY;  
20 FUNDING AGREEMENT.—The terms “extrinsic  
21 work”, “Federal agency”, and “funding agreement”  
22 have the meanings given those terms in section  
23 201(f)(3) of title 17, United States Code, as added  
24 by subsection (a) of this section.

1           (2) APPROPRIATE CONGRESSIONAL COMMIT-  
2           TEES.—The term “appropriate congressional com-  
3           mittees” means the Committee on the Judiciary and  
4           the Committee on Appropriations of the House of  
5           Representatives and the Committee on the Judiciary  
6           and the Committee on Appropriations of the Senate.

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