

AMENDMENT TO H.R. 5889
OFFERED BY MR. BERMAN OF CALIFORNIA

Page 2, strike lines 13 through 14 and insert the following:

1 “(C) industry practices and guidelines of
2 associations and organizations relevant to each
3 category of works under section 102(a) of this
4 title;

Page 3, lines 24 and 25, strike “party with the authority to grant or license that right” and insert “person or entity with the authority to grant or license that right on an exclusive or non-exclusive basis”.

Page 6, strike lines 19 through 21 and insert the following:

5 “(ii) fails to render payment, in a rea-
6 sonably timely manner, of any reasonable
7 compensation agreed upon by the owner of
8 the infringed copyright and the infringer.

Page 7, strike line 6 and all that follows through line 24, and insert the following:

1 “(ii) DETERMINATION OF DILIGENT
2 EFFORT.—In determining whether a
3 search is diligent under this subparagraph,
4 a court shall—

5 “(I) consider whether—

6 “(aa) the actions taken in
7 performing that search are rea-
8 sonable and appropriate under
9 the facts relevant to that search,
10 including whether the infringer
11 took actions based on facts un-
12 covered by the search itself; and

13 “(bb) the infringer per-
14 formed the search before using
15 the work and at a time that was
16 reasonably proximate to the com-
17 mencement of the infringement;
18 and

19 “(II) give deference to, and con-
20 sider whether the infringer employed,
21 the applicable best practices main-
22 tained by the Register of Copyrights
23 under subparagraph (B).

Page 8, strike line 8 and all that follows through
line 24 and insert the following:

1 “(B) INFORMATION TO GUIDE SEARCHES;
2 BEST PRACTICES.—

3 “(i) STATEMENTS OF BEST PRAC-
4 TICES.—The Register of Copyrights shall
5 maintain and make available to the public,
6 including through the Internet, a current
7 statement of the best practices applicable
8 to each category or works under section
9 102(a) of this title or subcategory thereof,
10 for conducting and documenting a search
11 under this subsection.

12 “(ii) CONSIDERATION OF RELEVANT
13 MATERIALS AND STANDARDS.—In main-
14 taining the statements of best practices re-
15 quired under clause (i), the Register of
16 Copyrights shall, in its sole discretion,
17 from time to time, consider materials and
18 standards submitted to, and determined to
19 be reasonable by, the Register of Copy-
20 rights, that may be relevant to the require-
21 ments for a qualifying search under sub-
22 paragraph (A).

Page 9, line 4, strike “(1)(A)(i)(III)” and insert
“(a)(A)(ii)”.

Page 10, line 22, insert “museum,” before “or archives”.

Page 10, line 23, add after “118)” the following: “, or an employee of such institution, library, museum, archives, or entity, acting within the scope of his or her employment,”.

Page 12, line 4, insert before the period the following: “except that, if the infringer has met the requirements of subsection (b), the relief may account for any harm that the relief would cause the infringer due to the infringer’s reliance on having performed a qualifying search under subsection (b)”.

