

(h) Reports required.—The Chair of the Commission and the Antitrust Division shall submit to the appropriate congressional committees quarterly reports on compliance with this section, including the status of any divestitures required under this section.

(i) Rule of construction.—Nothing in this section shall be construed to limit the authority of the Commission, the Department of Justice, or the attorney general of a State under any other provision of law.

Subtitle C—Intellectual Property Reform

PART I—COPYRIGHT REFORM

SEC. 531. DURATION OF COPYRIGHT AMENDED.

(a) Duration of copyright.—[Section 302 of title 17](#), United States Code, is amended—

(1) in subsection (a), by striking "70" and inserting "50";

(2) in subsection (b), by striking "70" and inserting "50" before the period at the end;

(3) in subsection (c)—

(A) by striking "95" and inserting "50"; and

(B) by striking ", or a term of 120 years from the year of its creation, whichever expires first" and inserting "unless extended pursuant to section 304(e)"; and

(4) in subsection (e) to read as follows:

"(e) Enforcement rights.—The exclusive rights conferred by section 106 may be exercised only during periods of active enforcement as provided in chapter 4A."

SEC. 532. PERIOD OF ACTIVE ENFORCEMENT DEFINED.

(a) [Section 101 of title 17](#), United States Code, is amended by inserting after the definition relating to "performing rights society" the following:

"The term 'period of active enforcement' means the time during the duration of a copyright in which civil and criminal actions may be initiated for violations of the rights and privileges granted to the holder under this title."

(b) New chapter.—[Title 17, United States Code](#), is amended by inserting after chapter 4 the following new chapter:

"CHAPTER 4A—ENFORCEMENT LICENSURE

"SEC. 451. Definitions.

"SEC. 452. Enforcement privilege may lapse.

"SEC. 453. Enforcement license.

"SEC. 454. Administration.

"Sec. 451. Definitions.

"(a) In this chapter—

"(1) Enforcement license.—The term 'enforcement license' means an optional 7-year period of active enforcement after the initial enforcement period, with respect to all exclusive rights under section 106 in the work owned by the purchasing rights-holder, for which the rights-holder has paid the applicable fee under section 453.

"(2) Initial enforcement period.—The term 'initial enforcement period' means the first 15 years beginning on the date of first publication of the work.

"(3) Lapse.—The term 'lapse' means that the exclusive rights granted under section 106 are not enforceable through civil or criminal actions.

"(4) Rights-holder.—The term 'rights-holder' means the owner of one or more exclusive rights under section 106 with respect to a work.

"Sec. 452. Enforcement privilege may lapse.

"(a) Transition date.—Beginning January 1, 2028, no criminal or civil action for a violation of section 106 of this title may be brought for any work not in its initial enforcement period unless an enforcement license has been purchased under this chapter.

"(b) Pending actions.—Nothing in this section shall affect any civil or criminal action commenced on or before December 31, 2027.

"(c) Calendar-year application.—Pursuant to [section 305](#), all periods of active enforcement shall run to the end of the calendar year in which they would otherwise expire.

"Sec. 453. Enforcement license.

"(a) Enforcement protection optional.—A rights-holder may extend the period of active enforcement for the exclusive rights in a work owned by that rights-holder by purchasing a 7-year enforcement license according to the following fee schedule:

"(1) for years 16 through 22, \$100;

"(2) for years 23 through 29, \$500;

"(3) for years 30 through 36, \$2,500;

"(4) for years 37 through 43, \$5,000; and

"(5) for years 44 through 50, \$10,000.

"(b) Failure to renew.—If the rights-holder fails to purchase an enforcement license under this section during years 15, 22, 29, 36, or 43 of their copyright, the period of active enforcement shall be deemed to lapse at the end of the year. Such lapse shall not diminish the validity of any actions commenced prior to the conclusion of a period of active enforcement.

"(c) Indexing of fees.—Beginning in 2029, the dollar amounts in subsection (a) shall be adjusted annually by the percentage change in the Consumer Price Index for All Urban Consumers, rounded to the nearest \$10.

"(d) Transition fees.—During the calendar year 2027, a rights-holder may purchase a prorated enforcement license for a fraction of the fee schedule based on the year in which the work was originally published. Such fees shall be as follows:

- "(1) for 2012, the amount listed in subsection (a)(1);
- "(2) for 2011, \$85;
- "(3) for 2010, \$71;
- "(4) for 2009, \$57;
- "(5) for 2008, \$42;
- "(6) for 2007, \$28;
- "(7) for 2006, \$14;
- "(8) for 2005, the amount listed in subsection (a)(2);
- "(9) for 2004, \$428;
- "(10) for 2003, \$357;
- "(11) for 2002, \$285;
- "(12) for 2001, \$214;
- "(13) for 2000, \$142;
- "(14) for 1999, \$71;
- "(15) for 1998, the amount listed in subsection (a)(3);
- "(16) for 1997, \$2,142;
- "(17) for 1996, \$1,785;
- "(18) for 1995, \$1,428;
- "(19) for 1994, \$1,071;
- "(20) for 1993, \$714;
- "(21) for 1992, \$357;
- "(22) for 1991, the amount listed in subsection (a)(4);
- "(23) for 1990, \$4,285;
- "(24) for 1989, \$3,571;

"(25) for 1988, \$2,857;

"(26) for 1987, \$2,142;

"(27) for 1986, \$1,428;

"(28) for 1985, \$714;

"(29) for 1984, the amount listed in subsection (a)(5);

"(30) for 1983, \$8,571;

"(31) for 1982, \$7,142;

"(32) for 1981, \$5,714;

"(33) for 1980, \$4,285;

"(34) for 1979, \$2,857; and

"(35) for 1978, \$1,428.

"(e) Separately owned exclusive rights.—

"(1) In general.—If exclusive rights under section 106 in the same work are owned by more than 1 rights-holder, each rights-holder shall separately purchase an enforcement license for the exclusive rights owned by that rights-holder.

"(2) Transfer during license term.—A transfer of an exclusive right covered by an enforcement license transfers the benefit of the license with the exclusive right for the remainder of the license term. The transferee shall notify the Register of Copyrights of the transfer in such form and manner as the Register may prescribe. No additional enforcement-license fee shall be required for the transferred right during the remainder of that license term."

"Sec. 454. Administration.

"(a) Regulations.—The Register of Copyrights shall, not later than 90 days after the date of enactment of this Act, issue interim final regulations to implement this chapter, including procedures for payment, recording, and public notice of renewals, and shall thereafter promulgate final regulations after notice and comment.

"(b) Public registry.—The Register shall establish an electronic public registry identifying, for each work, whether it is in an active enforcement period and, if so, the dates of the initial enforcement period and any renewal periods, and the rights-holder and exclusive rights covered by each enforcement license."

SEC. 533. SUBSISTING COPYRIGHT.

(a) Subsisting copyrights.—[Section 304 of title 17](#), United States Code, is amended—

(1) in subsection (a)—

(A) by striking "67 years" and inserting "22 years"; and

(B) by adding at the end the following: "No civil or criminal enforcement action may be initiated under this title more than 50 years after the date of first publication of the work, except pursuant to subsection (e).";

(2) in subsection (b)—

(A) by striking "67 years" and inserting "22 years"; and

(B) by adding at the end the following: "No civil or criminal enforcement action may be initiated under this title more than 50 years after the date of first publication of the work, except pursuant to subsection (e).";

(3) in subsections (c) and (d), by striking "75 years" each place it appears and inserting "50 years";

(4) by striking "95 years" each place it appears and inserting "50 years";

(5) by adding at the end of subsection (c) the following: "Termination of a grant under this subsection shall not have the effect of extending a copyright beyond the term provided under this section, except pursuant to subsection (e)."; and

(6) by adding at the end of subsection (d) the following text and new subsection (e):
"Termination of a grant under this subsection shall not have the effect of extending a copyright beyond the term provided under this section, except pursuant to subsection (e).

"(e) Additional terms of copyright.—

"(1) In general.—A copyright shall expire and enter the public domain unless extended for an additional term under this subsection—

"(A) upon expiration of a 50-year term provided under section 302(c) or this section; or

"(B) on January 1, 2028.

"(2) Additional terms.—An additional term under this subsection shall be for a period of 5 years and shall confer a period of active enforcement for the duration of such term.

"(3) Calendar-year application.—Pursuant to [section 305](#), all periods of active enforcement shall run to the end of the calendar year in which they would otherwise expire.

"(4) Fee schedule.—The extension fee for an additional term under this subsection shall be as follows:

"(A) for years 51 through 55, \$1,000,000;

"(B) for years 56 through 60, \$2,000,000;

"(C) for years 61 through 65, \$4,000,000;

"(D) for years 66 through 70, \$8,000,000;

"(E) for years 71 through 75, \$16,000,000;

"(F) for years 76 through 80, \$32,000,000;

"(G) for years 81 through 85, \$64,000,000;

"(H) for years 86 through 90, \$128,000,000;

"(I) for years 91 through 95, \$256,000,000;

"(J) for years 96 through 100, \$512,000,000; and

"(K) for each successive 5-year period beginning after years 96 through 100, 2 times the extension fee applicable to the immediately preceding 5-year period, after application of any adjustment under paragraph (6).

"(5) Proration during transition.—Prior to January 1, 2028, the applicable extension fee for an additional term which will lapse at the end of calendar year 2028, 2029, 2030, or 2031 shall be the product of—

"(A) the applicable fee specified in paragraph (4); and

"(B) the number of full calendar years remaining in the applicable 5-year term divided by 5.

"(6) Indexing of fees.—Beginning January 1, 2029, the dollar amounts in paragraph (4), and each fee determined under paragraph (4)(K), shall be adjusted annually by the percentage change in the Consumer Price Index for All Urban Consumers, rounded to the nearest \$1,000."

SEC. 534. CONFORMING AMENDMENTS.

(a) [Section 501 of title 17, United States Code](#), is amended by adding at the end the following:

"(g) No action for infringement may be brought under this section unless the copyright is in a period of active enforcement."

(b) [Section 106 of title 17, United States Code](#), is amended by inserting "(a)" before the introductory text and adding at the end the following:

"(b) Enforcement rights under this section may be exercised only if the work is in a period of active enforcement. No civil action, administrative action, or takedown request may be initiated or maintained except during a period of active enforcement."

(c) [Section 412 of title 17, United States Code](#), is amended by adding at the end the following:

"(3) Statutory damages and attorney's fees may be awarded only if the copyright was in a period of active enforcement."

(d) [Section 506 of title 17, United States Code](#), is amended by adding at the end the following:

"(g) Affirmative defense.—It shall be an affirmative defense to a violation of this section that the work in question was not in a period of active enforcement."

(e) Savings clause.—Any provision of law inconsistent with this part is repealed to the extent of such inconsistency.

SEC. 535. DISPOSITION OF FEES AND RECEIPTS.

(a) In general.—Notwithstanding any other provision of law, all fees collected under chapter 4A and [section 304\(e\) of title 17, United States Code](#), shall be deposited into the general fund of the Treasury and disbursed in accordance with this section.

(b) American Value Fund.—99 percent of all amounts deposited pursuant to subsection (a) shall be credited to the American Value Fund established in title VI of the POPULIST Act.

(c) Library of Congress.—1 percent of all amounts deposited pursuant to subsection (a) shall be transferred to the Library of Congress Support and Cultural Preservation Fund established in section 537.

(d) Budgetary treatment.—Amounts transferred under this section shall be treated as offsetting receipts for purposes of the Congressional Budget Act of 1974.

SEC. 536. DENUNCIATION OF THE BERNE CONVENTION.

(a) Denunciation authorized.—The President is authorized and directed to denounce the Berne Convention for the Protection of Literary and Artistic Works, done at Berne on September 9, 1886, as revised and amended, pursuant to Article 35 of the Paris Act of July 24, 1971.

(b) Notice.—Not later than December 31, 2026, the President shall transmit a written notification of denunciation to the Director General of the World Intellectual Property Organization in accordance with Article 35(2) of the Berne Convention.

(c) Effective date.—The denunciation authorized by subsection (a) shall take effect on the date that is 1 year after the date on which the notification described in subsection (b) is received by the Director General of the World Intellectual Property Organization.

SEC. 537. LIBRARY OF CONGRESS SUPPORT AND CULTURAL PRESERVATION FUND.

(a) Establishment.—There is established in the Treasury of the United States a fund to be known as the "Library of Congress Support and Cultural Preservation Fund" (in this section referred to as the "Fund").

(b) Uses.—Amounts in the Fund shall be available to the Library of Congress, without further appropriation, for the following purposes:

(1) Digitization, preservation, and restoration of copyrighted and formerly copyrighted works;

(2) Long-term digital storage infrastructure, redundancy, and access systems;

(3) Audio, visual, and audiovisual conservation, including film, sound recordings, and born-digital media;

(4) Metadata creation, cataloging, indexing, and public discovery tools; and

(5) Technical and administrative support necessary to carry out the activities described in this subsection.

(c) Oversight and coordination.—

(1) The Librarian of Congress shall submit an annual report to the Committees on Appropriations and the Committees on the Judiciary of the House of Representatives and the Senate describing—

(A) amounts deposited into and expended from the Fund;

(B) activities supported by the Fund; and

(C) measurable outcomes relating to preservation, access, and public availability.

(2) The Librarian of Congress shall coordinate activities funded under this section with the Register of Copyrights to ensure consistency with copyright administration and public access objectives.

(d) Budgetary treatment.—Amounts deposited into and expended from the Fund shall be treated as offsetting collections for purposes of the Congressional Budget Act of 1974.

SEC. 538. CONTROLLED DIGITAL LENDING BY QUALIFYING LIBRARIES.

(a) In general.—Chapter 1 of [title 17, United States Code](#), is amended by inserting after section 109 the following—

"Sec. 109A. Controlled digital lending by qualifying libraries.

"(a) Definitions.—In this section:

"(1) Controlled digital loan.—The term 'controlled digital loan' means the time-limited provision of access to a digital surrogate by a qualifying library to a user under technological access controls that enforce the limitations in subsection (b).

"(2) Digital surrogate.—The term 'digital surrogate' means a reproduction of a lawfully acquired copy, fixed in a digital format, that is created by or for a qualifying library.

"(3) Lawfully acquired copy.—The term 'lawfully acquired copy' means a tangible copy of a work that is lawfully owned by a qualifying library.

"(4) Qualifying library.—The term 'qualifying library' means a library or archives that meets the requirements of [section 108\(a\)\(2\)](#).

"(5) Technological access controls.—The term 'technological access controls' means reasonable and effective technical measures that, in the ordinary course of operation, prevent unauthorized retention, copying, redistribution, or simultaneous access beyond the limits of subsection (b).

"(6) User.—The term 'user' means an individual who is a member of the public entitled to access the library's collections.

"(b) Authorization and conditions.—Notwithstanding section 106, a qualifying library may make controlled digital loans, if—

"(1) the qualifying library limits access to digital surrogates of a work to a number of users equal to the number of lawfully acquired copies of that work;

"(2) during the controlled digital loan of a lawfully acquired copy, the qualifying library does not lend, lease, or otherwise provide access to that particular lawfully acquired copy to any other person;

"(3) the controlled digital loan is provided as part of the qualifying library's noncommercial public lending function;

"(4) the qualifying library provides notice to users that access is provided solely for the duration of the loan and that retention or redistribution is prohibited;

"(5) the controlled digital loan terminates automatically at the end of the loan period;

"(6) the loan period does not exceed the period for which the qualifying library ordinarily lends a tangible copy of the same work or category of work;

"(7) the qualifying library uses technological access controls to—

"(A) authenticate users; and

"(B) prevent users from—

"(i) retaining the digital surrogate after the termination of the loan period; or

"(ii) redistributing the digital surrogate to others; and

"(8) the qualifying library maintains records sufficient to demonstrate compliance with paragraphs (1) through (7), including—

"(A) the number of lawfully acquired copies owned;

"(B) the number of concurrent controlled digital loans enabled; and

"(C) the applicable loan periods.

"(c) No compensation owed.—No royalty, fee, or other remuneration shall be owed to any copyright owner for the making of controlled digital loans in compliance with subsection (b).

"(d) No waiver by private terms.—Any term or condition of a contract, license, or agreement that purports to prohibit or restrict an act authorized by this section, or that purports to impose remuneration for an act authorized by this section, shall be unenforceable as contrary to public policy.

"(e) Scope; exclusions.—Nothing in this section:

"(1) authorizes the circumvention of technological measures in violation of section 1201;

"(2) authorizes controlled digital lending of a copy that was primarily acquired as a licensed digital product rather than as a lawfully acquired copy;

"(3) limits any right, limitation, or exception under section 107, 108, or 109; or

"(4) affects remedies for any act that is not in material compliance with subsection (b).

"(f) Construction.—This section shall be construed to preserve a qualifying library's traditional public lending function in digital form, while maintaining an owned-to-loaned limitation that preserves materially equivalent scarcity to physical lending."

(b) Clerical amendment.—The table of sections for chapter 1 of [title 17, United States Code](#), is amended by inserting after the item relating to section 109 the following:

"109A. Controlled digital lending by qualifying libraries."

PART II—PATENT REFORM

SEC. 541. DESIGN PATENT TERM HARMONIZED.

(a) Term amended.—[Section 173 of title 35](#), United States Code, is amended to read as follows:

"Sec. 173. Term of design patent.

"Subject to the payment of fees under this title, patents for designs shall be granted for a term beginning on the date on which the patent issues and ending 20 years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application or applications under section 120, 121, 365(c), or 386(c), from the date on which the earliest such application was filed."

(b) Applicability.—The amendment made by subsection (a) shall apply to any design patent issued on an application filed before, on, or after the date of enactment of this Act.

SEC. 542. PATENT MAINTENANCE FEES; ESCALATION; INDEXING; TRANSITION.

(a) Maintenance fee schedule.—[Section 41 of title 35](#), United States Code, is amended—

(1) in subsection (a)(7), by adding "." at the end;

(2) in subsection (b)(1) to read as follows—

"(1) In general.—The Director shall charge the following fees for maintaining in force all patents, other than plant patents, based on applications filed on or after December 12, 1980:

"(A) 3 years and 6 months after grant, \$2,500.

"(B) 7 years after grant, \$5,000.

"(C) 10 years and 6 months after grant, \$10,000.

"(D) 14 years after grant, \$20,000.

"(E) 17 years after grant, \$40,000."; and

(3) by repealing subsection (b)(3) and adding the following new paragraphs after subsection (b)(2)—

"(3) No maintenance fee for plant patent.—No fee may be established for maintaining a plant patent in force.

"(4) No fee after expiration.—No maintenance fee under paragraph (1), and no surcharge for late payment of such fee, shall be due after expiration of the term of the patent.

"(5) Transition rule.—

"(A) No maintenance fee under paragraph (1), and no surcharge for late payment of such fee, shall be due for any payment date that occurred before January 1, 2027.

"(B) Nothing in this paragraph shall revive any patent that expired or lapsed before January 1, 2027.

"(6) Transition rule for additional maintenance fees.—

"(A) No maintenance fee under paragraph (1)(D) shall apply to a grant issued on or before December 31, 2012.

"(B) No maintenance fee under paragraph (1)(E) shall apply to a grant issued on or before December 31, 2009.

"(7) Design patent transition rule.—No maintenance fee under paragraph (1), and no surcharge for late payment of such fee, shall be due for a design patent before January 1, 2027."; and

(4) in subsection (f) by—

(A) striking "may be adjusted" and inserting "shall be adjusted"; and

(B) striking "may be ignored" and inserting "shall be included in the next annual adjustment."

SEC. 543. SCALE LIMITS ON FEE DISCOUNTS; AGGREGATION; FRAUD PENALTIES.

(a) Portfolio limitation on discounts.—[Section 41\(h\) of title 35, United States Code](#), is amended by adding at the end the following:

"(4) Portfolio limitation.—Notwithstanding any other provision of this subsection, no reduction in fees under this subsection shall apply with respect to any maintenance fee due under subsection (b) if the owner of the patent, or any commonly controlled entity, owns more than 25 issued United States patents as of the date such maintenance fee is paid.

"(5) Common control.—For purposes of this subsection, entities shall be treated as commonly controlled if they are under common ownership or control, including through direct

ownership, indirect ownership, exclusive licensing arrangements, or any contractual obligation to assign or license patent rights, as determined by the Director by regulation."

(b) Fraudulent assertion of entity status.—[Section 41 of title 35](#), United States Code, is amended by adding at the end the following:

"(k) Fraudulent assertion of small or micro entity status.—

"(1) In general.—Any person who knowingly or recklessly asserts small entity or micro-entity status under this section, or fails to timely correct such status after it no longer applies, shall be subject to a civil penalty.

"(2) Penalty amount.—The civil penalty under this subsection shall be the greater of—

"(A) 3 times the amount of fees avoided by reason of such false or improper assertion; or

"(B) \$10,000 multiplied by the total number of issued United States patents owned by the person or by any commonly controlled entity at the time of the violation.

"(3) Additional remedies.—In addition to any penalty imposed under paragraph (2), the Director may—

"(A) require payment of all unpaid fees at the undiscounted rate, with interest calculated from the date each unpaid fee was due at the rate and in the manner provided under sections [6621\(a\)\(2\)](#) and [6622\(a\)](#) of the Internal Revenue Code of 1986;

"(B) impose administrative sanctions, including suspension of eligibility for fee discounts for a period of not less than 5 years; and

"(C) refer evidence of willful misconduct to the Attorney General for appropriate action.

"(4) Rule of construction.—A pattern of misrepresentation, concealment, or portfolio fragmentation shall constitute prima facie evidence of recklessness under this subsection.

"(l) Portfolio disclosure and verification authority.—The Director may require, as a condition of payment of any maintenance fee or assertion of small or micro entity status, disclosure of information sufficient to determine—

"(1) the total number of issued United States patents owned by the person making such payment or assertion; and

"(2) whether such patents are owned or controlled by commonly controlled entities.

"The Director may conduct audits and investigations as reasonably necessary to enforce this section.

"(m) Administrative process.—Before imposing a civil penalty or administrative sanction under subsection (k), the Director shall provide written notice of the alleged violation and the proposed penalty or sanction, and a reasonable opportunity to respond. A final determination under subsection (k) shall be made on the record after consideration of any timely submission by the

person charged and shall be subject to administrative review under procedures prescribed by the Director."

SEC. 544. DISPOSITION OF PATENT FEES.

(a) In general.—Notwithstanding any other provision of law, all amounts collected as maintenance fees under [section 41\(b\) of title 35, United States Code](#), including any penalties collected under section 41(k), shall be deposited into the general fund of the Treasury and disbursed in accordance with this section.

(b) American Value Fund.—99 percent of all amounts deposited pursuant to subsection (a) shall be credited to the American Value Fund established in title VI of the POPULIST Act.

(c) United States Patent and Trademark Office.—1 percent of all amounts deposited pursuant to subsection (a) shall be transferred to the United States Patent and Trademark Office and shall be available, without further appropriation, solely for patent examination, information technology modernization, fraud detection, and administrative enforcement.

(d) Budgetary treatment.—Amounts transferred under this section shall be treated as offsetting receipts for purposes of the Congressional Budget Act of 1974.

PART III—TRADEMARK REFORM

SEC. 551. SEVEN-YEAR TRADEMARKS.

(a) Renewal period.—

(1) In general.—Section 9(a) of the Trademark Act of 1946 ([15 U.S.C. 1059\(a\)](#)) is amended to read as follows:

"(a) Period of renewal; time for renewal.—

"(1) In general.—Subject to the provisions of section 1058 of this title, each registration may be renewed for periods of 7 years at the end of each successive 7-year period following the date of registration upon payment of the fee prescribed under section 1113(c) of this title and the filing of a written application, in such form as may be prescribed by the Director.

"(2) Time for renewal.—An application under paragraph (1) may be made at any time within 1 year before the end of each successive 7-year period for which the registration was issued or renewed, or may be made within a grace period of 6 months after the end of each successive 7-year period, upon payment of the fee prescribed under section 1113(c) of this title and any surcharge prescribed therefor.

"(3) Deficient application.—If any application filed under this section is deficient, the deficiency may be corrected within the time prescribed after notification of the deficiency, upon payment of a surcharge prescribed therefor."

(2) Applicability.—The amendment made by paragraph (1) shall apply to any registration issued or any renewal period beginning after the date of enactment of this Act, without regard to the date on which the application or renewal application was filed. A registration issued, or

renewal period beginning, on or before such date shall remain subject to the expiration date applicable before the amendment made by paragraph (1).

(b) Declaration of use or excusable nonuse.—

(1) In general.—Section 8(a) of the Trademark Act of 1946 ([15 U.S.C. 1058\(a\)](#)) is amended to read as follows:

"(a) Time periods for required affidavits.—

"(1) In general.—Each registration shall remain in force for 7 years, except that the registration of any mark shall be canceled by the Director unless the owner of the registration files in the United States Patent and Trademark Office affidavits that meet the requirements of subsection (b), within the 1-year period immediately preceding the expiration of each 7-year period following the date of registration under this chapter or the date of publication under section 1062(c) of this title.

"(2) Grace period.—The owner may file the affidavit required under this section within the 6-month grace period immediately following the expiration of the period established in paragraph (1), together with the fee described in subsection (b) and the additional grace period surcharge prescribed by the Director."

(2) Applicability.—The amendment made by paragraph (1) shall apply to any registration issued or any renewal period beginning after the date of enactment of this Act, without regard to the date on which the application or renewal application was filed. A registration issued, or renewal period beginning, on or before such date shall remain subject to the expiration date applicable before the amendment made by paragraph (1).

(c) Bona fide commercial use.—Section 8(b)(1) of the Trademark Act of 1946 ([15 U.S.C. 1058\(b\)\(1\)](#)) is amended by striking subparagraph (C) and inserting the following:

"(C) be accompanied by such representative evidence demonstrating bona fide commercial use in commerce as may be required by the Director; and".

(d) Token use.—Section 8 of the Trademark Act of 1946 ([15 U.S.C. 1058](#)) is amended by adding at the end the following:

"(g) Token use.—Use of a mark solely for the purpose of maintaining a registration, reserving a mark, or preventing use by others, without genuine commercial exploitation, shall not constitute bona fide commercial use in commerce as required by subsection (b)(1)(C)."

(e) Portfolio-based registration and renewal fees.—Section 31 of the Trademark Act of 1946 ([15 U.S.C. 1113](#)) is amended by adding at the end the following:

"(c) Portfolio-based registration and renewal fees.—

"(1) In general.—Beginning January 1, 2027, any fee required for an application for registration of a trademark or other mark under section 1051 of this title or for renewal of a trademark registration under section 1059(a) of this title shall be determined based on the size of the portfolio of the applicant or registrant at the time the fee is paid.

"(2) Base amount.—The base amount for a fee under this subsection shall be \$250.

"(3) Escalation formula.—The fee applicable under this subsection shall be equal to the base amount multiplied by n raised to the power of 0.30, where n equals the size of the portfolio owned or controlled by the applicant or registrant at the time the fee is paid. The resulting fee shall be rounded to the nearest whole dollar.

"(4) Class application.—The fee determined under this subsection shall apply equally to each class included in an application for registration or filing for renewal.

"(5) Paper filing.—The Director may impose an additional fee for paper filing of an application for registration or renewal application.

"(6) Transition rules.—

"(A) Early-filed renewals.—A renewal application filed before January 1, 2027, for a renewal period beginning on or after January 1, 2027, shall be treated as conditionally filed and may not be accepted as complete, and the registration may not be renewed, until the applicant or registrant pays the full fee required under this subsection.

"(B) Credit for prior payment.—Any fee paid before January 1, 2027, for a renewal application described in subparagraph (A) shall be credited against the fee required under this subsection.

"(7) Indexing.—Beginning January 1, 2028, the base amount specified in paragraph (2) shall be adjusted annually by the percentage change in the Consumer Price Index for All Urban Consumers, rounded to the nearest \$5.

"(d) Portfolio certification.—Each applicant or registrant submitting an application for registration or renewal application shall certify, under penalty of perjury, the size of the applicant or registrant's portfolio as of the date of such filing.

"(e) Audit and verification.—The Director may conduct audits and require production of information reasonably necessary to verify—

"(1) the accuracy of any portfolio certification submitted under subsection (d);

"(2) the existence of common control among entities; or

"(3) contractual rights and licensing arrangements related to trademarks.

"(f) False statement or material omission.—Any person who knowingly or recklessly makes a false statement or material omission in any certification or disclosure required under this section shall be subject to penalty.

"(1) Civil penalty.—The Director may impose a civil penalty equal to the greater of—

"(A) 3 times the amount of fees avoided by reason of the false statement or omission; or

"(B) \$5,000 multiplied by the total number of items in the portfolio of the person at the time of the violation.

"(2) Additional remedies.—In addition to any civil penalty, the Director may—

"(A) bar the person, for a period of 6 years, from—

"(i) registering any new trademark; or

"(ii) renewing any trademark owned or controlled by the person at the time of the violation; and

"(B) refer evidence of willful misconduct to the Attorney General for appropriate action.

"(3) Rule of construction.—A pattern of misrepresentation, concealment, or portfolio fragmentation shall constitute prima facie evidence of recklessness under this subsection.

"(4) Administrative process.—Before imposing a civil penalty or administrative sanction under this subsection, the Director shall provide written notice of the alleged violation and the proposed penalty or sanction, and a reasonable opportunity to respond. A final determination under this subsection shall be made on the record after consideration of any timely submission by the person charged and shall be subject to administrative review under procedures prescribed by the Director.

"(g) Rulemaking.—The Director shall issue regulations to implement this section, including standards for determining common control, audit selection, evidentiary requirements, procedures for calculating portfolio size, procedures for treating simultaneous or batch filings, procedures for notifying applicants or registrants of fee deficiencies, and procedures for crediting prior payments.

"(h) Definitions.—In this section:

"(1) Active trademark registration.—The term 'active trademark registration' means any registration that has not been irrevocably cancelled or expired, including any registration within a renewal window or statutory grace period.

"(2) Common control.—The term 'common control' means the direct or indirect ownership or control of trademarks or applications for registration by the same person or entity, including through parent-subsidiary relationships, common ownership, exclusive licensing arrangements, or contractual obligations to assign or license trademark rights.

"(3) Portfolio.—The term 'portfolio' means, with respect to an applicant or registrant, the aggregate of the following items under common control:

"(A) active trademark registrations;

"(B) pending applications for registration; and

"(C) in the case of an application for registration, such application."

SEC. 552. DISPOSITION OF TRADEMARK FEES.

(a) In general.—Notwithstanding any other provision of law, all fees collected under sections 8, 9, and 31 of the Trademark Act of 1946 ([15 U.S.C. 1058](#), [1059](#), and [1113](#)), including registration fees, renewal fees, late fees, and penalties, shall be deposited into the general fund of the Treasury and disbursed in accordance with this section.

(b) American Value Fund.—99 percent of all amounts deposited pursuant to subsection (a) shall be credited to the American Value Fund established in title VI of the POPULIST Act.

(c) United States Patent and Trademark Office.—1 percent of all amounts deposited pursuant to subsection (a) shall be transferred to the United States Patent and Trademark Office and shall be available, without further appropriation, solely for trademark examination, registry maintenance, fraud detection, enforcement of use requirements, and administrative modernization.

(d) Budgetary treatment.—Amounts transferred under this section shall be treated as offsetting receipts for purposes of the Congressional Budget Act of 1974 ([2 U.S.C. 621 et seq.](#)).

Subtitle D—Data Privacy and Protection

SEC. 561. DEFINITIONS.

(a) Definitions.—In this subtitle:

(1) Affirmative express consent.—

(A) In general.—The term "affirmative express consent" means an affirmative act by an individual that clearly communicates the individual's freely given, specific, and unambiguous authorization for an act or practice after having been informed, in response to a specific request from a covered entity that meets the requirements of subparagraph (B).

(B) Request requirements.—The requirements of this subparagraph with respect to a request from a covered entity to an individual are the following:

(i) The request is provided to the individual in a clear and conspicuous standalone disclosure made through the primary medium used to offer the covered entity's product or service, or only if the product or service is not offered in a medium that permits the making of the request under this paragraph, another medium regularly used in conjunction with the covered entity's product or service.

(ii) The request includes a description of the processing purpose for which the individual's consent is sought and—

(I) clearly states the specific categories of covered data that the covered entity shall collect, process, and transfer necessary to effectuate the processing purpose; and

(II) includes a prominent heading and is written in easy-to-understand language that would enable a reasonable individual to identify and understand the processing purpose for which consent is sought and the covered data to be collected, processed, or transferred by the covered entity for such processing purpose.

(iii) The request clearly explains the individual's applicable rights related to consent.

(iv) The request is made in a manner reasonably accessible to and usable by individuals with disabilities.