

## Q&A: arts law expert Marc Fineman on the ARTS Act

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Attorney Marc Fineman of Levenfeld Pearlstein LLC explains the substance of the Artistic Recognition for Talented Students Act, or ARTS Act, and what to expect if the legislation becomes law.

**Thomson Reuters:** First of all, when was the ARTS Act introduced in Congress and who introduced it?

**Marc Fineman:** The current version of the Artistic Recognition for Talented Students Act (or ARTS Act) was introduced on Feb. 2, 2021, as bipartisan, bicameral legislation in the U.S. Senate (S.169) and the U.S. House of Representatives (H.R.704). Sens. Thom Tillis, R-N.C., and Patrick Leahy, D-Vt., and Reps. Hakeem Jeffries, D-N.Y., and Nancy Mace, R-S.C., co-introduced the ARTS Act.

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A previous version of the ARTS Act was introduced in Congress as bipartisan, bicameral legislation in November 2019 by Sens. Tillis and Leahy and Reps. Jeffries and Martha Roby, R-Ala. While the Senate passed the previous version of the act, the legislation did not proceed past the House Committee on the Judiciary. Thus, it has been reintroduced during the current 117th Congress.

**TR:** What is the ARTS Act seeking to address?

**MF:** The ARTS Act seeks to provide an incentive for young people (specifically, middle school and high school students) who create certain works to register the copyrights for those works with the United States Copyright Office. The incentive takes the form of a waiver of certain Copyright Office fees for works that win one of two congressional competitions identified in the act.

The sponsors of the legislation believe that waiving such fees will incentivize copyright registration, teach students about the benefits of copyright protection and allow students to obtain copyright registrations regardless of their financial means.

Because the Register of Copyrights currently does not have the authority to waive the fees, the act seeks to amend Section 708 of the U.S. Copyright Act, 17 U.S.C.A. § 708, to grant such authority to the Register of Copyrights.

**TR:** What are the competitions sponsored by the Congressional Institute or established by Congress affected by this bill?

**MF:** The ARTS Act identifies, generally, two covered competitions that would be affected by the bill. The first is an art competition sponsored by the Congressional Institute that is open only to high school students. This competition currently is known as the Congressional Art Competition.

The Congressional Art Competition has been sponsored by the Congressional Institute since 2009, though the competition dates back to 1982. This annual competition recognizes and encourages artistic talent by celebrating the artistic achievements of the nation's high school students. A single winner is selected from each congressional district whose representative chooses to participate in the competition in a given year. According to the U.S. House of Representatives, more than 650,000 high school students have participated in the competition since it began.

The second is an academic competition in the fields of science, technology, engineering and mathematics (STEM). This competition currently is known as the Congressional App Challenge.

The Congressional App Challenge was established by the U.S. House of Representatives in 2013 to foster an appreciation for computer science and STEM and to encourage students to learn how to code by creating their own software applications. The first competition was held in 2015. The competition allows middle school and high school students to submit their applications to be judged based on creativity/originality, user experience/interface and programming skill. Like the Congressional Art Competition, a single winner is selected from each Congressional district whose Representative chooses to participate in the Congressional App Challenge in a given year. According to the U.S. House of Representatives, more than 14,000 students have participated in the competition since it began.

**TR:** If the legislation is passed, which copyright fees will be waived?

**MF:** The ARTS Act provides for a waiver of the fee due on filing an application for registration of a copyright claim. In other words, the Copyright Office fee for filing a copyright application (currently \$45 or \$65 for most types of works, if the application is filed electronically) would be waived.

**TR:** What is the time frame for applicants seeking to have fees waived?

**MF:** Under the ARTS Act, the Register of Copyrights would be required to waive the copyright application filing fee if the application is submitted to/filed with (the language still is being finalized) the Copyright Office by the last day of the calendar year following the year in which the work claimed by the application wins the applicable competition. For example, if a work of art wins the Congressional Art Competition in 2021, the filing fee for that work's copyright application would be waived through Dec. 31, 2022.

Notably, the act also gives the Register of Copyrights discretion to waive the filing fee for copyright applications for winning works that are filed after the period noted above, if the fee otherwise would have been waived had the application been timely filed. However, the act does not specify any criteria for granting such a waiver.

**TR:** How many copyright applicants potentially will be affected?

**MF:** Based on the 435 current congressional districts, up to 870 copyright applications per year potentially could receive the benefit of the mandatory fee waiver contemplated by the ARTS Act.

**TR:** Do you think the law will stimulate activity or participation in the competitions that are the subject of this bill?

**MF:** I think the ARTS Act may provide some additional incentive for students to participate in the Congressional Art Competition and the Congressional App Challenge. However, I think the impact of the act will be more pronounced in terms of stimulating student interest in and appreciation of copyright and intellectual property protection. In that sense, I think the experiential learning process of creating a work and obtaining a copyright registration for it will help students understand, in a very personal way, the importance and value of intellectual property.

## About the author



**Marc Fineman** is a partner and chair of the Intellectual Property Group at **Levenfeld Pearlstein LLC** in Chicago. He has experience in all facets of patent, trademark, industrial design and copyright law and represents a broad range of clients, including large, multinational public corporations, privately held middle market companies, family-owned businesses and individuals. In addition to his work protecting some of the most famous products and brands in the world, he has an interest in nontraditional trademarks such as sounds, shapes, colors and textures and was involved in obtaining the first known registration of a tactile sensory trademark in the United States. He can be reached at [mfineman@lplegal.com](mailto:mfineman@lplegal.com).

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