

## **US Code**

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### **TITLE 17—COPYRIGHTS**

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### **Amendments**

2010—Pub. L. 111–175, title I, §§ 102(a)(2), 103 (a)(2), 104 (a)(2), May 27, 2010, 124 Stat. 1219, 1227, 1231, added items 111, 119, and 122 and struck out former items 111 “Limitations on exclusive rights: Secondary transmissions”, 119 “Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing”, and 122 “Limitations on exclusive rights: Secondary transmissions by satellite carriers within local markets”.

2002—Pub. L. 107–273, div. C, title III, § 13210(2)(B), (3)(B), Nov. 2, 2002, 116 Stat. 1909, substituted “Reproduction” for “reproduction” in item 121 and “Limitations on exclusive rights: Secondary transmissions by satellite carriers within local markets” for “Limitations on exclusive rights; secondary transmissions by satellite carriers within local market” in item 122.

1999—Pub. L. 106–113, div. B, § 1000(a)(9) [title I, § 1002(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–527, added item 122.

1997—Pub. L. 105–80, § 12(a)(2), Nov. 13, 1997, 111 Stat. 1534, substituted “Limitations on exclusive rights: Computer programs” for “Scope of exclusive rights: Use in conjunction with computers and similar information systems” in item 117.

1996—Pub. L. 104–197, title III, § 316(b), Sept. 16, 1996, 110 Stat. 2417, added item 121.

1994—Pub. L. 103–465, title V, § 514(c), Dec. 8, 1994, 108 Stat. 4981, substituted “Copyright in restored works” for “Copyright in certain motion pictures” in item 104A.

1993—Pub. L. 103–198, § 3(a), (b)(2), Dec. 17, 1993, 107 Stat. 2309, renumbered item 116A as 116 and struck out former item 116 “Scope of exclusive rights in nondramatic musical works: Compulsory licenses for public performances by means of coin-operated phonorecord players.”

Pub. L. 103–182, title III, § 334(b), Dec. 8, 1993, 107 Stat. 2115, added item 104A.

1990—Pub. L. 101–650, title VI, § 603(b), title VII, § 704(b)(1), Dec. 1, 1990, 104 Stat. 5130, 5134, added items 106A and 120.

1988—Pub. L. 100–667, title II, § 202(6), Nov. 16, 1988, 102 Stat. 3958, added item 119.

Pub. L. 100–568, § 4(b)(2), Oct. 31, 1988, 102 Stat. 2857, substituted “Compulsory licenses for public performances” for “Public performances” in item 116 and added item 116A.

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## **§ 101. Definitions**

Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

An “anonymous work” is a work on the copies or phonorecords of which no natural person is identified as author.

An “architectural work” is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.

“Audiovisual works” are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines, or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

The “Berne Convention” is the Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto.

The “best edition” of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

A person’s “children” are that person’s immediate offspring, whether legitimate or not, and any children legally adopted by that person.

A “collective work” is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

A “compilation” is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term “compilation” includes collective works.

A “computer program” is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

“Copies” are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “copies” includes the material object, other than a phonorecord, in which the work is first fixed.

“Copyright owner”, with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

A “Copyright Royalty Judge” is a Copyright Royalty Judge appointed under section 802 of this title, and includes any individual serving as an interim Copyright Royalty Judge under such section.

A work is “created” when it is fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.

A “derivative work” is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a “derivative work”.

A “device”, “machine”, or “process” is one now known or later developed.

A “digital transmission” is a transmission in whole or in part in a digital or other non-analog format.

To “display” a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

An “establishment” is a store, shop, or any similar place of business open to the general public for the primary purpose of selling goods or services in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.

The term “financial gain” includes receipt, or expectation of receipt, of anything of value, including the receipt of other copyrighted works.

A work is “fixed” in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is “fixed” for purposes of this title if a fixation of the work is being made simultaneously with its transmission.

A “food service or drinking establishment” is a restaurant, inn, bar, tavern, or any other similar place of business in which the public or patrons assemble for the primary purpose of being served food or drink, in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.

The “Geneva Phonograms Convention” is the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, concluded at Geneva, Switzerland, on October 29, 1971.

The “gross square feet of space” of an establishment means the entire interior space of that establishment, and any adjoining outdoor space used to serve patrons, whether on a seasonal basis or otherwise.

The terms “including” and “such as” are illustrative and not limitative.

An “international agreement” is—

- (1) the Universal Copyright Convention;
- (2) the Geneva Phonograms Convention;
- (3) the Berne Convention;
- (4) the WTO Agreement;

- (5) the WIPO Copyright Treaty;
- (6) the WIPO Performances and Phonograms Treaty; and
- (7) any other copyright treaty to which the United States is a party.

A “joint work” is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

“Literary works” are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.

The term “motion picture exhibition facility” means a movie theater, screening room, or other venue that is being used primarily for the exhibition of a copyrighted motion picture, if such exhibition is open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances.

“Motion pictures” are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

To “perform” a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

A “performing rights society” is an association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.

“Phonorecords” are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “phonorecords” includes the material object in which the sounds are first fixed.

“Pictorial, graphic, and sculptural works” include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.

For purposes of section 513, a “proprietor” is an individual, corporation, partnership, or other entity, as the case may be, that owns an establishment or a food service or drinking establishment, except that no owner or operator of a radio or television station licensed by the Federal Communications Commission, cable system or satellite carrier, cable or satellite carrier service or programmer, provider of online services or network access or the operator of facilities therefor, telecommunications company, or any other such audio or audiovisual service or programmer now known or as may be developed in the future, commercial subscription music service, or owner

or operator of any other transmission service, shall under any circumstances be deemed to be a proprietor.

A “pseudonymous work” is a work on the copies or phonorecords of which the author is identified under a fictitious name.

“Publication” is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

To perform or display a work “publicly” means—

- (1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or
- (2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

“Registration”, for purposes of sections 205 (c)(2), 405, 406, 410 (d), 411, 412, and 506 (e), means a registration of a claim in the original or the renewed and extended term of copyright.

“Sound recordings” are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

“State” includes the District of Columbia and the Commonwealth of Puerto Rico, and any territories to which this title is made applicable by an Act of Congress.

A “transfer of copyright ownership” is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.

A “transmission program” is a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.

To “transmit” a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent.

A “treaty party” is a country or intergovernmental organization other than the United States that is a party to an international agreement.

The “United States”, when used in a geographical sense, comprises the several States, the District of Columbia and the Commonwealth of Puerto Rico, and the organized territories under the jurisdiction of the United States Government.

For purposes of section 411, a work is a “United States work” only if—

- (1) in the case of a published work, the work is first published—
  - (A) in the United States;
  - (B) simultaneously in the United States and another treaty party or parties, whose law grants a term of copyright protection that is the same as or longer than the term provided in the United States;

- (C) simultaneously in the United States and a foreign nation that is not a treaty party; or
- (D) in a foreign nation that is not a treaty party, and all of the authors of the work are nationals, domiciliaries, or habitual residents of, or in the case of an audiovisual work legal entities with headquarters in, the United States;
- (2) in the case of an unpublished work, all the authors of the work are nationals, domiciliaries, or habitual residents of the United States, or, in the case of an unpublished audiovisual work, all the authors are legal entities with headquarters in the United States; or
- (3) in the case of a pictorial, graphic, or sculptural work incorporated in a building or structure, the building or structure is located in the United States.

A “useful article” is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article that is normally a part of a useful article is considered a “useful article”.

The author’s “widow” or “widower” is the author’s surviving spouse under the law of the author’s domicile at the time of his or her death, whether or not the spouse has later remarried.

The “WIPO Copyright Treaty” is the WIPO Copyright Treaty concluded at Geneva, Switzerland, on December 20, 1996.

The “WIPO Performances and Phonograms Treaty” is the WIPO Performances and Phonograms Treaty concluded at Geneva, Switzerland, on December 20, 1996.

A “work of visual art” is—

- (1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or
- (2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

A work of visual art does not include—

- (A) (i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;
- (ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;
- (iii) any portion or part of any item described in clause (i) or (ii);
- (B) any work made for hire; or
- (C) any work not subject to copyright protection under this title.

A “work of the United States Government” is a work prepared by an officer or employee of the United States Government as part of that person’s official duties.

A “work made for hire” is—

- (1) a work prepared by an employee within the scope of his or her employment; or
- (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing,

concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

In determining whether any work is eligible to be considered a work made for hire under paragraph (2), neither the amendment contained in section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106–113, nor the deletion of the words added by that amendment—

(A) shall be considered or otherwise given any legal significance, or

(B) shall be interpreted to indicate congressional approval or disapproval of, or acquiescence in, any judicial determination,

by the courts or the Copyright Office. Paragraph (2) shall be interpreted as if both section 2(a)(1) of the Work Made For Hire and Copyright Corrections Act of 2000 and section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106–113, were never enacted, and without regard to any inaction or awareness by the Congress at any time of any judicial determinations.

The terms “WTO Agreement” and “WTO member country” have the meanings given those terms in paragraphs (9) and (10), respectively, of section 2 of the Uruguay Round Agreements Act.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2541; Pub. L. 96–517, § 10(a), Dec. 12, 1980, 94 Stat. 3028; Pub. L. 100–568, § 4(a)(1), Oct. 31, 1988, 102 Stat. 2854; Pub. L. 101–650, title VI, § 602, title VII, § 702, Dec. 1, 1990, 104 Stat. 5128, 5133; Pub. L. 102–307, title I, § 102(b)(2), June 26, 1992, 106 Stat. 266; Pub. L. 102–563, § 3(b), Oct. 28, 1992, 106 Stat. 4248; Pub. L. 104–39, § 5(a), Nov. 1, 1995, 109 Stat. 348; Pub. L. 105–80, § 12(a)(3), Nov. 13, 1997, 111 Stat. 1534; Pub. L. 105–147, § 2(a), Dec. 16, 1997, 111 Stat. 2678; Pub. L. 105–298, title II, § 205, Oct. 27, 1998, 112 Stat. 2833; Pub. L. 105–304, title I, § 102(a), Oct. 28, 1998, 112 Stat. 2861; Pub. L. 106–44, § 1(g)(1), Aug. 5, 1999, 113 Stat. 222; Pub. L. 106–113, div. B, § 1000(a)(9) [title I, § 1011(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A–544; Pub. L. 106–379, § 2(a), Oct. 27, 2000, 114 Stat. 1444; Pub. L. 107–273, div. C, title III, § 13210(5), Nov. 2, 2002, 116 Stat. 1909; Pub. L. 108–419, § 4, Nov. 30, 2004, 118 Stat. 2361; Pub. L. 109–9, title I, § 102(c), Apr. 27, 2005, 119 Stat. 220; Pub. L. 111–295, § 6(a), Dec. 9, 2010, 124 Stat. 3181.)

## **Historical and Revision Notes**

### **house report no. 94–1476**

The significant definitions in this section will be mentioned or summarized in connection with the provisions to which they are most relevant.

## **References in Text**

Section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, referred to in definition of “work made for hire”, is section 1000 (a)(9) [title I, § 1011(d)] of Pub. L. 106–113, which amended par. (2) of that definition. See 1999 Amendment note below.

Section 2(a)(1) of the Work Made For Hire and Copyright Corrections Act of 2000, referred to in definition of “work made for hire”, is section 2(a)(1) of Pub. L. 106—379, which amended par. (2) of that definition. See 2000 Amendment note below.

Section 2 of the Uruguay Round Agreements Act, referred to in definitions of “WTO Agreement” and “WTO member country”, is classified to section 3501 of Title 19, Customs Duties.

## **Amendments**

2010—Pub. L. 111–295, § 6(a)(3), transferred the definition of “food service or drinking establishment” to appear after the definition of “fixed”.

Pub. L. 111–295, § 6(a)(2), transferred the definition of “motion picture exhibition facility” to appear after the definition of “Literary works”.

Pub. L. 111–295, § 6(a)(1), which directed transfer of the definition of “Copyright Royalty Judges” to appear after the definition of “Copyright owner”, was executed by so transferring the definition of “Copyright Royalty Judge”, to reflect the probable intent of Congress.

2005—Pub. L. 109–9 inserted definition of “motion picture exhibition facility” after definition of “Motion pictures”.

2004—Pub. L. 108–419 inserted definition of “Copyright Royalty Judge” after definition of “Copies”.

2002—Pub. L. 107–273, § 13210(5)(B), transferred definition of “Registration” to appear after definition of “publicly”.

Pub. L. 107–273, § 13210(5)(A), transferred definition of “computer program” to appear after definition of “compilation”.

2000—Pub. L. 106–379, § 2(a)(2), in definition of “work made for hire”, inserted after par. (2) provisions relating to considerations and interpretations to be used in determining whether any work is eligible to be considered a work made for hire under par. (2).

Pub. L. 106–379, § 2(a)(1), in definition of “work made for hire”, struck out “as a sound recording,” after “motion picture or other audiovisual work,” in par. (2).

1999—Pub. L. 106–113, which directed the insertion of “as a sound recording,” after “audiovisual work” in par. (2) of definition relating to work made for hire, was executed by making the insertion after “audiovisual work,” to reflect the probable intent of Congress.

Pub. L. 106–44, § 1(g)(1)(B), in definition of “proprietor”, substituted “For purposes of section 513, a ‘proprietor’ ” for “A ‘proprietor’ ”.

Pub. L. 106–44, § 1(g)(1)(A), transferred definition of “United States work” to appear after definition of “United States”.

1998—Pub. L. 105–304, § 102(a)(1), struck out definition of “Berne Convention work”.

Pub. L. 105–304, § 102(a)(2), in definition of “country of origin”, substituted “For purposes of section 411, a work is a ‘United States work’ only if” for “The ‘country of origin’ of a Berne Convention work, for purposes of section 411, is the United States if” in introductory provisions, substituted “treaty party or parties” for “nation or nations adhering to the Berne Convention” in par. (1)(B) and “is not a treaty party” for “does not adhere to the Berne Convention” in par. (1)(C), (D), and struck out at end “For the purposes of section 411, the ‘country of origin’ of any other Berne Convention work is not the United States.”

Pub. L. 105–298, § 205(1), inserted definitions of “establishment” and “food service or drinking establishment”.

Pub. L. 105–304, § 102(a)(3), inserted definition of “Geneva Phonograms Convention”.

Pub. L. 105–298, § 205(2), inserted definition of “gross square feet of space”.

Pub. L. 105–304, § 102(a)(4), inserted definition of “international agreement”.

Pub. L. 105–298, § 205(3), (4), inserted definitions of “performing rights society” and “proprietor”.

Pub. L. 105–304, § 102(a)(5), inserted definition of term “treaty party”.

Pub. L. 105–304, § 102(a)(6), inserted definition of term “WIPO Copyright Treaty”.

Pub. L. 105–304, § 102(a)(7), inserted definition of term “WIPO Performances and Phonograms Treaty”.

Pub. L. 105–304, § 102(a)(8), inserted definitions of terms “WTO Agreement” and “WTO member country”.

1997—Pub. L. 105–147 inserted definition of “financial gain”.

Pub. L. 105–80, in definition of to perform or to display a work “publicly”, substituted “process” for “processs” in par. (2).

1995—Pub. L. 104–39 inserted definition of “digital transmission”.

1992—Pub. L. 102–563 substituted “Except as otherwise provided in this title, as used” for “As used” in introductory provisions.

Pub. L. 102–307 inserted definition of “registration”.

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscpri.html>).*

1990—Pub. L. 101–650, § 702(a), inserted definition of “architectural work”.

Pub. L. 101–650, § 702(b), in definition of “Berne Convention work” added par. (5).

Pub. L. 101–650, § 602, inserted definition of “work of visual art”.

1988—Pub. L. 100–568, § 4(a)(1)(B), inserted definitions of “The Berne Convention” and “Berne Convention work”.

Pub. L. 100–568, § 4(a)(1)(C), inserted definition of “country of origin”.

Pub. L. 100–568, § 4(a)(1)(A), in definition of “Pictorial, graphic, and sculptural works” substituted “diagrams, models, and technical drawings, including architectural plans” for “technical drawings, diagrams, and models”.

1980—Pub. L. 96–517 inserted definition of “computer program”.

### **Effective Date of 2004 Amendment**

Amendment by Pub. L. 108–419 effective 6 months after Nov. 30, 2004, subject to transition provisions, see section 6 of Pub. L. 108–419, set out as an Effective Date; Transition Provisions note under section 801 of this title.

### **Effective Date of 2000 Amendment**

Pub. L. 106–379, § 2(b)(1), Oct. 27, 2000, 114 Stat. 1444, provided that: “The amendments made by this section [amending this section] shall be effective as of November 29, 1999.”

### **Effective Date of 1999 Amendment**

Pub. L. 106–113, div. B, § 1000(a)(9) [title I, § 1012], Nov. 29, 1999, 113 Stat. 1536, 1501A–544, provided that: “Sections 1001, 1003, 1005, 1007, 1008, 1009, 1010, and 1011 [enacting sections 338 and 339 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, amending this section, sections 111, 119, 501, and 510 of this title, and section 325 of Title 47, enacting provisions set out as a note under this section and section 325 of Title 47, and amending provisions set out as a note under section 119 of this title] (and the amendments made by such sections) shall take effect on the date of the enactment of this Act [Nov. 29, 1999]. The amendments made by sections 1002, 1004, and 1006 [enacting section 122 of this title and amending sections 119 and 501 of this title] shall be effective as of July 1, 1999.”

### **Effective Date of 1998 Amendments**

Pub. L. 105–304, title I, § 105, Oct. 28, 1998, 112 Stat. 2877, provided that:

“(a) In General.—Except as otherwise provided in this title [see section 101 of Pub. L. 105–304, set out as a Short Title of 1998 Amendments note below], this title and the amendments made by this title shall take effect on the date of the enactment of this Act [Oct. 28, 1998].

“(b) Amendments Relating to Certain International Agreements.—(1) The following shall take effect upon the entry into force of the WIPO Copyright Treaty with respect to the United States [Mar. 6, 2002]:

“(A) Paragraph (5) of the definition of ‘international agreement’ contained in section 101 of title 17, United States Code, as amended by section 102(a)(4) of this Act.

“(B) The amendment made by section 102(a)(6) of this Act [amending this section].

“(C) Subparagraph (C) of section 104A (h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this Act.

“(D) Subparagraph (C) of section 104A (h)(3) of title 17, United States Code, as amended by section 102(c)(2) of this Act.

“(2) The following shall take effect upon the entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States [May 20, 2002]:

“(A) Paragraph (6) of the definition of ‘international agreement’ contained in section 101 of title 17, United States Code, as amended by section 102(a)(4) of this Act.

“(B) The amendment made by section 102(a)(7) of this Act [amending this section].

“(C) The amendment made by section 102(b)(2) of this Act [amending section 104 of this title].

“(D) Subparagraph (D) of section 104A (h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this Act.

“(E) Subparagraph (D) of section 104A (h)(3) of title 17, United States Code, as amended by section 102(c)(2) of this Act.

“(F) The amendments made by section 102(c)(3) of this Act [amending section 104A of this title].”

Pub. L. 105–298, title II, § 207, Oct. 27, 1998, 112 Stat. 2834, provided that: “This title [enacting section 512 of this title, amending this section and sections 110 and 504 of this title, and enacting provisions set out as notes under this section] and the amendments made by this title shall take effect 90 days after the date of the enactment of this Act [Oct. 27, 1998].”

### **Effective Date of 1995 Amendment**

Section 6 of Pub. L. 104–39 provided that: “This Act [see Short Title of 1995 Amendment note below] and the amendments made by this Act shall take effect 3 months after the date of enactment of this Act [Nov. 1, 1995], except that the provisions of sections 114 (e) and 114 (f) of title 17, United States Code (as added by section 3 of this Act) shall take effect immediately upon the date of enactment of this Act.”

### **Effective Date of 1992 Amendment**

Section 102(g) of Pub. L. 102–307, as amended by Pub. L. 105–298, title I, § 102(d)(2)(B), Oct. 27, 1998, 112 Stat. 2828, provided that:

“(1) Subject to paragraphs (2) and (3), this section [amending this section and sections 304, 408, 409, and 708 of this title and enacting provisions set out as a note under section 304 of this title] and the amendments made by this section shall take effect on the date of the enactment of this Act [June 26, 1992].

“(2) The amendments made by this section shall apply only to those copyrights secured between January 1, 1964, and December 31, 1977. Copyrights secured before January 1, 1964, shall be governed by the provisions of section 304 (a) of title 17, United States Code, as in effect on the day before the effective date of this section [June 26, 1992], except each reference to forty-seven years in such provisions shall be deemed to be 67 years.

“(3) This section and the amendments made by this section shall not affect any court proceedings pending on the effective date of this section.”

### **Effective Date of 1990 Amendment**

Amendment by section 602 of Pub. L. 101–650 effective 6 months after Dec. 1, 1990, see section 610 of Pub. L. 101–650, set out as an Effective Date note under section 106A of this title.

Section 706 of title VII of Pub. L. 101–650 provided that: “The amendments made by this title [enacting section 120 of this title and amending this section and sections 102, 106, and 301 of this title], apply to—

“(1) any architectural work created on or after the date of the enactment of this Act [Dec. 1, 1990]; and

“(2) any architectural work that, on the date of the enactment of this Act, is unconstructed and embodied in unpublished plans or drawings, except that protection for such architectural work under title 17, United States Code, by virtue of the amendments made by this title, shall terminate on December 31, 2002, unless the work is constructed by that date.”

### **Effective Date of 1988 Amendment**

Section 13 of Pub. L. 100–568 provided that:

“(a) Effective Date.—This Act and the amendments made by this Act [enacting section 116A of this title, amending this section and sections 104, 116, 205, 301, 401 to 408, 411, 501, 504, 801, and 804 of this title, and enacting provisions set out as notes under this section] take effect on the date on which the Berne Convention (as defined in section 101 of title 17, United States Code) enters into force with respect to the United States [Mar. 1, 1989]. [The Berne Convention entered into force with respect to the United States on Mar. 1, 1989.]

“(b) Effect on Pending Cases.—Any cause of action arising under title 17, United States Code, before the effective date of this Act shall be governed by the provisions of such title as in effect when the cause of action arose.”

### **Short Title of 2010 Amendment**

Pub. L. 111–295, § 1, Dec. 9, 2010, 124 Stat. 3180, provided that: “This Act [amending this section and sections 114, 115, 119, 205, 303, 409, 503, 504, 512, 602, 704, 803, 1203, and 1204 of this title and section 2318 of Title 18, Crimes and Criminal Procedure, and repealing section 601 of this title] may be cited as the ‘Copyright Cleanup, Clarification, and Corrections Act of 2010’.”

Pub. L. 111–175, § 1(a), May 27, 2010, 124 Stat. 1218, provided that: “This Act [enacting section 342 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, amending sections 111, 119, 122, 708, and 804 of this title and sections 325, 335, and 338 to 340 of Title 47, enacting provisions set out as notes under sections 111 and 119 of this title and sections 325, 338, and 340 of Title 47, and repealing provisions set out as a note under section 119 of this title] may be cited as the ‘Satellite Television Extension and Localism Act of 2010’.”

Pub. L. 111–151, § 1, Mar. 26, 2010, 124 Stat. 1027, provided that: “This Act [amending section 119 of this title and section 325 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and amending provisions set out as a note under section 119 of this title] may be cited as the ‘Satellite Television [sic] Extension Act of 2010’.”

### **Short Title of 2009 Amendment**

Pub. L. 111–36, § 1, June 30, 2009, 123 Stat. 1926, provided that: “This Act [amending section 114 of this title] may be cited as the ‘Webcaster Settlement Act of 2009’.”

### **Short Title of 2008 Amendment**

Pub. L. 110–435, § 1, Oct. 16, 2008, 122 Stat. 4974, provided that: “This Act [amending section 114 of this title] may be cited as the ‘Webcaster Settlement Act of 2008’.”

Pub. L. 110–434, § 1(a), Oct. 16, 2008, 122 Stat. 4972, provided that: “This Act [amending section 1301 of this title] may be cited as the ‘Vessel Hull Design Protection Amendments of 2008’.”

### **Short Title of 2006 Amendment**

Pub. L. 109–303, § 1, Oct. 6, 2006, 120 Stat. 1478, provided that: “This Act [amending sections 111, 114, 115, 118, 119, 801 to 804, and 1007 of this title, enacting provisions set out as notes under sections 111 and 119 of this title, and amending provisions set out as a note under section 801 of this title] may be cited as the ‘Copyright Royalty Judges Program Technical Corrections Act’.”

### **Short Title of 2005 Amendment**

Pub. L. 109–9, § 1, Apr. 27, 2005, 119 Stat. 218, provided that: “This Act [enacting section 2319B of Title 18, Crimes and Criminal Procedure, amending this section and sections 108, 110, 408, 411, 412, and 506 of this title, sections 179m, 179n, 179p, 179q, and 179w of Title 2, The Congress, section 1114 of Title 15, Commerce and Trade, section 2319 of Title 18, and sections 151703, 151705, 151706, and 151711 of Title 36, Patriotic and National Observances, Ceremonies, and Organizations, enacting provisions set out as notes under this section, section 179l of Title 2, and section 101 of Title 36, and provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Family Entertainment and Copyright Act of 2005’.”

Pub. L. 109–9, title I, § 101, Apr. 27, 2005, 119 Stat. 218, provided that: “This title [enacting section 2319B of Title 18, Crimes and Criminal Procedure, amending this section, sections 408, 411, 412, and 506 of this title, and section 2319 of Title 18, and enacting provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Artists’ Rights and Theft Prevention Act of 2005’ or the ‘ART Act’.”

Pub. L. 109–9, title II, § 201, Apr. 27, 2005, 119 Stat. 223, provided that: “This title [amending section 110 of this title and section 1114 of Title 15, Commerce and Trade] may be cited as the ‘Family Movie Act of 2005’.”

Pub. L. 109–9, title IV, § 401, Apr. 27, 2005, 119 Stat. 226, provided that: “This title [amending section 108 of this title] may be cited as the ‘Preservation of Orphan Works Act’.”

### **Short Title of 2004 Amendments**

Pub. L. 108–447, div. J, title IX, § 1(a), Dec. 8, 2004, 118 Stat. 3393, provided that: “This title [enacting sections 340 and 341 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, amending sections 111, 119, 122, and 803 of this title and sections 307, 312, 325, 338, and 339 of Title 47, enacting provisions set out as notes under section 119 of this title and sections 325 and 338 of Title 47, and amending provisions set out as a note under section 119 of this title] may be cited as the ‘Satellite Home Viewer Extension and Reauthorization Act of 2004’ or the ‘W. J. (Billy) Tauzin Satellite Television Act of 2004’.”

Pub. L. 108–419, § 1, Nov. 30, 2004, 118 Stat. 2341, provided that: “This Act [enacting chapter 8 of this title, amending this section and sections 111, 112, 114 to 116, 118, 119, 1004, 1006, 1007, and 1010 of this title, and enacting provisions set out as a note under section 801 of this title] may be cited as the ‘Copyright Royalty and Distribution Reform Act of 2004’.”

### **Short Title of 2002 Amendments**

Pub. L. 107–321, § 1, Dec. 4, 2002, 116 Stat. 2780, provided that: “This Act [amending section 114 of this title and enacting provisions set out as notes under section 114 of this title] may be cited as the ‘Small Webcaster Settlement Act of 2002’.”

Pub. L. 107–273, div. C, title III, § 13301(a), Nov. 2, 2002, 116 Stat. 1910, provided that: “This subtitle [subtitle C (§ 13301) of title III of div. C of Pub. L. 107–273, amending sections 110, 112, and 802 of this title] may be cited as the ‘Technology, Education, and Copyright Harmonization Act of 2002’.”

### **Short Title of 2000 Amendment**

Pub. L. 106–379, § 1, Oct. 27, 2000, 114 Stat. 1444, provided that: “This Act [amending this section and sections 121, 705, and 708 of this title, repealing section 710 of this title, and enacting provisions set out as notes under this section and section 708 of this title] may be cited as the ‘Work Made For Hire and Copyright Corrections Act of 2000’.”

### **Short Title of 1999 Amendments**

Pub. L. 106–160, § 1, Dec. 9, 1999, 113 Stat. 1774, provided that: “This Act [amending section 504 of this title and enacting provisions set out as notes under section 504 of this title and section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Digital Theft Deterrence and Copyright Damages Improvement Act of 1999’.”

Pub. L. 106–113, div. B, § 1000(a)(9) [title I, § 1001], Nov. 29, 1999, 113 Stat. 1536, 1501A–523, provided that: “This title [enacting section 122 of this title and sections 338 and 339 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, amending this section, sections 111, 119, 501, and 510 of this title, and section 325 of Title 47, enacting provisions set out as notes under this section and section 325 of Title 47, and amending provisions set out as a note under section 119 of this title] may be cited as the ‘Satellite Home Viewer Improvement Act of 1999’.”

### **Short Title of 1998 Amendments**

Pub. L. 105–304, § 1, Oct. 28, 1998, 112 Stat. 2860, provided that: “This Act [enacting section 512 and chapters 12 and 13 of this title and section 4001 of Title 28, Judiciary and Judicial Procedure, amending this section, sections 104, 104A, 108, 112, 114, 117, 411, 507, 701, and 801 to 803 of this title, section 5314 of Title 5, Government Organization and Employees, sections 1338, 1400, and 1498 of Title 28, and section 3 of Title 35, Patents, and enacting provisions set out as notes under this section and sections 108, 109, 112, 114, 512, and 1301 of this title] may be cited as the ‘Digital Millennium Copyright Act’.”

Pub. L. 105–304, title I, § 101, Oct. 28, 1998, 112 Stat. 2861, provided that: “This title [enacting chapter 12 of this title, amending this section and sections 104, 104A, 411, and 507 of this title, and enacting provisions set out as notes under this section and section 109 of this title] may be cited as the ‘WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998’.”

Pub. L. 105–304, title II, § 201, Oct. 28, 1998, 112 Stat. 2877, provided that: “This title [enacting section 512 of this title and provisions set out as a note under section 512 of this title] may be cited as the ‘Online Copyright Infringement Liability Limitation Act’.”

Pub. L. 105–304, title III, § 301, Oct. 28, 1998, 112 Stat. 2886, provided that: “This title [amending section 117 of this title] may be cited as the ‘Computer Maintenance Competition Assurance Act’.”

Pub. L. 105–304, title V, § 501, Oct. 28, 1998, 112 Stat. 2905, provided that: “This Act [probably means “this title”, enacting chapter 13 of this title and amending sections 1338, 1400, and 1498 of Title 28, Judiciary and Judicial Procedure] may be referred to as the ‘Vessel Hull Design Protection Act’.”

Pub. L. 105–298, title I, § 101, Oct. 27, 1998, 112 Stat. 2827, provided that: “This title [amending sections 108, 203, and 301 to 304 of this title, enacting provisions set out as a note under section 108 of this title, and amending provisions set out as notes under this section and section 304 of this title] may be referred to as the ‘Sonny Bono Copyright Term Extension Act’.”

Pub. L. 105–298, title II, § 201, Oct. 27, 1998, 112 Stat. 2830, provided that: “This title [enacting section 512 of this title, amending this section and sections 110 and 504 of this title, and enacting provisions set out as notes under this section] may be cited as the ‘Fairness In Music Licensing Act of 1998’.”

### **Short Title of 1995 Amendment**

Section 1 of Pub. L. 104–39 provided that: “This Act [amending this section and sections 106, 111, 114, 115, 119, and 801 to 803 of this title and enacting provisions set out as a note above] may be cited as the ‘Digital Performance Right in Sound Recordings Act of 1995’.”

### **Short Title of 1994 Amendment**

Pub. L. 103–369, § 1, Oct. 18, 1994, 108 Stat. 3477, provided that: “This Act [amending sections 111 and 119 of this title and enacting and repealing provisions set out as notes under section 119 of this title] may be cited as the ‘Satellite Home Viewer Act of 1994’.”

### **Short Title of 1993 Amendment**

Pub. L. 103–198, § 1, Dec. 17, 1993, 107 Stat. 2304, provided that: “This Act [amending sections 111, 116, 118, 119, 801 to 803, 1004 to 1007, and 1010 of this title and section 1288 of Title 8, Aliens and Nationality, renumbering sections 116A and 804 of this title as sections 116 and 803, respectively, of this title, repealing sections 116, 803, and 805 to 810 of this title, and enacting provisions set out as notes under section 801 of this title and section 1288 of Title 8] may be cited as the ‘Copyright Royalty Tribunal Reform Act of 1993’.”

### **Short Title of 1992 Amendments**

Pub. L. 102–563, § 1, Oct. 28, 1992, 106 Stat. 4237, provided that: “This Act [enacting chapter 10 of this title, amending this section, sections 801, 804, and 912 of this title, and section 1337 of Title 19, Customs Duties, and enacting provisions set out as a note under section 1001 of this title] may be cited as the ‘Audio Home Recording Act of 1992’.”

Section 1 of Pub. L. 102–307 provided that: “This Act [enacting sections 179 to 179k of Title 2, The Congress, amending this section and sections 108, 304, 408, 409, and 708 of this title, repealing sections 178 to 178l of Title 2, enacting provisions set out as notes under this section, section 304 of this title, and section 179 of Title 2, and repealing provisions set out as a note under section 178 of Title 2] may be cited as the ‘Copyright Amendments Act of 1992’.”

Section 101 of title I of Pub. L. 102–307 provided that: “This title [amending this section and sections 304, 408, 409, and 708 of this title and enacting provisions set out as notes under this section and section 304 of this title] may be referred to as the ‘Copyright Renewal Act of 1992’.”

### **Short Title of 1991 Amendment**

Pub. L. 102–64, § 1, June 28, 1991, 105 Stat. 320, provided that: “This Act [amending section 914 of this title and enacting provisions set out as a note under section 914 of this title] may be cited as the ‘Semiconductor International Protection Extension Act of 1991’.”

### **Short Title of 1990 Amendments**

Section 601 of title VI of Pub. L. 101–650 provided that: “This title [enacting section 106A of this title, amending this section and sections 107, 113, 301, 411, 412, 501, and 506 of this title, and enacting provisions set out as notes under this section and section 106A of this title] may be cited as the ‘Visual Artists Rights Act of 1990’.”

Section 701 of title VII of Pub. L. 101–650 provided that: “This title [enacting section 120 of this title, amending this section and sections 102, 106, and 301 of this title, and enacting provisions set out as a note above] may be cited as the ‘Architectural Works Copyright Protection Act’.”

Section 801 of title VIII of Pub. L. 101–650 provided that: “This title [amending section 109 of this title and enacting provisions set out as notes under sections 109 and 205 of this title] may be cited as the ‘Computer Software Rental Amendments Act of 1990’.”

Pub. L. 101–553, § 1, Nov. 15, 1990, 104 Stat. 2749, provided that: “This Act [enacting section 511 of this title, amending sections 501, 910, and 911 of this title, and enacting provisions set out as a note under section 501 of this title] may be cited as the ‘Copyright Remedy Clarification Act’.”

Pub. L. 101–319, § 1, July 3, 1990, 104 Stat. 290, provided that: “This Act [amending sections 701 and 802 of this title and sections 5315 and 5316 of Title 5, Government Organization and Employees, and enacting provisions set out as a note under section 701 of this title] may be cited as the ‘Copyright Royalty Tribunal Reform and Miscellaneous Pay Act of 1989’.”

Pub. L. 101–318, § 1, July 3, 1990, 104 Stat. 287, provided that: “This Act [amending sections 106, 111, 704, 708, 801, and 804 of this title and enacting provisions set out as notes under sections 106, 111, 708, and 804 of this title] may be cited as the ‘Copyright Fees and Technical Amendments Act of 1989’.”

### **Short Title of 1988 Amendments**

Pub. L. 100–667, title II, § 201, Nov. 16, 1988, 102 Stat. 3949, provided that: “This title [enacting section 119 of this title and sections 612 and 613 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, amending sections 111, 501, 801, and 804 of this title and section 605 of Title 47, and enacting provisions set out as notes under section 119 of this title] may be cited as the ‘Satellite Home Viewer Act of 1988’.” [Section ceases to be effective Dec. 31, 1994, see section 207 of Pub. L. 100–667, set out as an Effective and Termination Dates note under section 119 of this title.]

Section 1(a) of Pub. L. 100–568 provided that: “This Act [enacting section 116A of this title, amending this section and sections 104, 116, 205, 301, 401 to 408, 411, 501, 504, 801, and 804 of this title, and enacting provisions set out as notes under this section] may be cited as the ‘Berne Convention Implementation Act of 1988’.”

### **Short Title of 1984 Amendments**

Pub. L. 98–620, title III, § 301, Nov. 8, 1984, 98 Stat. 3347, provided that: “This title [enacting chapter 9 of this title] may be cited as the ‘Semiconductor Chip Protection Act of 1984’.”

Pub. L. 98–450, § 1, Oct. 4, 1984, 98 Stat. 1727, provided that: “This Act [amending sections 109 and 115 of this title and enacting provisions set out as a note under section 109 of this title] may be cited as the ‘Record Rental Amendment of 1984’.”

### **Short Title of 1976 Act**

Pub. L. 94–553, Oct. 19, 1976, 90 Stat. 2541, which enacted this title and section 170 of Title 2, The Congress, amended section 131 of Title 2, section 290e of Title 15, Commerce and Trade, section 2318 of Title 18, Crimes and Criminal Procedure, section 543 of Title 26, Internal Revenue Code, section 1498 of Title 28, Judiciary and Judicial Procedure, sections 3202 and 3206 of Title 39, Postal Service, and sections 505 and 2117 of Title 44, Public Printing and Documents, and enacted provisions set out as notes preceding this section and under sections 104, 115, 304, 401, 407, 410, and 501 of this title, is popularly known as the “Copyright Act of 1976”.

### **Severability**

Pub. L. 106–379, § 2(b)(2), Oct. 27, 2000, 114 Stat. 1444, provided that: “If the provisions of paragraph (1) [see Effective Date of 2000 Amendment note above], or any application of such provisions to any person or circumstance, is held to be invalid, the remainder of this section [amending this section and enacting provisions set out as a note above], the amendments made by this section, and the application of this section to any other person or circumstance shall not be affected by such invalidation.”

### **Construction of 1998 Amendment**

Pub. L. 105–298, title II, § 206, Oct. 27, 1998, 112 Stat. 2834, provided that: “Except as otherwise provided in this title [enacting section 512 of this title, amending this section and sections 110 and 504 of this title, and enacting provisions set out as notes under this section], nothing in this title shall be construed to relieve any performing rights society of any obligation under any State or local statute, ordinance, or law, or consent decree or other court order governing its operation, as such statute, ordinance, law, decree, or order is in effect on the date of the enactment of this Act [Oct. 27, 1998], as it may be amended after such date, or as it may be issued or agreed to after such date.”

### **First Amendment Application**

Section 609 of title VI of Pub. L. 101–650 provided that: “This title [see Short Title of 1990 Amendments note above] does not authorize any governmental entity to take any action or enforce restrictions prohibited by the First Amendment to the United States Constitution.”

### **Berne Convention; Congressional Declarations**

Section 2 of Pub. L. 100–568 provided that: “The Congress makes the following declarations:

“(1) The Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto (hereafter in this Act [see Short Title of 1988 Amendment note above] referred to as the ‘Berne Convention’) are not self-executing under the Constitution and laws of the United States.

“(2) The obligations of the United States under the Berne Convention may be performed only pursuant to appropriate domestic law.

“(3) The amendments made by this Act, together with the law as it exists on the date of the enactment of this Act [Oct. 31, 1988], satisfy the obligations of the United States in adhering to the Berne Convention and no further rights or interests shall be recognized or created for that purpose.”

### **Berne Convention; Construction**

Section 3 of Pub. L. 100–568 provided that:

“(a) Relationship With Domestic Law.—The provisions of the Berne Convention—

“(1) shall be given effect under title 17, as amended by this Act [see Short Title of 1988 Amendment note above], and any other relevant provision of Federal or State law, including the common law; and

“(2) shall not be enforceable in any action brought pursuant to the provisions of the Berne Convention itself.

“(b) Certain Rights Not Affected.—The provisions of the Berne Convention, the adherence of the United States thereto, and satisfaction of United States obligations thereunder, do not expand or reduce any right of an author of a work, whether claimed under Federal, State, or the common law—

“(1) to claim authorship of the work; or

“(2) to object to any distortion, mutilation, or other modification of, or other derogatory action in relation to, the work, that would prejudice the author’s honor or reputation.”

## **Works in Public Domain Without Copyright Protection**

Section 12 of Pub. L. 100–568 provided that: “Title 17, United States Code, as amended by this Act [see Short Title of 1988 Amendment note above], does not provide copyright protection for any work that is in the public domain in the United States.”

## **Definitions**

Pub. L. 103–465, title V, § 501, Dec. 8, 1994, 108 Stat. 4973, provided that: “For purposes of this title [enacting section 1101 of this title and section 2319A of Title 18, Crimes and Criminal Procedure, amending sections 104A and 109 of this title, sections 1052 and 1127 of Title 15, Commerce and Trade, and sections 41, 104, 111, 119, 154, 156, 172, 173, 252, 262, 271, 272, 287, 292, 295, 307, 365, and 373 of Title 35, Patents, enacting provisions set out as notes under section 1052 of Title 15 and sections 104 and 154 of Title 35, and amending provisions set out as a note under section 109 of this title]—

“(1) the term ‘WTO Agreement’ has the meaning given that term in section 2(9) of the Uruguay Round Agreements Act [19 U.S.C. 3501 (9)]; and

“(2) the term ‘WTO member country’ has the meaning given that term in section 2(10) of the Uruguay Round Agreements Act.”

.....

## **§ 102. Subject matter of copyright: In general**

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2544; Pub. L. 101–650, title VII, § 703, Dec. 1, 1990, 104 Stat. 5133.)

## **Historical and Revision Notes**

### **house report no. 94–1476**

Original Works of Authorship. The two fundamental criteria of copyright protection—originality and fixation in tangible form are restated in the first sentence of this cornerstone provision. The phrase “original works or authorship,” which is purposely left undefined, is intended to incorporate without change the standard of originality established by

the courts under the present copyright statute. This standard does not include requirements of novelty, ingenuity, or esthetic merit, and there is no intention to enlarge the standard of copyright protection to require them.

In using the phrase “original works of authorship,” rather than “all the writings of an author” now in section 4 of the statute [section 4 of former title 17], the committee’s purpose is to avoid exhausting the constitutional power of Congress to legislate in this field, and to eliminate the uncertainties arising from the latter phrase. Since the present statutory language is substantially the same as the empowering language of the Constitution [Const. Art. I, § 8, cl. 8], a recurring question has been whether the statutory and the constitutional provisions are coextensive. If so, the courts would be faced with the alternative of holding copyrightable something that Congress clearly did not intend to protect, or of holding constitutionally incapable of copyright something that Congress might one day want to protect. To avoid these equally undesirable results, the courts have indicated that “all the writings of an author” under the present statute is narrower in scope than the “writings” of “authors” referred to in the Constitution. The bill avoids this dilemma by using a different phrase—“original works of authorship”—in characterizing the general subject matter of statutory copyright protection.

The history of copyright law has been one of gradual expansion in the types of works accorded protection, and the subject matter affected by this expansion has fallen into two general categories. In the first, scientific discoveries and technological developments have made possible new forms of creative expression that never existed before. In some of these cases the new expressive forms—electronic music, filmstrips, and computer programs, for example—could be regarded as an extension of copyrightable subject matter Congress had already intended to protect, and were thus considered copyrightable from the outset without the need of new legislation. In other cases, such as photographs, sound recordings, and motion pictures, statutory enactment was deemed necessary to give them full recognition as copyrightable works.

Authors are continually finding new ways of expressing themselves, but it is impossible to foresee the forms that these new expressive methods will take. The bill does not intend either to freeze the scope of copyrightable subject matter at the present stage of communications technology or to allow unlimited expansion into areas completely outside the present congressional intent. Section 102 implies neither that that subject matter is unlimited nor that new forms of expression within that general area of subject matter would necessarily be unprotected.

The historic expansion of copyright has also applied to forms of expression which, although in existence for generations or centuries, have only gradually come to be recognized as creative and worthy of protection. The first copyright statute in this country, enacted in 1790, designated only “maps, charts, and books”; major forms of expression such as music, drama, and works of art achieved specific statutory recognition only in later enactments. Although the coverage of the present statute is very broad, and would be broadened further by the explicit recognition of all forms of choreography, there are unquestionably other areas of existing subject matter that this bill does not propose to protect but that future Congresses may want to.

**Fixation in Tangible Form.** As a basic condition of copyright protection, the bill perpetuates the existing requirement that a work be fixed in a “tangible medium of expression,” and adds that this medium may be one “now known or later developed,” and that the fixation is sufficient if the work “can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” This broad language is intended to avoid the artificial and largely unjustifiable distinctions, derived from cases such as *White-Smith Publishing Co. v. Apollo Co.*, 209 U.S. 1 (1908) [28 S.Ct. 319, 52 L.Ed. 655], under which statutory copyrightability in certain cases has been made to depend upon the form or medium in which the work is fixed. Under the bill it makes no difference what the form, manner, or medium of fixation may be—whether it is in words, numbers, notes, sounds, pictures, or any other graphic or symbolic indicia, whether embodied in a physical object in written, printed, photographic, sculptural, punched, magnetic, or any other stable form, and whether it is capable of perception directly or by means of any machine or device “now known or later developed.”

Under the bill, the concept of fixation is important since it not only determines whether the provisions of the statute apply to a work, but it also represents the dividing line between common law and statutory protection. As will be noted in more detail in connection with section 301, an unfixed work of authorship, such as an improvisation or an unrecorded choreographic work, performance, or broadcast, would continue to be subject to protection under State common law or statute, but would not be eligible for Federal statutory protection under section 102.

The bill seeks to resolve, through the definition of “fixation” in section 101, the status of live broadcasts—sports, news coverage, live performances of music, etc.—that are reaching the public in unfixed form but that are simultaneously being recorded. When a football game is being covered by four television cameras, with a director guiding the activities of the four cameramen and choosing which of their electronic images are sent out to the public and in what order, there is little doubt that what the cameramen and the director are doing constitutes “authorship.” The further question to be considered is whether there has been a fixation. If the images and sounds to be broadcast are first recorded (on a video tape, film, etc.) and then transmitted, the recorded work would be considered a “motion picture” subject to statutory protection against unauthorized reproduction or retransmission of the broadcast. If the program content is transmitted live to the public while being recorded at the same time, the case would be treated the same; the copyright

owner would not be forced to rely on common law rather than statutory rights in proceeding against an infringing user of the live broadcast.

Thus, assuming it is copyrightable—as a “motion picture” or “sound recording,” for example—the content of a live transmission should be regarded as fixed and should be accorded statutory protection if it is being recorded simultaneously with its transmission. On the other hand, the definition of “fixation” would exclude from the concept purely evanescent or transient reproductions such as those projected briefly on a screen, shown electronically on a television or other cathode ray tube, or captured momentarily in the “memory” of a computer.

Under the first sentence of the definition of “fixed” in section 101, a work would be considered “fixed in a tangible medium of expression” if there has been an authorized embodiment in a copy or phonorecord and if that embodiment “is sufficiently permanent or stable” to permit the work “to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.” The second sentence makes clear that, in the case of “a work consisting of sounds, images, or both, that are being transmitted,” the work is regarded as “fixed” if a fixation is being made at the same time as the transmission.

Under this definition “copies” and “phonorecords” together will comprise all of the material objects in which copyrightable works are capable of being fixed. The definitions of these terms in section 101, together with their usage in section 102 and throughout the bill, reflect a fundamental distinction between the “original work” which is the product of “authorship” and the multitude of material objects in which it can be embodied. Thus, in the sense of the bill, a “book” is not a work of authorship, but is a particular kind of “copy.” Instead, the author may write a “literary work,” which in turn can be embodied in a wide range of “copies” and “phonorecords,” including books, periodicals, computer punch cards, microfilm, tape recordings, and so forth. It is possible to have an “original work of authorship” without having a “copy” or “phonorecord” embodying it, and it is also possible to have a “copy” or “phonorecord” embodying something that does not qualify as an “original work of authorship.” The two essential elements—original work and tangible object—must merge through fixation in order to produce subject matter copyrightable under the statute.

**Categories of Copyrightable Works.** The second sentence of section 102 lists seven broad categories which the concept of “works of authorship” is said to “include”. The use of the word “include,” as defined in section 101, makes clear that the listing is “illustrative and not limitative,” and that the seven categories do not necessarily exhaust the scope of “original works of authorship” that the bill is intended to protect. Rather, the list sets out the general area of copyrightable subject matter, but with sufficient flexibility to free the courts from rigid or outmoded concepts of the scope of particular categories. The items are also overlapping in the sense that a work falling within one class may encompass works coming within some or all of the other categories. In the aggregate, the list covers all classes of works now specified in section 5 of title 17 [section 5 of former title 17]; in addition, it specifically enumerates “pantomimes and choreographic works”.

Of the seven items listed, four are defined in section 101. The three undefined categories—“musical works,” “dramatic works,” and “pantomimes and choreographic works”—have fairly settled meanings. There is no need, for example, to specify the copyrightability of electronic or concrete music in the statute since the form of a work would no longer be of any importance, nor is it necessary to specify that “choreographic works” do not include social dance steps and simple routines.

The four items defined in section 101 are “literary works,” “pictorial, graphic, and sculptural works,” “motion pictures and audiovisual works”, and “sound recordings”. In each of these cases, definitions are needed not only because the meaning of the term itself is unsettled but also because the distinction between “work” and “material object” requires clarification. The term “literary works” does not connote any criterion of literary merit or qualitative value: it includes catalogs, directories, and similar factual, reference, or instructional works and compilations of data. It also includes computer data bases, and computer programs to the extent that they incorporate authorship in the programmer’s expression of original ideas, as distinguished from the ideas themselves.

Correspondingly, the definition of “pictorial, graphic, and sculptural works” carries with it no implied criterion of artistic taste, aesthetic value, or intrinsic quality. The term is intended to comprise not only “works of art” in the traditional sense but also works of graphic art and illustration, art reproductions, plans and drawings, photographs and reproductions of them, maps, charts, globes, and other cartographic works, works of these kinds intended for use in advertising and commerce, and works of “applied art.” There is no intention whatever to narrow the scope of the subject matter now characterized in section 5 (k) [section 5(k) of former title 17] as “prints or labels used for articles of merchandise.” However, since this terminology suggests the material object in which a work is embodied rather than the work itself, the bill does not mention this category separately.

In accordance with the Supreme Court’s decision in *Mazer v. Stein*, 347 U.S. 201 (1954) [74 S.Ct. 460, 98 L. Ed. 630, rehearing denied 74 S.Ct. 637, 347 U.S. 949, 98 L.Ed. 1096], works of “applied art” encompass all original pictorial, graphic, and sculptural works that are intended to be or have been embodied in useful articles, regardless of factors such as mass production, commercial exploitation, and the potential availability of design patent protection. The scope of exclusive rights in these works is given special treatment in section 113, to be discussed below.

The Committee has added language to the definition of “pictorial, graphic, and sculptural works” in an effort to make clearer the distinction between works of applied art protectable under the bill and industrial designs not subject to copyright protection. The declaration that “pictorial, graphic, and sculptural works” include “works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned” is classic language; it is drawn from Copyright Office regulations promulgated in the 1940’s and expressly endorsed by the Supreme Court in the Mazer case.

The second part of the amendment states that “the design of a useful article \* \* \* shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.” A “useful article” is defined as “an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information.” This part of the amendment is an adaptation of language added to the Copyright Office Regulations in the mid-1950’s in an effort to implement the Supreme Court’s decision in the Mazer case.

In adopting this amendatory language, the Committee is seeking to draw as clear a line as possible between copyrightable works of applied art and uncopyrighted works of industrial design. A two-dimensional painting, drawing, or graphic work is still capable of being identified as such when it is printed on or applied to utilitarian articles such as textile fabrics, wallpaper, containers, and the like. The same is true when a statue or carving is used to embellish an industrial product or, as in the Mazer case, is incorporated into a product without losing its ability to exist independently as a work of art. On the other hand, although the shape of an industrial product may be aesthetically satisfying and valuable, the Committee’s intention is not to offer it copyright protection under the bill. Unless the shape of an automobile, airplane, ladies’ dress, food processor, television set, or any other industrial product contains some element that, physically or conceptually, can be identified as separable from the utilitarian aspects of that article, the design would not be copyrighted under the bill. The test of separability and independence from “the utilitarian aspects of the article” does not depend upon the nature of the design—that is, even if the appearance of an article is determined by aesthetic (as opposed to functional) considerations, only elements, if any, which can be identified separately from the useful article as such are copyrightable. And, even if the three-dimensional design contains some such element (for example, a carving on the back of a chair or a floral relief design on silver flatware), copyright protection would extend only to that element, and would not cover the over-all configuration of the utilitarian article as such.

A special situation is presented by architectural works. An architect’s plans and drawings would, of course, be protected by copyright, but the extent to which that protection would extend to the structure depicted would depend on the circumstances. Purely nonfunctional or monumental structures would be subject to full copyright protection under the bill, and the same would be true of artistic sculpture or decorative ornamentation or embellishment added to a structure. On the other hand, where the only elements of shape in an architectural design are conceptually inseparable from the utilitarian aspects of the structure, copyright protection for the design would not be available.

The Committee has considered, but chosen to defer, the possibility of protecting the design of typefaces. A “typeface” can be defined as a set of letters, numbers, or other symbolic characters, whose forms are related by repeating design elements consistently applied in a notational system and are intended to be embodied in articles whose intrinsic utilitarian function is for use in composing text or other cognizable combinations of characters. The Committee does not regard the design of typeface, as thus defined, to be a copyrightable “pictorial, graphic, or sculptural work” within the meaning of this bill and the application of the dividing line in section 101.

Enactment of Public Law 92–140 in 1971 [Pub. L. 92–140, Oct. 15, 1971, 85 Stat. 391, which amended sections 1, 5, 19, 20, 26, and 101 of former title 17, and enacted provisions set out as a note under section 1 of former title 17] marked the first recognition in American copyright law of sound recordings as copyrightable works. As defined in section 101, copyrightable “sound recordings” are original works of authorship comprising an aggregate of musical, spoken, or other sounds that have been fixed in tangible form. The copyrightable work comprises the aggregation of sounds and not the tangible medium of fixation. Thus, “sound recordings” as copyrightable subject matter are distinguished from “phonorecords,” the latter being physical objects in which sounds are fixed. They are also distinguished from any copyrighted literary, dramatic, or musical works that may be reproduced on a “phonorecord.”

As a class of subject matter, sound recordings are clearly within the scope of the “writings of an author” capable of protection under the Constitution [Const. Art. I, § 8, cl. 8], and the extension of limited statutory protection to them was too long delayed. Aside from cases in which sounds are fixed by some purely mechanical means without originality of any kind, the copyright protection that would prevent the reproduction and distribution of unauthorized phonorecords of sound recordings is clearly justified.

The copyrightable elements in a sound recording will usually, though not always, involve “authorship” both on the part of the performers whose performance is captured and on the part of the record producer responsible for setting up the recording session, capturing and electronically processing the sounds, and compiling and editing them to make the final sound recording. There may, however, be cases where the record producer’s contribution is so minimal that the performance is the only copyrightable element in the work, and there may be cases (for example, recordings of birdcalls, sounds of racing cars, et cetera) where only the record producer’s contribution is copyrightable.

Sound tracks of motion pictures, long a nebulous area in American copyright law, are specifically included in the definition of “motion pictures,” and excluded in the definition of “sound recordings.” To be a “motion picture,” as defined, requires three elements: (1) a series of images, (2) the capability of showing the images in certain successive order, and (3) an impression of motion when the images are thus shown. Coupled with the basic requirements of original authorship and fixation in tangible form, this definition encompasses a wide range of cinematographic works embodied in films, tapes, video disks, and other media. However, it would not include: (1) unauthorized fixations of live performances or telecasts, (2) live telecasts that are not fixed simultaneously with their transmission, or (3) filmstrips and slide sets which, although consisting of a series of images intended to be shown in succession, are not capable of conveying an impression of motion.

On the other hand, the bill equates audiovisual materials such as filmstrips, slide sets, and sets of transparencies with “motion pictures” rather than with “pictorial, graphic, and sculptural works.” Their sequential showing is closer to a “performance” than to a “display,” and the definition of “audiovisual works,” which applies also to “motion pictures,” embraces works consisting of a series of related images that are by their nature, intended for showing by means of projectors or other devices.

Nature of Copyright. Copyright does not preclude others from using the ideas or information revealed by the author’s work. It pertains to the literary, musical, graphic, or artistic form in which the author expressed intellectual concepts. Section 102 (b) makes clear that copyright protection does not extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

Some concern has been expressed lest copyright in computer programs should extend protection to the methodology or processes adopted by the programmer, rather than merely to the “writing” expressing his ideas. Section 102 (b) is intended, among other things, to make clear that the expression adopted by the programmer is the copyrightable element in a computer program, and that the actual processes or methods embodied in the program are not within the scope of the copyright law.

Section 102 (b) in no way enlarges or contracts the scope of copyright protection under the present law. Its purpose is to restate, in the context of the new single Federal system of copyright, that the basic dichotomy between expression and idea remains unchanged.

## **Amendments**

1990—Subsec. (a)(8). Pub. L. 101–650 added par. (8).

## **Effective Date of 1990 Amendment**

Amendment by Pub. L. 101–650 applicable to any architectural work created on or after Dec. 1, 1990, and any architectural work, that, on Dec. 1, 1990, is unconstructed and embodied in unpublished plans or drawings, except that protection for such architectural work under this title terminates on Dec. 31, 2002, unless the work is constructed by that date, see section 706 of Pub. L. 101–650, set out as a note under section 101 of this title.

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## **§ 103. Subject matter of copyright: Compilations and derivative works**

(a) The subject matter of copyright as specified by section 102 includes compilations and derivative works, but protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.

(b) The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2545.)

## **Historical and Revision Notes**

### **house report no. 94–1476**

Section 103 complements section 102: A compilation or derivative work is copyrightable if it represents an “original work of authorship” and falls within one or more of the categories listed in section 102. Read together, the two sections

make plain that the criteria of copyrightable subject matter stated in section 102 apply with full force to works that are entirely original and to those containing preexisting material. Section 103 (b) is also intended to define, more sharply and clearly than does section 7 of the present law [section 7 of former title 17], the important interrelationship and correlation between protection of preexisting and of “new” material in a particular work. The most important point here is one that is commonly misunderstood today: copyright in a “new version” covers only the material added by the later author, and has no effect one way or the other on the copyright or public domain status of the preexisting material.

Between them the terms “compilations” and “derivative works” which are defined in section 101 comprehend every copyrightable work that employs preexisting material or data of any kind. There is necessarily some overlapping between the two, but they basically represent different concepts. A “compilation” results from a process of selecting, bringing together, organizing, and arranging previously existing material of all kinds, regardless of whether the individual items in the material have been or ever could have been subject to copyright. A “derivative work,” on the other hand, requires a process of recasting, transforming, or adapting “one or more preexisting works”; the “preexisting work” must come within the general subject matter of copyright set forth in section 102, regardless of whether it is or was ever copyrighted.

The second part of the sentence that makes up section 103 (a) deals with the status of a compilation or derivative work unlawfully employing preexisting copyrighted material. In providing that protection does not extend to “any part of the work in which such material has been used unlawfully,” the bill prevents an infringer from benefiting, through copyright protection, from committing an unlawful act, but preserves protection for those parts of the work that do not employ the preexisting work. Thus, an unauthorized translation of a novel could not be copyrighted at all, but the owner of copyright in an anthology of poetry could sue someone who infringed the whole anthology, even though the infringer proves that publication of one of the poems was unauthorized. Under this provision, copyright could be obtained as long as the use of the preexisting work was not “unlawful,” even though the consent of the copyright owner had not been obtained. For instance, the unauthorized reproduction of a work might be “lawful” under the doctrine of fair use or an applicable foreign law, and if so the work incorporating it could be copyrighted.

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## **§ 104. Subject matter of copyright: National origin**

**(a) Unpublished Works.**— The works specified by sections 102 and 103, while unpublished, are subject to protection under this title without regard to the nationality or domicile of the author.

**(b) Published Works.**— The works specified by sections 102 and 103, when published, are subject to protection under this title if—

- (1)** on the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a treaty party, or is a stateless person, wherever that person may be domiciled; or
- (2)** the work is first published in the United States or in a foreign nation that, on the date of first publication, is a treaty party; or
- (3)** the work is a sound recording that was first fixed in a treaty party; or
- (4)** the work is a pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party; or
- (5)** the work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States; or
- (6)** the work comes within the scope of a Presidential proclamation. Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States or to works that are first published in the United States, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under this title to works of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation, or which was first published in that nation. The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under a proclamation.

For purposes of paragraph (2), a work that is published in the United States or a treaty party within 30 days after publication in a foreign nation that is not a treaty party shall be considered to be first published in the United States or such treaty party, as the case may be.

**(c) Effect of Berne Convention.**— No right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto. Any rights in a work eligible for protection under this title that derive from this title, other Federal or State statutes, or the common law, shall not be expanded or reduced by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto.

**(d) Effect of Phonograms Treaties.**— Notwithstanding the provisions of subsection (b), no works other than sound recordings shall be eligible for protection under this title solely by virtue of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2545; Pub. L. 100–568, § 4(a)(2), (3), Oct. 31, 1988, 102 Stat. 2855; Pub. L. 105–304, title I, § 102(b), Oct. 28, 1998, 112 Stat. 2862.)

## **Historical and Revision Notes**

### **house report no. 94–1476**

Section 104 of the bill [this section], which sets forth the basic criteria under which works of foreign origin can be protected under the U.S. copyright law, divides all works coming within the scope of sections 102 and 103 into two categories: unpublished and published. Subsection (a) imposes no qualifications of nationality and domicile with respect to unpublished works. Subsection (b) would make published works subject to protection under any one of four conditions:

- (1) The author is a national or domiciliary of the United States or of a country with which the United States has copyright relations under a treaty, or is a stateless person;
- (2) The work is first published in the United States or in a country that is a party to the Universal Copyright Convention;
- (3) The work is first published by the United Nations, by any of its specialized agencies, or by the Organization of American States; or
- (4) The work is covered by a Presidential proclamation extending protection to works originating in a specified country which extends protection to U.S. works “on substantially the same basis” as to its own works.

The third of these conditions represents a treaty obligation of the United States. Under the Second Protocol of the Universal Copyright Convention, protection under U.S. Copyright law is expressly required for works published by the United Nations, by U.N. specialized agencies and by the Organization of American States.

## **Amendments**

1998—Subsec. (b). Pub. L. 105–304, § 102(b)(1)(G), inserted concluding provisions.

Subsec. (b)(1). Pub. L. 105–304, § 102(b)(1)(A), substituted “treaty party” for “foreign nation that is a party to a copyright treaty to which the United States is also a party”.

Subsec. (b)(2). Pub. L. 105–304, § 102(b)(1)(B), substituted “treaty party” for “party to the Universal Copyright Convention”.

Subsec. (b)(3). Pub. L. 105–304, § 102(b)(1)(E), added par. (3). Former par. (3) redesignated (5).

Subsec. (b)(4). Pub. L. 105–304, § 102(b)(1)(F), substituted “pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party” for “Berne Convention work”.

Subsec. (b)(5), (6). Pub. L. 105–304, § 102(b)(1)(C), (D), redesignated par. (3) as (5) and transferred it to appear after par. (4) and redesignated former par. (5) as (6).

Subsec. (d). Pub. L. 105–304, § 102(b)(2), added subsec. (d).

1988—Subsec. (b)(4), (5). Pub. L. 100–568, § 4(a)(2), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 100–568, § 4(a)(3), added subsec. (c).

### **Effective Date of 1998 Amendment**

Amendment by section 102(b)(1) of Pub. L. 105–304 effective Oct. 28, 1998, except as otherwise provided, and amendment by section 102(b)(2) of Pub. L. 105–304 effective May 20, 2002, see section 105(a), (b)(2)(C) of Pub. L. 105–304, set out as a note under section 101 of this title.

### **Effective Date of 1988 Amendment**

Amendment by Pub. L. 100–568 effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions in effect when cause of action arose, see section 13 of Pub. L. 100–568, set out as a note under section 101 of this title.

### **Proc. No. 3792. Copyright Extension: Germany**

Proc. No. 3792, July 12, 1967, 32 F.R. 10341, provided:

WHEREAS the President is authorized, in accordance with the conditions prescribed in Section 9 of Title 17 of the United States Code which includes the provisions of the act of Congress approved March 4, 1909, 35 Stat. 1075, as amended by the act of September 25, 1941, 55 Stat. 732, to grant an extension of time for fulfillment of the conditions and formalities prescribed by the copyright laws of the United States of America, with respect to works first produced or published outside the United States of America and subject to copyright or to renewal of copyright under the laws of the United States of America, by nationals of countries which accord substantially equal treatment to citizens of the United States of America; and

WHEREAS satisfactory official assurances have been received that, since April 15, 1892, citizens of the United States have been entitled to obtain copyright in Germany for their works on substantially the same basis as German citizens without the need of complying with any formalities, provided such works secured protection in the United States; and

WHEREAS, pursuant to Article 2 of the Law No. 8, Industrial, Literary and Artistic Property Rights of Foreign Nations and Nationals, promulgated by the Allied High Commission for Germany on October 20, 1949, literary or artistic property rights in Germany owned by United States nationals at the commencement of or during the state of war between Germany and the United States of America which were transferred, seized, requisitioned, revoked or otherwise impaired by war measures, whether legislative, judicial or administrative, were, upon request made prior to October 3, 1950, restored to such United States nationals or their legal successors; and

WHEREAS, pursuant to Article 5 of the aforesaid law, any literary or artistic property right in Germany owned by a United States national at the commencement of or during the state of war between Germany and the United States of America was, upon request made prior to October 3, 1950, extended in term for a period corresponding to the inclusive time from the date of the commencement of the state of war, or such later date on which such right came in existence, to September 30, 1949; and

WHEREAS, by virtue of a proclamation by the President of the United States of America dated May 25, 1922, 42 Stat. 2271, German citizens are and have been entitled to the benefits of the act of Congress approved March 4, 1909, 35 Stat. 1075, as amended, including the benefits of Section 1(e) of the aforementioned Title 17 of the United States Code [section 1(e) of former Title 17]; and

WHEREAS, a letter of February 6, 1950, from the Chancellor of the Federal Republic of Germany to the Chairman of the Allied High Commission for Germany established the mutual understanding that reciprocal copyright relations continued in effect between the Federal Republic of Germany and the United States of America:

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States of America, by virtue of the authority vested in me by Section 9 of Title 17 of the United States Code [section 9 of former Title 17], do declare and proclaim:

(1) That, with respect to works first produced or published outside the United States of America: (a) where the work was subject to copyright under the laws of the United States of America on or after September 3, 1939, and on or before May 5, 1956, by an author or other owner who was then a German citizen; or (b) where the work was subject to renewal of copyright under the laws of the United States of America on or after September 3, 1939, and on or before May 5, 1956, by an author or other person specified in Sections 24 and 25 of the aforesaid Title 17 [sections 24 and 25 of former Title 17], who was then a German citizen, there has existed during several years of the aforementioned period such disruption and suspension of facilities essential to compliance with conditions and formalities prescribed with respect to such works by the copyright law of the United States of America as to bring such works within the terms of Section 9(b) of the aforesaid Title 17 [section 9(b) of former Title 17]; and

(2) That, in view of the reciprocal treatment accorded to citizens of the United States by the Federal Republic of Germany, the time within which persons who are presently German citizens may comply with such conditions and formalities with respect to such works is hereby extended for one year after the date of this proclamation.

It shall be understood that the term of copyright in any case is not and cannot be altered or affected by this proclamation. It shall also be understood that, as provided by Section 9 (b) of Title 17, United States Code [section 9(b) of former Title 17], no liability shall attach under that title for lawful uses made or acts done prior to the effective date of this proclamation in connection with the above-described works, or with respect to the continuance for one year subsequent to such date of any business undertaking or enterprise lawfully undertaken prior to such date involving expenditure or contractual obligation in connection with the exploitation, production, reproduction, circulation or performance of any such works.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of July in the year of our Lord nineteen hundred and sixty-seven, and of the Independence of the United States of America the one hundred and ninety-second.

Lyndon B. Johnson.

### **Presidential Proclamations Issued Under Predecessor Provisions**

Section 104 of Pub. L. 94-553 provided that: "All proclamations issued by the President under section 1 (e) or 9 (b) of title 17 as it existed on December 31, 1977, or under previous copyright statutes of the United States, shall continue in force until terminated, suspended, or revised by the President."

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## **§ 104A. Copyright in restored works**

### **(a) Automatic Protection and Term.—**

#### **(1) Term.—**

(A) Copyright subsists, in accordance with this section, in restored works, and vests automatically on the date of restoration.

(B) Any work in which copyright is restored under this section shall subsist for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States.

(2) **Exception.—** Any work in which the copyright was ever owned or administered by the Alien Property Custodian and in which the restored copyright would be owned by a government or instrumentality thereof, is not a restored work.

**(b) Ownership of Restored Copyright.—** A restored work vests initially in the author or initial rightholder of the work as determined by the law of the source country of the work.

**(c) Filing of Notice of Intent to Enforce Restored Copyright Against Reliance Parties.—** On or after the date of restoration, any person who owns a copyright in a restored work or an exclusive right therein may file with the Copyright Office a notice of intent to enforce that person's copyright or exclusive right or may serve such a notice directly on a reliance party. Acceptance of a notice by the Copyright Office is effective as to any reliance parties but shall not create a presumption of the validity of any of the facts stated therein. Service on a reliance party is effective as to that reliance party and any other reliance parties with actual knowledge of such service and of the contents of that notice.

### **(d) Remedies for Infringement of Restored Copyrights.—**

(1) **Enforcement of copyright in restored works in the absence of a reliance party.—** As against any party who is not a reliance party, the remedies provided in chapter 5 of this title shall be available on or after the date of restoration of a restored copyright with respect to an act of infringement of the restored copyright that is commenced on or after the date of restoration.

(2) **Enforcement of copyright in restored works as against reliance parties.—** As against a reliance party, except to the extent provided in paragraphs (3) and (4), the remedies provided in chapter 5 of this title shall be available, with respect to an act of infringement of a restored copyright, on or after the date of restoration of the restored copyright if the requirements of either of the following subparagraphs are met:

(A) (i) The owner of the restored copyright (or such owner's agent) or the owner of an exclusive right therein (or such owner's agent) files with the Copyright Office, during the 24-month period beginning on the date of restoration, a notice of intent to enforce the restored copyright; and

- (ii) (I) the act of infringement commenced after the end of the 12-month period beginning on the date of publication of the notice in the Federal Register;
- (II) the act of infringement commenced before the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available only for infringement occurring after the end of that 12-month period; or
- (III) copies or phonorecords of a work in which copyright has been restored under this section are made after publication of the notice of intent in the Federal Register.
- (B) (i) The owner of the restored copyright (or such owner's agent) or the owner of an exclusive right therein (or such owner's agent) serves upon a reliance party a notice of intent to enforce a restored copyright; and
- (ii) (I) the act of infringement commenced after the end of the 12-month period beginning on the date the notice of intent is received;
- (II) the act of infringement commenced before the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available only for the infringement occurring after the end of that 12-month period; or
- (III) copies or phonorecords of a work in which copyright has been restored under this section are made after receipt of the notice of intent.

In the event that notice is provided under both subparagraphs (A) and (B), the 12-month period referred to in such subparagraphs shall run from the earlier of publication or service of notice.

**(3) Existing derivative works.—**

- (A) In the case of a derivative work that is based upon a restored work and is created—
  - (i) before the date of the enactment of the Uruguay Round Agreements Act, if the source country of the restored work is an eligible country on such date, or
  - (ii) before the date on which the source country of the restored work becomes an eligible country, if that country is not an eligible country on such date of enactment,
 a reliance party may continue to exploit that derivative work for the duration of the restored copyright if the reliance party pays to the owner of the restored copyright reasonable compensation for conduct which would be subject to a remedy for infringement but for the provisions of this paragraph.
- (B) In the absence of an agreement between the parties, the amount of such compensation shall be determined by an action in United States district court, and shall reflect any harm to the actual or potential market for or value of the restored work from the reliance party's continued exploitation of the work, as well as compensation for the relative contributions of expression of the author of the restored work and the reliance party to the derivative work.

**(4) Commencement of infringement for reliance parties.—** For purposes of section 412, in the case of reliance parties, infringement shall be deemed to have commenced before registration when acts which would have constituted infringement had the restored work been subject to copyright were commenced before the date of restoration.

**(e) Notices of Intent To Enforce a Restored Copyright.—**

**(1) Notices of intent filed with the copyright office.—**

- (A) (i) A notice of intent filed with the Copyright Office to enforce a restored copyright shall be signed by the owner of the restored copyright or the owner of an exclusive right therein, who files the notice under subsection (d)(2)(A)(i) (hereafter in this paragraph referred to as the "owner"), or by the owner's agent, shall identify the title of the restored work, and shall include an English translation of the title and any other alternative titles known to

the owner by which the restored work may be identified, and an address and telephone number at which the owner may be contacted. If the notice is signed by an agent, the agency relationship must have been constituted in a writing signed by the owner before the filing of the notice. The Copyright Office may specifically require in regulations other information to be included in the notice, but failure to provide such other information shall not invalidate the notice or be a basis for refusal to list the restored work in the Federal Register.

(ii) If a work in which copyright is restored has no formal title, it shall be described in the notice of intent in detail sufficient to identify it.

(iii) Minor errors or omissions may be corrected by further notice at any time after the notice of intent is filed. Notices of corrections for such minor errors or omissions shall be accepted after the period established in subsection (d)(2)(A)(i). Notices shall be published in the Federal Register pursuant to subparagraph (B).

(B) (i) The Register of Copyrights shall publish in the Federal Register, commencing not later than 4 months after the date of restoration for a particular nation and every 4 months thereafter for a period of 2 years, lists identifying restored works and the ownership thereof if a notice of intent to enforce a restored copyright has been filed.

(ii) Not less than 1 list containing all notices of intent to enforce shall be maintained in the Public Information Office of the Copyright Office and shall be available for public inspection and copying during regular business hours pursuant to sections 705 and 708.

(C) The Register of Copyrights is authorized to fix reasonable fees based on the costs of receipt, processing, recording, and publication of notices of intent to enforce a restored copyright and corrections thereto.

(D) (i) Not later than 90 days before the date the Agreement on Trade-Related Aspects of Intellectual Property referred to in section 101(d)(15) of the Uruguay Round Agreements Act enters into force with respect to the United States, the Copyright Office shall issue and publish in the Federal Register regulations governing the filing under this subsection of notices of intent to enforce a restored copyright.

(ii) Such regulations shall permit owners of restored copyrights to file simultaneously for registration of the restored copyright.

**(2) Notices of intent served on a reliance party.—**

(A) Notices of intent to enforce a restored copyright may be served on a reliance party at any time after the date of restoration of the restored copyright.

(B) Notices of intent to enforce a restored copyright served on a reliance party shall be signed by the owner or the owner's agent, shall identify the restored work and the work in which the restored work is used, if any, in detail sufficient to identify them, and shall include an English translation of the title, any other alternative titles known to the owner by which the work may be identified, the use or uses to which the owner objects, and an address and telephone number at which the reliance party may contact the owner. If the notice is signed by an agent, the agency relationship must have been constituted in writing and signed by the owner before service of the notice.

**(3) Effect of material false statements.—** Any material false statement knowingly made with respect to any restored copyright identified in any notice of intent shall make void all claims and assertions made with respect to such restored copyright.

**(f) Immunity From Warranty and Related Liability.—**

**(1) In general.—** Any person who warrants, promises, or guarantees that a work does not violate an exclusive right granted in section 106 shall not be liable for legal, equitable, arbitral, or administrative relief if the warranty, promise, or guarantee is breached by virtue of the restoration

of copyright under this section, if such warranty, promise, or guarantee is made before January 1, 1995.

**(2) Performances.**— No person shall be required to perform any act if such performance is made infringing by virtue of the restoration of copyright under the provisions of this section, if the obligation to perform was undertaken before January 1, 1995.

**(g) Proclamation of Copyright Restoration.**— Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States, restored copyright protection on substantially the same basis as provided under this section, the President may by proclamation extend restored protection provided under this section to any work—

- (1)** of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation; or
- (2)** which was first published in that nation.

The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under such a proclamation.

**(h) Definitions.**— For purposes of this section and section 109 (a):

**(1)** The term “date of adherence or proclamation” means the earlier of the date on which a foreign nation which, as of the date the WTO Agreement enters into force with respect to the United States, is not a nation adhering to the Berne Convention or a WTO member country, becomes—

- (A)** a nation adhering to the Berne Convention;
- (B)** a WTO member country;
- (C)** a nation adhering to the WIPO Copyright Treaty;
- (D)** a nation adhering to the WIPO Performances and Phonograms Treaty; or
- (E)** subject to a Presidential proclamation under subsection (g).

**(2)** The “date of restoration” of a restored copyright is—

- (A)** January 1, 1996, if the source country of the restored work is a nation adhering to the Berne Convention or a WTO member country on such date, or
- (B)** the date of adherence or proclamation, in the case of any other source country of the restored work.

**(3)** The term “eligible country” means a nation, other than the United States, that—

- (A)** becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;
- (B)** on such date of enactment is, or after such date of enactment becomes, a nation adhering to the Berne Convention;
- (C)** adheres to the WIPO Copyright Treaty;
- (D)** adheres to the WIPO Performances and Phonograms Treaty; or
- (E)** after such date of enactment becomes subject to a proclamation under subsection (g).

**(4)** The term “reliance party” means any person who—

- (A)** with respect to a particular work, engages in acts, before the source country of that work becomes an eligible country, which would have violated section 106 if the restored work had been subject to copyright protection, and who, after the source country becomes an eligible country, continues to engage in such acts;
- (B)** before the source country of a particular work becomes an eligible country, makes or acquires 1 or more copies or phonorecords of that work; or
- (C)** as the result of the sale or other disposition of a derivative work covered under subsection (d)(3), or significant assets of a person described in subparagraph (A) or (B), is a successor, assignee, or licensee of that person.

**(5)** The term “restored copyright” means copyright in a restored work under this section.

- (6) The term “restored work” means an original work of authorship that—
- (A) is protected under subsection (a);
  - (B) is not in the public domain in its source country through expiration of term of protection;
  - (C) is in the public domain in the United States due to—
    - (i) noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, lack of proper notice, or failure to comply with any manufacturing requirements;
    - (ii) lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or
    - (iii) lack of national eligibility;
  - (D) has at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country, and if published, was first published in an eligible country and not published in the United States during the 30-day period following publication in such eligible country; and
  - (E) if the source country for the work is an eligible country solely by virtue of its adherence to the WIPO Performances and Phonograms Treaty, is a sound recording.
- (7) The term “rightholder” means the person—
- (A) who, with respect to a sound recording, first fixes a sound recording with authorization, or
  - (B) who has acquired rights from the person described in subparagraph (A) by means of any conveyance or by operation of law.
- (8) The “source country” of a restored work is—
- (A) a nation other than the United States;
  - (B) in the case of an unpublished work—
    - (i) the eligible country in which the author or rightholder is a national or domiciliary, or, if a restored work has more than 1 author or rightholder, of which the majority of foreign authors or rightholders are nationals or domiciliaries; or
    - (ii) if the majority of authors or rightholders are not foreign, the nation other than the United States which has the most significant contacts with the work; and
  - (C) in the case of a published work—
    - (i) the eligible country in which the work is first published, or
    - (ii) if the restored work is published on the same day in 2 or more eligible countries, the eligible country which has the most significant contacts with the work.

(Added Pub. L. 103–182, title III, § 334(a), Dec. 8, 1993, 107 Stat. 2115; amended Pub. L. 103–465, title V, § 514(a), Dec. 8, 1994, 108 Stat. 4976; Pub. L. 104–295, § 20(e)(2), Oct. 11, 1996, 110 Stat. 3529; Pub. L. 105–80, § 2, Nov. 13, 1997, 111 Stat. 1530; Pub. L. 105–304, title I, § 102(c), Oct. 28, 1998, 112 Stat. 2862.)

## References in Text

The date of the enactment of the Uruguay Round Agreements Act, referred to in subsecs. (d)(3)(A) and (h)(3), is the date of enactment of Pub. L. 103–465, which was approved Dec. 8, 1994.

Section 101(d)(15) of the Uruguay Round Agreements Act, referred to in subsec. (e)(1)(D)(i), is classified to section 3511 (d)(15) of Title 19, Customs Duties.

## Amendments

1998—Subsec. (h)(1)(A) to (E). Pub. L. 105–304, § 102(c)(1), added subpars. (A) to (E) and struck out former subpars. (A) and (B) which read as follows:

“(A) a nation adhering to the Berne Convention or a WTO member country; or

“(B) subject to a Presidential proclamation under subsection (g).”

Subsec. (h)(3). Pub. L. 105–304, § 102(c)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “The term ‘eligible country’ means a nation, other than the United States, that—

“(A) becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;

“(B) on such date of enactment is, or after such date of enactment becomes, a member of the Berne Convention; or

“(C) after such date of enactment becomes subject to a proclamation under subsection (g).”

For purposes of this section, a nation that is a member of the Berne Convention on the date of the enactment of the Uruguay Round Agreements Act shall be construed to become an eligible country on such date of enactment.”

Subsec. (h)(6)(E). Pub. L. 105–304, § 102(c)(3), added subpar. (E).

Subsec. (h)(8)(B)(i). Pub. L. 105–304, § 102(c)(4), inserted “of which” before “the majority” and struck out “of eligible countries” after “domiciliaries”.

Subsec. (h)(9). Pub. L. 105–304, § 102(c)(5), struck out par. (9) which read as follows: “The terms ‘WTO Agreement’ and ‘WTO member country’ have the meanings given those terms in paragraphs (9) and (10), respectively, of section 2 of the Uruguay Round Agreements Act.”

1997—Subsec. (d)(3)(A). Pub. L. 105–80, § 2(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “In the case of a derivative work that is based upon a restored work and is created—

“(i) before the date of the enactment of the Uruguay Round Agreements Act, if the source country of the derivative work is an eligible country on such date, or

“(ii) before the date of adherence or proclamation, if the source country of the derivative work is not an eligible country on such date of enactment,

a reliance party may continue to exploit that work for the duration of the restored copyright if the reliance party pays to the owner of the restored copyright reasonable compensation for conduct which would be subject to a remedy for infringement but for the provisions of this paragraph.”

Subsec. (e)(1)(B)(ii). Pub. L. 105–80, § 2(2), struck out at end “Such list shall also be published in the Federal Register on an annual basis for the first 2 years after the applicable date of restoration.”

Subsec. (h)(2), (3). Pub. L. 105–80, § 2(3), (4), amended pars. (2) and (3) generally. Prior to amendment, pars. (2) and (3) read as follows:

“(2) The ‘date of restoration’ of a restored copyright is the later of—

“(A) the date on which the Agreement on Trade-Related Aspects of Intellectual Property referred to in section 101(d)(15) of the Uruguay Round Agreements Act enters into force with respect to the United States, if the source country of the restored work is a nation adhering to the Berne Convention or a WTO member country on such date; or

“(B) the date of adherence or proclamation, in the case of any other source country of the restored work.

“(3) The term ‘eligible country’ means a nation, other than the United States, that is a WTO member country, adheres to the Berne Convention, or is subject to a proclamation under subsection (g).”

1996—Subsec. (h)(3). Pub. L. 104–295 substituted “subsection (g)” for “section 104A (g)”.

1994—Pub. L. 103–465 substituted “Copyright in restored works” for “Copyright in certain motion pictures” as section catchline and amended text generally, substituting present provisions for provisions restoring copyright in certain motion pictures and providing for effective date of protection as well as use of previously owned copies.

## **Effective Date of 1998 Amendment**

Subsec. (h)(1)(A), (B), (E), (3)(A), (B), (E) of this section and amendment by section 102(c)(4), (5) of Pub. L. 105–304 effective Oct. 28, 1998, except as otherwise provided, subsec. (h)(1)(C), (3)(C) of this section effective Mar. 6, 2002, and subsec. (h)(1)(D), (3)(D) of this section and amendment by section 102(c)(3) of Pub. L. 105–304 effective May 20, 2002, see section 105 (a), (b)(1)(C), (D), (2)(D)–(F) of Pub. L. 105–304, set out as a note under section 101 of this title.

## **Effective Date**

Section effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 335(a) of Pub. L. 103–182, set out in an Effective Date of 1993 Amendment note under section 1052 of Title 15, Commerce and Trade.

## **Uruguay Round Agreements: Entry Into Force**

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 3511 (d) of Title 19, Customs Duties, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of Title 19.

## **§ 105. Subject matter of copyright: United States Government works**

Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2546.)

### **Historical and Revision Notes**

#### **house report no. 94–1476**

Scope of the Prohibition. The basic premise of section 105 of the bill is the same as that of section 8 of the present law [section 8 of former title 17]—that works produced for the U.S. Government by its officers and employees should not be subject to copyright. The provision applies the principle equally to unpublished and published works.

The general prohibition against copyright in section 105 applies to “any work of the United States Government,” which is defined in section 101 as “a work prepared by an officer or employee of the United States Government as part of that person’s official duties.” Under this definition a Government official or employee would not be prevented from securing copyright in a work written at that person’s own volition and outside his or her duties, even though the subject matter involves the Government work or professional field of the official or employee. Although the wording of the definition of “work of the United States Government” differs somewhat from that of the definition of “work made for hire,” the concepts are intended to be construed in the same way.

A more difficult and far-reaching problem is whether the definition should be broadened to prohibit copyright in works prepared under U.S. Government contract or grant. As the bill is written, the Government agency concerned could determine in each case whether to allow an independent contractor or grantee, to secure copyright in works prepared in whole or in part with the use of Government funds. The argument that has been made against allowing copyright in this situation is that the public should not be required to pay a “double subsidy,” and that it is inconsistent to prohibit copyright in works by Government employees while permitting private copyrights in a growing body of works created by persons who are paid with Government funds. Those arguing in favor of potential copyright protection have stressed the importance of copyright as an incentive to creation and dissemination in this situation, and the basically different policy considerations, applicable to works written by Government employees and those applicable to works prepared by private organizations with the use of Federal funds.

The bill deliberately avoids making any sort of outright, unqualified prohibition against copyright in works prepared under Government contract or grant. There may well be cases where it would be in the public interest to deny copyright in the writings generated by Government research contracts and the like; it can be assumed that, where a Government agency commissions a work for its own use merely as an alternative to having one of its own employees prepare the work, the right to secure a private copyright would be withheld. However, there are almost certainly many other cases where the denial of copyright protection would be unfair or would hamper the production and publication of important works. Where, under the particular circumstances, Congress or the agency involved finds that the need to have a work freely available outweighs the need of the private author to secure copyright, the problem can be dealt with by specific legislation, agency regulations, or contractual restrictions.

The prohibition on copyright protection for United States Government works is not intended to have any effect on protection of these works abroad. Works of the governments of most other countries are copyrighted. There are no valid policy reasons for denying such protection to United States Government works in foreign countries, or for precluding the Government from making licenses for the use of its works abroad.

The effect of section 105 is intended to place all works of the United States Government, published or unpublished, in the public domain. This means that the individual Government official or employee who wrote the work could not secure copyright in it or restrain its dissemination by the Government or anyone else, but it also means that, as far as the copyright law is concerned, the Government could not restrain the employee or official from disseminating the work if he or she chooses to do so. The use of the term “work of the United States Government” does not mean that a work falling within the definition of that term is the property of the U.S. Government.

### **limited exception for national technical information service**

At the House hearings in 1975 the U.S. Department of Commerce called attention to its National Technical Information Service (NTIS), which has a statutory mandate, under Chapter 23 [§ 1151 et seq.] of Title 15 of the U.S. Code, to operate a clearinghouse for the collection and dissemination of scientific, technical and engineering information. Under its statute, NTIS is required to be as self-sustaining as possible, and not to force the general public to bear publishing costs that are for private benefit. The Department urged an amendment to section 105 that would allow it to secure copyright in NTIS publications both in the United States and abroad, noting that a precedent exists in the Standard Reference Data Act (15 U.S.C. § 290 (e) [§ 290e]).

In response to this request the Committee adopted a limited exception to the general prohibition in section 105, permitting the Secretary of Commerce to “secure copyright for a limited term not to exceed five years, on behalf of the United States as author or copyright owner” in any NTIS publication disseminated pursuant to 15 U.S.C. Chapter 23 [§ 1151 et seq.]. In order to “secure copyright” in a work under this amendment the Secretary would be required to publish the work with a copyright notice, and the five-year term would begin upon the date of first publication.

Proposed Saving Clause. Section 8 of the statute now in effect [section 8 of former title 17] includes a saving clause intended to make clear that the copyright protection of a private work is not affected if the work is published by the Government. This provision serves a real purpose in the present law because of the ambiguity of the undefined term “any publication of the United States Government.” Section 105 of the bill, however, uses the operative term “work of the United States Government” and defines it in such a way that privately written works are clearly excluded from the prohibition; accordingly, a saving clause becomes superfluous.

Retention of a saving clause has been urged on the ground that the present statutory provision is frequently cited, and that having the provision expressly stated in the law would avoid questions and explanations. The committee here observes: (1) there is nothing in section 105 that would relieve the Government of its obligation to secure permission in order to publish a copyrighted work; and (2) publication or other use by the Government of a private work would not affect its copyright protection in any way. The question of use of copyrighted material in documents published by the Congress and its Committees is discussed below in connection with section 107.

Works of the United States Postal Service. The intent of section 105 [this section] is to restrict the prohibition against Government copyright to works written by employees of the United States Government within the scope of their official duties. In accordance with the objectives of the Postal Reorganization Act of 1970 [Pub. L. 91–375, which enacted title 39, Postal Service], this section does not apply to works created by employees of the United States Postal Service. In addition to enforcing the criminal statutes proscribing the forgery or counterfeiting of postage stamps, the Postal Service could, if it chooses, use the copyright law to prevent the reproduction of postage stamp designs for private or commercial non-postal services (for example, in philatelic publications and catalogs, in general advertising, in art reproductions, in textile designs, and so forth). However, any copyright claimed by the Postal Service in its works, including postage stamp designs, would be subject to the same conditions, formalities, and time limits as other copyrightable works.

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## **§ 106. Exclusive rights in copyrighted works**

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2546; Pub. L. 101–318, § 3(d), July 3, 1990, 104 Stat. 288; Pub. L. 101–650, title VII, § 704(b)(2), Dec. 1, 1990, 104 Stat. 5134; Pub. L. 104–39, § 2, Nov.

1, 1995, 109 Stat. 336; Pub. L. 106–44, § 1(g)(2), Aug. 5, 1999, 113 Stat. 222; Pub. L. 107–273, div. C, title III, § 13210(4)(A), Nov. 2, 2002, 116 Stat. 1909.)

## **Historical and Revision Notes**

### **house report no. 94–1476**

**General Scope of Copyright.** The five fundamental rights that the bill gives to copyright owners—the exclusive rights of reproduction, adaptation, publication, performance, and display—are stated generally in section 106. These exclusive rights, which comprise the so-called “bundle of rights” that is a copyright, are cumulative and may overlap in some cases. Each of the five enumerated rights may be subdivided indefinitely and, as discussed below in connection with section 201, each subdivision of an exclusive right may be owned and enforced separately.

The approach of the bill is to set forth the copyright owner’s exclusive rights in broad terms in section 106, and then to provide various limitations, qualifications, or exemptions in the 12 sections that follow. Thus, everything in section 106 is made “subject to sections 107 through 118”, and must be read in conjunction with those provisions.

The exclusive rights accorded to a copyright owner under section 106 are “to do and to authorize” any of the activities specified in the five numbered clauses. Use of the phrase “to authorize” is intended to avoid any questions as to the liability of contributory infringers. For example, a person who lawfully acquires an authorized copy of a motion picture would be an infringer if he or she engages in the business of renting it to others for purposes of unauthorized public performance.

**Rights of Reproduction, Adaptation, and Publication.** The first three clauses of section 106, which cover all rights under a copyright except those of performance and display, extend to every kind of copyrighted work. The exclusive rights encompassed by these clauses, though closely related, are independent; they can generally be characterized as rights of copying, recording, adaptation, and publishing. A single act of infringement may violate all of these rights at once, as where a publisher reproduces, adapts, and sells copies of a person’s copyrighted work as part of a publishing venture. Infringement takes place when any one of the rights is violated: where, for example, a printer reproduces copies without selling them or a retailer sells copies without having anything to do with their reproduction. The references to “copies or phonorecords,” although in the plural, are intended here and throughout the bill to include the singular (1 U.S.C. § 1).

**Reproduction.**—Read together with the relevant definitions in section 101, the right “to reproduce the copyrighted work in copies or phonorecords” means the right to produce a material object in which the work is duplicated, transcribed, imitated, or simulated in a fixed form from which it can be “perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” As under the present law, a copyrighted work would be infringed by reproducing it in whole or in any substantial part, and by duplicating it exactly or by imitation or simulation. Wide departures or variations from the copyrighted work would still be an infringement as long as the author’s “expression” rather than merely the author’s “ideas” are taken. An exception to this general principle, applicable to the reproduction of copyrighted sound recordings, is specified in section 114.

“Reproduction” under clause (1) of section 106 is to be distinguished from “display” under clause (5). For a work to be “reproduced,” its fixation in tangible form must be “sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.” Thus, the showing of images on a screen or tube would not be a violation of clause (1), although it might come within the scope of clause (5).

**Preparation of Derivative Works.**—The exclusive right to prepare derivative works, specified separately in clause (2) of section 106, overlaps the exclusive right of reproduction to some extent. It is broader than that right, however, in the sense that reproduction requires fixation in copies or phonorecords, whereas the preparation of a derivative work, such as a ballet, pantomime, or improvised performance, may be an infringement even though nothing is ever fixed in tangible form.

To be an infringement the “derivative work” must be “based upon the copyrighted work,” and the definition in section 101 refers to “a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted.” Thus, to constitute a violation of section 106 (2), the infringing work must incorporate a portion of the copyrighted work in some form; for example, a detailed commentary on a work or a programmatic musical composition inspired by a novel would not normally constitute infringements under this clause.

**Use in Information Storage and Retrieval Systems.**—As section 117 declares explicitly, the bill is not intended to alter the present law with respect to the use of copyrighted works in computer systems.

**Public Distribution.**—Clause (3) of section 106 establishes the exclusive right of publication: The right “to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending.” Under this provision the copyright owner would have the right to control the first public distribution of an authorized copy or phonorecord of his work, whether by sale, gift, loan, or some rental or lease arrangement.

Likewise, any unauthorized public distribution of copies or phonorecords that were unlawfully made would be an infringement. As section 109 makes clear, however, the copyright owner's rights under section 106 (3) cease with respect to a particular copy or phonorecord once he has parted with ownership of it.

**Rights of Public Performance and Display. Performing Rights and the "For Profit" Limitation.**—The right of public performance under section 106 (4) extends to "literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works and sound recordings" and, unlike the equivalent provisions now in effect, is not limited by any "for profit" requirement. The approach of the bill, as in many foreign laws, is first to state the public performance right in broad terms, and then to provide specific exemptions for educational and other nonprofit uses.

This approach is more reasonable than the outright exemption of the 1909 statute. The line between commercial and "nonprofit" organizations is increasingly difficult to draw. Many "non-profit" organizations are highly subsidized and capable of paying royalties, and the widespread public exploitation of copyrighted works by public broadcasters and other noncommercial organizations is likely to grow. In addition to these trends, it is worth noting that performances and displays are continuing to supplant markets for printed copies and that in the future a broad "not for profit" exemption could not only hurt authors but could dry up their incentive to write.

The exclusive right of public performance is expanded to include not only motion pictures, including works recorded on film, video tape, and video disks, but also audiovisual works such as filmstrips and sets of slides. This provision of section 106 (4), which is consistent with the assimilation of motion pictures to audiovisual works throughout the bill, is also related to amendments of the definitions of "display" and "perform" discussed below. The important issue of performing rights in sound recordings is discussed in connection with section 114.

**Right of Public Display.**—Clause (5) of section 106 represents the first explicit statutory recognition in American copyright law of an exclusive right to show a copyrighted work, or an image of it, to the public. The existence or extent of this right under the present statute is uncertain and subject to challenge. The bill would give the owners of copyright in "literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works", including the individual images of a motion picture or other audiovisual work, the exclusive right "to display the copyrighted work publicly."

**Definitions.** Under the definitions of "perform," "display," "publicly," and "transmit" in section 101, the concepts of public performance and public display cover not only the initial rendition or showing, but also any further act by which that rendition or showing is transmitted or communicated to the public. Thus, for example: a singer is performing when he or she sings a song; a broadcasting network is performing when it transmits his or her performance (whether simultaneously or from records); a local broadcaster is performing when it transmits the network broadcast; a cable television system is performing when it retransmits the broadcast to its subscribers; and any individual is performing whenever he or she plays a phonorecord embodying the performance or communicates the performance by turning on a receiving set. Although any act by which the initial performance or display is transmitted, repeated, or made to recur would itself be a "performance" or "display" under the bill, it would not be actionable as an infringement unless it were done "publicly," as defined in section 101. Certain other performances and displays, in addition to those that are "private," are exempted or given qualified copyright control under sections 107 through 118.

To "perform" a work, under the definition in section 101, includes reading a literary work aloud, singing or playing music, dancing a ballet or other choreographic work, and acting out a dramatic work or pantomime. A performance may be accomplished "either directly or by means of any device or process," including all kinds of equipment for reproducing or amplifying sounds or visual images, any sort of transmitting apparatus, any type of electronic retrieval system, and any other techniques and systems not yet in use or even invented.

The definition of "perform" in relation to "a motion picture or other audiovisual work" is "to show its images in any sequence or to make the sounds accompanying it audible." The showing of portions of a motion picture, filmstrip, or slide set must therefore be sequential to constitute a "performance" rather than a "display", but no particular order need be maintained. The purely aural performance of a motion picture sound track, or of the sound portions of an audiovisual work, would constitute a performance of the "motion picture or other audiovisual work"; but, where some of the sounds have been reproduced separately on phonorecords, a performance from the phonorecord would not constitute performance of the motion picture or audiovisual work.

The corresponding definition of "display" covers any showing of a "copy" of the work, "either directly or by means of a film, slide, television image, or any other device or process." Since "copies" are defined as including the material object "in which the work is first fixed," the right of public display applies to original works of art as well as to reproductions of them. With respect to motion pictures and other audiovisual works, it is a "display" (rather than a "performance") to show their "individual images nonsequentially." In addition to the direct showings of a copy of a work, "display" would include the projection of an image on a screen or other surface by any method, the transmission of an image by electronic or other means, and the showing of an image on a cathode ray tube, or similar viewing apparatus connected with any sort of information storage and retrieval system.

Under clause (1) of the definition of “publicly” in section 101, a performance or display is “public” if it takes place “at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered.” One of the principal purposes of the definition was to make clear that, contrary to the decision in *Metro-Goldwyn-Mayer Distributing Corp. v. Wyatt*, 21 C.O.Bull. 203 (D.Md.1932), performances in “semipublic” places such as clubs, lodges, factories, summer camps, and schools are “public performances” subject to copyright control. The term “a family” in this context would include an individual living alone, so that a gathering confined to the individual’s social acquaintances would normally be regarded as private. Routine meetings of businesses and governmental personnel would be excluded because they do not represent the gathering of a “substantial number of persons.”

Clause (2) of the definition of “publicly” in section 101 makes clear that the concepts of public performance and public display include not only performances and displays that occur initially in a public place, but also acts that transmit or otherwise communicate a performance or display of the work to the public by means of any device or process. The definition of “transmit”—to communicate a performance or display “by any device or process whereby images or sound are received beyond the place from which they are sent”—is broad enough to include all conceivable forms and combinations of wired or wireless communications media, including but by no means limited to radio and television broadcasting as we know them. Each and every method by which the images or sounds comprising a performance or display are picked up and conveyed is a “transmission,” and if the transmission reaches the public in my [any] form, the case comes within the scope of clauses (4) or (5) of section 106.

Under the bill, as under the present law, a performance made available by transmission to the public at large is “public” even though the recipients are not gathered in a single place, and even if there is no proof that any of the potential recipients was operating his receiving apparatus at the time of the transmission. The same principles apply whenever the potential recipients of the transmission represent a limited segment of the public, such as the occupants of hotel rooms or the subscribers of a cable television service. Clause (2) of the definition of “publicly” is applicable “whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.”

## **Amendments**

2002—Pub. L. 107–273 substituted “122” for “121” in introductory provisions.

1999—Pub. L. 106–44 substituted “121” for “120” in introductory provisions.

1995—Par. (6). Pub. L. 104–39 added par. (6).

1990—Pub. L. 101–650 substituted “120” for “119” in introductory provisions.

Pub. L. 101–318 substituted “119” for “118” in introductory provisions.

## **Effective Date of 1995 Amendment**

Amendment by Pub. L. 104–39 effective 3 months after Nov. 1, 1995, see section 6 of Pub. L. 104–39, set out as a note under section 101 of this title.

## **Effective Date of 1990 Amendments**

Amendment by Pub. L. 101–650 applicable to any architectural work created on or after Dec. 1, 1990, and any architectural work, that, on Dec. 1, 1990, is unconstructed and embodied in unpublished plans or drawings, except that protection for such architectural work under this title terminates on Dec. 31, 2002, unless the work is constructed by that date, see section 706 of Pub. L. 101–650, set out as a note under section 101 of this title.

Section 3(e)(3) of Pub. L. 101–318 provided that: “The amendment made by subsection (d) [amending this section] shall be effective as of November 16, 1988.”

.....

## **§ 106A. Rights of certain authors to attribution and integrity**

**(a) Rights of Attribution and Integrity.**— Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art—

**(1)** shall have the right—

**(A)** to claim authorship of that work, and

**(B)** to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

- (2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and
- (3) subject to the limitations set forth in section 113 (d), shall have the right—
- (A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and
- (B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.
- (b) Scope and Exercise of Rights.**— Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are coowners of the rights conferred by subsection (a) in that work.
- (c) Exceptions.**—
- (1) The modification of a work of visual art which is a result of the passage of time or the inherent nature of the materials is not a distortion, mutilation, or other modification described in subsection (a)(3)(A).
- (2) The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.
- (3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of “work of visual art” in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).
- (d) Duration of Rights.**—
- (1) With respect to works of visual art created on or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.
- (2) With respect to works of visual art created before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106.
- (3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author.
- (4) All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire.
- (e) Transfer and Waiver.**—
- (1) The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.
- (2) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by

the author, a waiver of the rights conferred by subsection (a) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work, or of ownership of a copyright or of any exclusive right under a copyright in that work.

(Added Pub. L. 101–650, title VI, § 603(a), Dec. 1, 1990, 104 Stat. 5128.)

## **References in Text**

Section 610(a) of the Visual Artists Rights Act of 1990 [Pub. L. 101–650], referred to in subsec. (d), is set out as an Effective Date note below.

## **Effective Date**

Section 610 of title VI of Pub. L. 101–650 provided that:

“(a) In General.—Subject to subsection (b) and except as provided in subsection (c), this title [enacting this section, amending sections 101, 107, 113, 301, 411, 412, 501, and 506 of this title, and enacting provisions set out as notes under this section and section 101 of this title] and the amendments made by this title take effect 6 months after the date of the enactment of this Act [Dec. 1, 1990].

“(b) Applicability.—The rights created by section 106A of title 17, United States Code, shall apply to—

“(1) works created before the effective date set forth in subsection (a) but title to which has not, as of such effective date, been transferred from the author, and

“(2) works created on or after such effective date, but shall not apply to any destruction, distortion, mutilation, or other modification (as described in section 106A(a)(3) of such title) of any work which occurred before such effective date.

“(c) Section 608.—Section 608 [set out below] takes effect on the date of the enactment of this Act.”

## **Studies by Copyright Office**

Section 608 of Pub. L. 101–650 provided that:

“(a) Study on Waiver of Rights Provision.—

“(1) Study.—The Register of Copyrights shall conduct a study on the extent to which rights conferred by subsection (a) of section 106A of title 17, United States Code, have been waived under subsection (e)(1) of such section.

“(2) Report to congress.—Not later than 2 years after the date of the enactment of this Act [Dec. 1, 1990], the Register of Copyrights shall submit to the Congress a report on the progress of the study conducted under paragraph (1). Not later than 5 years after such date of enactment, the Register of Copyrights shall submit to the Congress a final report on the results of the study conducted under paragraph (1), and any recommendations that the Register may have as a result of the study.

“(b) Study on Resale Royalties.—

“(1) Nature of study.—The Register of Copyrights, in consultation with the Chair of the National Endowment for the Arts, shall conduct a study on the feasibility of implementing—

“(A) a requirement that, after the first sale of a work of art, a royalty on any resale of the work, consisting of a percentage of the price, be paid to the author of the work; and

“(B) other possible requirements that would achieve the objective of allowing an author of a work of art to share monetarily in the enhanced value of that work.

“(2) Groups to be consulted.—The study under paragraph (1) shall be conducted in consultation with other appropriate departments and agencies of the United States, foreign governments, and groups involved in the creation, exhibition, dissemination, and preservation of works of art, including artists, art dealers, collectors of fine art, and curators of art museums.

“(3) Report to congress.—Not later than 18 months after the date of the enactment of this Act [Dec. 1, 1990], the Register of Copyrights shall submit to the Congress a report containing the results of the study conducted under this subsection.”

.....

## **§ 107. Limitations on exclusive rights: Fair use**

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2546; Pub. L. 101–650, title VI, § 607, Dec. 1, 1990, 104 Stat. 5132; Pub. L. 102–492, Oct. 24, 1992, 106 Stat. 3145.)

### **Historical and Revision Notes**

#### **house report no. 94–1476**

General Background of the Problem. The judicial doctrine of fair use, one of the most important and well-established limitations on the exclusive right of copyright owners, would be given express statutory recognition for the first time in section 107. The claim that a defendant's acts constituted a fair use rather than an infringement has been raised as a defense in innumerable copyright actions over the years, and there is ample case law recognizing the existence of the doctrine and applying it. The examples enumerated at page 24 of the Register's 1961 Report, while by no means exhaustive, give some idea of the sort of activities the courts might regard as fair use under the circumstances: "quotation of excerpts in a review or criticism for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author's observations; use in a parody of some of the content of the work parodied; summary of an address or article, with brief quotations, in a news report; reproduction by a library of a portion of a work to replace part of a damaged copy; reproduction by a teacher or student of a small part of a work to illustrate a lesson; reproduction of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported."

Although the courts have considered and ruled upon the fair use doctrine over and over again, no real definition of the concept has ever emerged. Indeed, since the doctrine is an equitable rule of reason, no generally applicable definition is possible, and each case raising the question must be decided on its own facts. On the other hand, the courts have evolved a set of criteria which, though in no case definitive or determinative, provide some gauge for balancing the equities. These criteria have been stated in various ways, but essentially they can all be reduced to the four standards which have been adopted in section 107: "(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work."

These criteria are relevant in determining whether the basic doctrine of fair use, as stated in the first sentence of section 107, applies in a particular case: "Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright."

The specific wording of section 107 as it now stands is the result of a process of accretion, resulting from the long controversy over the related problems of fair use and the reproduction (mostly by photocopying) of copyrighted material for educational and scholarly purposes. For example, the reference to fair use "by reproduction in copies or phonorecords or by any other means" is mainly intended to make clear that the doctrine has as much application to photocopying and taping as to older forms of use; it is not intended to give these kinds of reproduction any special

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscpri.html>).*

status under the fair use provision or to sanction any reproduction beyond the normal and reasonable limits of fair use. Similarly, the newly-added reference to “multiple copies for classroom use” is a recognition that, under the proper circumstances of fairness, the doctrine can be applied to reproductions of multiple copies for the members of a class.

The Committee has amended the first of the criteria to be considered—“the purpose and character of the use”—to state explicitly that this factor includes a consideration of “whether such use is of a commercial nature or is for non-profit educational purposes.” This amendment is not intended to be interpreted as any sort of not-for-profit limitation on educational uses of copyrighted works. It is an express recognition that, as under the present law, the commercial or non-profit character of an activity, while not conclusive with respect to fair use, can and should be weighed along with other factors in fair use decisions.

**General Intention Behind the Provision.** The statement of the fair use doctrine in section 107 offers some guidance to users in determining when the principles of the doctrine apply. However, the endless variety of situations and combinations of circumstances that can rise in particular cases precludes the formulation of exact rules in the statute. The bill endorses the purpose and general scope of the judicial doctrine of fair use, but there is no disposition to freeze the doctrine in the statute, especially during a period of rapid technological change. Beyond a very broad statutory explanation of what fair use is and some of the criteria applicable to it, the courts must be free to adapt the doctrine to particular situations on a case-by-case basis. Section 107 is intended to restate the present judicial doctrine of fair use, not to change, narrow, or enlarge it in any way.

**Intention as to Classroom Reproduction.** Although the works and uses to which the doctrine of fair use is applicable are as broad as the copyright law itself, most of the discussion of section 107 has centered around questions of classroom reproduction, particularly photocopying. The arguments on the question are summarized at pp. 30–31 of this Committee’s 1967 report (H.R. Rep. No. 83, 90th Cong., 1st Sess.), and have not changed materially in the intervening years.

The Committee also adheres to its earlier conclusion, that “a specific exemption freeing certain reproductions of copyrighted works for educational and scholarly purposes from copyright control is not justified.” At the same time the Committee recognizes, as it did in 1967, that there is a “need for greater certainty and protection for teachers.” In an effort to meet this need the Committee has not only adopted further amendments to section 107, but has also amended section 504 (c) to provide innocent teachers and other non-profit users of copyrighted material with broad insulation against unwarranted liability for infringement. The latter amendments are discussed below in connection with Chapter 5 of the bill [§ 501 et seq. of this title].

In 1967 the Committee also sought to approach this problem by including, in its report, a very thorough discussion of “the considerations lying behind the four criteria listed in the amended section 107, in the context of typical classroom situations arising today.” This discussion appeared on pp. 32–35 of the 1967 report, and with some changes has been retained in the Senate report on S. 22 (S. Rep. No. 94–473, pp. 63–65). The Committee has reviewed this discussion, and considers that it still has value as an analysis of various aspects of the problem.

At the Judiciary Subcommittee hearings in June 1975, Chairman Kastenmeier and other members urged the parties to meet together independently in an effort to achieve a meeting of the minds as to permissible educational uses of copyrighted material. The response to these suggestions was positive, and a number of meetings of three groups, dealing respectively with classroom reproduction of printed material, music, and audio-visual material, were held beginning in September 1975.

In a joint letter to Chairman Kastenmeier, dated March 19, 1976, the representatives of the Ad Hoc Committee of Educational Institutions and Organizations on Copyright Law Revision, and of the Authors League of America, Inc., and the Association of American Publishers, Inc., stated:

You may remember that in our letter of March 8, 1976 we told you that the negotiating teams representing authors and publishers and the Ad Hoc Group had reached tentative agreement on guidelines to insert in the Committee Report covering educational copying from books and periodicals under 107 of H.R. 2223 and S. 22 [this section], and that as part of that tentative agreement each side would accept the amendments to Sections 107 and 504 [this section and section 504 of this title] which were adopted by your Subcommittee on March 3, 1976.

We are now happy to tell you that the agreement has been approved by the principals and we enclose a copy herewith. We had originally intended to translate the agreement into language suitable for inclusion in the legislative report dealing with Section 107 [this section], but we have since been advised by committee staff that this will not be necessary.

As stated above, the agreement refers only to copying from books and periodicals, and it is not intended to apply to musical or audiovisual works.

The full text of the agreement is as follows: