

C I R C U L A R 9 2

Copyright Law of the United States
and Related Laws Contained in Title 17 of the United States Code

O C T O B E R 2 0 0 7



The Constitutional Provision Respecting Copyright

The Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

United States Constitution, Article I, Section 8

Preface

This volume contains the text of title 17 of the *United States Code*, including all amendments enacted through the end of the second session of the 109th Congress, in 2006. It includes the Copyright Act of 1976 and all subsequent amendments to copyright law; the Semiconductor Chip Protection Act of 1984, as amended; and the Vessel Hull Design Protection Act, as amended. The Copyright Office is responsible for registering claims under all three.

The United States copyright law is contained in chapters 1 through 8 and 10 through 12 of title 17 of the *United States Code*. The Copyright Act of 1976, which provides the basic framework for the current copyright law, was enacted on October 19, 1976, as Pub. L. No. 94-553, 90 Stat. 2541. Listed below in chronological order of their enactment are subsequent amendments to copyright law.

Chapters 9 and 13 of title 17 contain statutory design protection that is independent of copyright protection. Chapter 9 of title 17 is the Semiconductor Chip Protection Act of 1984 (SCPA), as amended. On November 8, 1984, the SCPA was enacted as title III of Pub. L. No. 98-620, 98 Stat. 3335, 3347. Chapter 13 of title 17 is the Vessel Hull Design Protection Act (VHDPA). It was enacted on October 28, 1998 as title V of the Digital Millennium Copyright Act (DMCA), Pub. L. No. 105-304, 112 Stat. 2860, 2905. Subsequent amendments to the SCPA and the VHDPA are also included in the list below, in chronological order of their enactment.

Significant copyright legislation enacted since the last edition of this circular in June 2003 includes the Copyright Royalty and Distribution Reform Act of 2004, the Satellite Home Viewer Extension and Reauthorization Act of 2004, and the Family Entertainment and Copyright Act of 2005 (including the Artists' Rights and Theft Prevention Act of 2005, the Family Movie Act of 2005, and the Preservation of Orphan Works Act). For more details, these statutes appear at the end of the chronological list below of statutory enactments contained in title 17 of the *United States Code*.

For transitional and supplementary copyright provisions that do not amend title 17, see the appendices.

Statutory Enactments Contained in Title 17 of the *United States Code*

- [Copyright Act of 1976], Pub. L. No. 94-553, 90 Stat. 2541 (for the general revision of copyright law, title 17 of the *United States Code*, and for other purposes), October 19, 1976.
- Legislative Branch Appropriation Act, 1978, Pub. L. No. 95-94, 91 Stat. 653, 682 (amending §203 and §708, title 17, *United States Code*, regarding the deposit

- of moneys by the Register of Copyrights in the Treasury of the United States), enacted August 5, 1977.
- [Copyright Amendments], Pub. L. No. 95-598, 92 Stat. 2549, 2676 (amending §201(e), title 17, *United States Code*, to permit involuntary transfer under the Bankruptcy Law), enacted November 6, 1978.
 - [Copyright Amendments], Pub. L. No. 96-517, 94 Stat. 3015, 3028 (amending §101 and §117, title 17, *United States Code*, regarding computer programs), enacted December 12, 1980.
 - Piracy and Counterfeiting Amendments Act of 1982, Pub. L. No. 97-180, 96 Stat. 91, 93 (amending §506(a), title 17, *United States Code* and title 18 of the *United States Code*), enacted May 24, 1982.
 - [Copyright Amendments], Pub. L. No. 97-215, 96 Stat. 178 (amending the manufacturing clause in chapter 6, title 17, *United States Code*), enacted July 13, 1982.
 - [Copyright Amendments], Pub. L. No. 97-366, 96 Stat. 1759 (amending §110 and §708, title 17, *United States Code*, regarding the redesignation of registration fees as filing fees, and the exemption from copyright liability of certain performances of nondramatic literary or musical works), enacted October 25, 1982.
 - Record Rental Amendment of 1984, Pub. L. No. 98-450, 98 Stat. 1727 (amending §109 and §115, title 17, *United States Code*, with respect to rental, lease or lending of sound recordings), enacted October 4, 1984.
 - Semiconductor Chip Protection Act of 1984, title III of Pub. L. No. 98-620, 98 Stat. 3335, 3347 (adding chapter 9, title 17, *United States Code*, to provide design protection for semiconductor chips), November 8, 1984.
 - [Copyright Amendments], Pub. L. No. 99-397, 100 Stat. 848 (amending §111 and §801, title 17, *United States Code*, to clarify the definition of the local service area of a primary transmitter in the case of a low power television station), enacted on August 27, 1986.
 - [Amendments to the Semiconductor Chip Protection Act of 1984], Pub. L. No. 100-159, 101 Stat. 899 (amending chapter 9, title 17, *United States Code*, regarding protection extended to semiconductor chip products of foreign entities), enacted November 9, 1987.
 - Berne Convention Implementation Act of 1988, Pub. L. No. 100-568, 102 Stat. 2853, enacted October 31, 1988. (See Appendix I for certain provisions of this Act that do not amend title 17 of the *United States Code*.)

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Chapter 1

Subject Matter and Scope of Copyright

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§101 · Definitions²

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.³

“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.⁴

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.⁵

“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.

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.⁶

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

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 nonanalog format.⁷

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.⁸

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.⁹

The term “financial gain” includes receipt, or expectation of receipt, of anything of value, including the receipt of other copyrighted works.¹⁰

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.

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, 1971.¹¹

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.¹²

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;¹³
- (6) the WIPO Performances and Phonograms Treaty;¹⁴ and
- (7) any other copyright treaty to which the United States is a party.¹⁵

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.

“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.

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.¹⁶

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.¹⁷

“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.¹⁸

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.¹⁹

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.²⁰

“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.²¹

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.²²

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, 1996.²³

The “WIPO Performances and Phonograms Treaty” is the WIPO Performances and Phonograms Treaty concluded at Geneva, Switzerland, on December 20, 1996.²⁴

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.²⁵

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.²⁶

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.²⁷

§ 102 · Subject matter of copyright: In general²⁸

(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.

**§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.

§104 · Subject matter of copyright: National origin²⁹

(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.³⁰

§104A · Copyright in restored works³¹

(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;³²

(D) a nation adhering to the WIPO Performances and Phonograms Treaty;³³ 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;³⁴
 - (D) adheres to the WIPO Performances and Phonograms Treaty;³⁵ 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.³⁶

(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.

§105 • Subject matter of copyright: United States Government works³⁷

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.

§106 • Exclusive rights in copyrighted works³⁸

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.

§106A · Rights of certain authors to attribution and integrity³⁹

(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 the 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.

§107 · Limitations on exclusive rights: Fair use⁴⁰

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.

§108 · Limitations on exclusive rights: Reproduction by libraries and archives⁴¹

(a) Except as otherwise provided in this title and notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, except as provided in subsections (b) and (c), or to distribute such copy or phonorecord, under the conditions specified by this section, if—

- (1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;
- (2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and
- (3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the

provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.

(b) The rights of reproduction and distribution under this section apply to three copies or phonorecords of an unpublished work duplicated solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if—

(1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and

(2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives.

(c) The right of reproduction under this section applies to three copies or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if—

(1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

(2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.

For purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.

(d) The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if—

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(e) The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price, if—

(1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and

(2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(f) Nothing in this section —

(1) shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: *Provided*, That such equipment displays a notice that the making of a copy may be subject to the copyright law;

(2) excuses a person who uses such reproducing equipment or who requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, if it exceeds fair use as provided by section 107;

(3) shall be construed to limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or archives of an audio-visual news program, subject to clauses (1), (2), and (3) of subsection (a); or

(4) in any way affects the right of fair use as provided by section 107, or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

(g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee —

(1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or

(2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): *Provided*, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

(h)(1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof,

for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.

(2) No reproduction, distribution, display, or performance is authorized under this subsection if—

(A) the work is subject to normal commercial exploitation;

(B) a copy or phonorecord of the work can be obtained at a reasonable price; or

(C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.

(3) The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.

(i) The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections (b), (c), and (h), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to works of which copies are reproduced or distributed in accordance with subsections (d) and (e).

§109 · Limitations on exclusive rights:

Effect of transfer of particular copy or phonorecord⁴²

(a) Notwithstanding the provisions of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord. Notwithstanding the preceding sentence, copies or phonorecords of works subject to restored copyright under section 104A that are manufactured before the date of restoration of copyright or, with respect to reliance parties, before publication or service of notice under section 104A(e), may be sold or otherwise disposed of without the authorization of the owner of the restored copyright for purposes of direct or indirect commercial advantage only during the 12-month period beginning on—

(1) the date of the publication in the Federal Register of the notice of intent filed with the Copyright Office under section 104A(d)(2)(A), or

(2) the date of the receipt of actual notice served under section 104A(d)(2)(B), whichever occurs first.

(b)(1)(A) Notwithstanding the provisions of subsection (a), unless authorized by the owners of copyright in the sound recording or the owner of copyright in a

computer program (including any tape, disk, or other medium embodying such program), and in the case of a sound recording in the musical works embodied therein, neither the owner of a particular phonorecord nor any person in possession of a particular copy of a computer program (including any tape, disk, or other medium embodying such program), may, for the purposes of direct or indirect commercial advantage, dispose of, or authorize the disposal of, the possession of that phonorecord or computer program (including any tape, disk, or other medium embodying such program) by rental, lease, or lending, or by any other act or practice in the nature of rental, lease, or lending. Nothing in the preceding sentence shall apply to the rental, lease, or lending of a phonorecord for nonprofit purposes by a nonprofit library or nonprofit educational institution. The transfer of possession of a lawfully made copy of a computer program by a nonprofit educational institution to another nonprofit educational institution or to faculty, staff, and students does not constitute rental, lease, or lending for direct or indirect commercial purposes under this subsection.

(B) This subsection does not apply to—

(i) a computer program which is embodied in a machine or product and which cannot be copied during the ordinary operation or use of the machine or product; or

(ii) a computer program embodied in or used in conjunction with a limited purpose computer that is designed for playing video games and may be designed for other purposes.

(C) Nothing in this subsection affects any provision of chapter 9 of this title.

(2)(A) Nothing in this subsection shall apply to the lending of a computer program for nonprofit purposes by a nonprofit library, if each copy of a computer program which is lent by such library has affixed to the packaging containing the program a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

(B) Not later than three years after the date of the enactment of the Computer Software Rental Amendments Act of 1990, and at such times thereafter as the Register of Copyrights considers appropriate, the Register of Copyrights, after consultation with representatives of copyright owners and librarians, shall submit to the Congress a report stating whether this paragraph has achieved its intended purpose of maintaining the integrity of the copyright system while providing nonprofit libraries the capability to fulfill their function. Such report shall advise the Congress as to any information or recommendations that the Register of Copyrights considers necessary to carry out the purposes of this subsection.

(3) Nothing in this subsection shall affect any provision of the antitrust laws. For purposes of the preceding sentence, “antitrust laws” has the meaning given that term in the first section of the Clayton Act and includes section 5 of

the Federal Trade Commission Act to the extent that section relates to unfair methods of competition.

(4) Any person who distributes a phonorecord or a copy of a computer program (including any tape, disk, or other medium embodying such program) in violation of paragraph (1) is an infringer of copyright under section 501 of this title and is subject to the remedies set forth in sections 502, 503, 504, 505, and 509. Such violation shall not be a criminal offense under section 506 or cause such person to be subject to the criminal penalties set forth in section 2319 of title 18.

(c) Notwithstanding the provisions of section 106(5), the owner of a particular copy lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to display that copy publicly, either directly or by the projection of no more than one image at a time, to viewers present at the place where the copy is located.

(d) The privileges prescribed by subsections (a) and (c) do not, unless authorized by the copyright owner, extend to any person who has acquired possession of the copy or phonorecord from the copyright owner, by rental, lease, loan, or otherwise, without acquiring ownership of it.

(e) Notwithstanding the provisions of sections 106(4) and 106(5), in the case of an electronic audiovisual game intended for use in coin-operated equipment, the owner of a particular copy of such a game lawfully made under this title, is entitled, without the authority of the copyright owner of the game, to publicly perform or display that game in coin-operated equipment, except that this subsection shall not apply to any work of authorship embodied in the audiovisual game if the copyright owner of the electronic audiovisual game is not also the copyright owner of the work of authorship.

§110 · Limitations on exclusive rights: Exemption of certain performances and displays⁴³

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;

(2) except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via

digital networks, or a performance or display that is given by means of a copy or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution knew or had reason to believe was not lawfully made and acquired, the performance of a nondramatic literary or musical work or reasonable and limited portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, if—

(A) the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution;

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission;

(C) the transmission is made solely for, and, to the extent technologically feasible, the reception of such transmission is limited to—

(i) students officially enrolled in the course for which the transmission is made; or

(ii) officers or employees of governmental bodies as a part of their official duties or employment; and

(D) the transmitting body or institution—

(i) institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection; and

(ii) in the case of digital transmissions—

(I) applies technological measures that reasonably prevent—

(aa) retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session; and

(bb) unauthorized further dissemination of the work in accessible form by such recipients to others; and

(II) does not engage in conduct that could reasonably be expected to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination;

(3) performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly;

(4) performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect

commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if—

(A) there is no direct or indirect admission charge; or

(B) the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright owner has served notice of objection to the performance under the following conditions:

(i) the notice shall be in writing and signed by the copyright owner or such owner's duly authorized agent; and

(ii) the notice shall be served on the person responsible for the performance at least seven days before the date of the performance, and shall state the reasons for the objection; and

(iii) the notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation;

(5)(A) except as provided in subparagraph (B), communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless—

(i) a direct charge is made to see or hear the transmission; or

(ii) the transmission thus received is further transmitted to the public;

(B) communication by an establishment of a transmission or retransmission embodying a performance or display of a nondramatic musical work intended to be received by the general public, originated by a radio or television broadcast station licensed as such by the Federal Communications Commission, or, if an audiovisual transmission, by a cable system or satellite carrier, if—

(i) in the case of an establishment other than a food service or drinking establishment, either the establishment in which the communication occurs has less than 2,000 gross square feet of space (excluding space used for customer parking and for no other purpose), or the establishment in which the communication occurs has 2,000 or more gross square feet of space (excluding space used for customer parking and for no other purpose) and—

(I) if the performance is by audio means only, the performance is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space; or

(II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not

more than 1 audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space;

(ii) in the case of a food service or drinking establishment, either the establishment in which the communication occurs has less than 3,750 gross square feet of space (excluding space used for customer parking and for no other purpose), or the establishment in which the communication occurs has 3,750 gross square feet of space or more (excluding space used for customer parking and for no other purpose) and—

(I) if the performance is by audio means only, the performance is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space; or

(II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than 1 audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space;

(iii) no direct charge is made to see or hear the transmission or retransmission;

(iv) the transmission or retransmission is not further transmitted beyond the establishment where it is received; and

(v) the transmission or retransmission is licensed by the copyright owner of the work so publicly performed or displayed;

(6) performance of a nondramatic musical work by a governmental body or a nonprofit agricultural or horticultural organization, in the course of an annual agricultural or horticultural fair or exhibition conducted by such body or organization; the exemption provided by this clause shall extend to any liability for copyright infringement that would otherwise be imposed on such body or organization, under doctrines of vicarious liability or related infringement, for a performance by a concessionaire, business establishment, or other person at such fair or exhibition, but shall not excuse any such person from liability for the performance;

(7) performance of a nondramatic musical work by a vending establishment open to the public at large without any direct or indirect admission charge, where the sole purpose of the performance is to promote the retail sale of

copies or phonorecords of the work, or of the audiovisual or other devices utilized in such performance, and the performance is not transmitted beyond the place where the establishment is located and is within the immediate area where the sale is occurring;

(8) performance of a nondramatic literary work, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, or deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission of visual signals, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of: (i) a governmental body; or (ii) a noncommercial educational broadcast station (as defined in section 397 of title 47); or (iii) a radio subcarrier authorization (as defined in 47 CFR 73.293–73.295 and 73.593–73.595); or (iv) a cable system (as defined in section 111 (f));

(9) performance on a single occasion of a dramatic literary work published at least ten years before the date of the performance, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of a radio subcarrier authorization referred to in clause (8) (iii), *Provided*, That the provisions of this clause shall not be applicable to more than one performance of the same work by the same performers or under the auspices of the same organization;

(10) notwithstanding paragraph (4), the following is not an infringement of copyright: performance of a nondramatic literary or musical work in the course of a social function which is organized and promoted by a nonprofit veterans' organization or a nonprofit fraternal organization to which the general public is not invited, but not including the invitees of the organizations, if the proceeds from the performance, after deducting the reasonable costs of producing the performance, are used exclusively for charitable purposes and not for financial gain. For purposes of this section the social functions of any college or university fraternity or sorority shall not be included unless the social function is held solely to raise funds for a specific charitable purpose; and

(11) the making imperceptible, by or at the direction of a member of a private household, of limited portions of audio or video content of a motion picture, during a performance in or transmitted to that household for private home viewing, from an authorized copy of the motion picture, or the creation or provision of a computer program or other technology that enables such making imperceptible and that is designed and marketed to be used, at the direction of a member of a private household, for such making imperceptible,

if no fixed copy of the altered version of the motion picture is created by such computer program or other technology.

The exemptions provided under paragraph (5) shall not be taken into account in any administrative, judicial, or other governmental proceeding to set or adjust the royalties payable to copyright owners for the public performance or display of their works. Royalties payable to copyright owners for any public performance or display of their works other than such performances or displays as are exempted under paragraph (5) shall not be diminished in any respect as a result of such exemption.

In paragraph (2), the term “mediated instructional activities” with respect to the performance or display of a work by digital transmission under this section refers to activities that use such work as an integral part of the class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting. The term does not refer to activities that use, in 1 or more class sessions of a single course, such works as textbooks, course packs, or other material in any media, copies or phonorecords of which are typically purchased or acquired by the students in higher education for their independent use and retention or are typically purchased or acquired for elementary and secondary students for their possession and independent use.

For purposes of paragraph (2), accreditation —

(A) with respect to an institution providing post-secondary education, shall be as determined by a regional or national accrediting agency recognized by the Council on Higher Education Accreditation or the United States Department of Education; and

(B) with respect to an institution providing elementary or secondary education, shall be as recognized by the applicable state certification or licensing procedures.

For purposes of paragraph (2), no governmental body or accredited nonprofit educational institution shall be liable for infringement by reason of the transient or temporary storage of material carried out through the automatic technical process of a digital transmission of the performance or display of that material as authorized under paragraph (2). No such material stored on the system or network controlled or operated by the transmitting body or institution under this paragraph shall be maintained on such system or network in a manner ordinarily accessible to anyone other than anticipated recipients. No such copy shall be maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary to facilitate the transmissions for which it was made.

For purposes of paragraph (11), the term “making imperceptible” does not include the addition of audio or video content that is performed or displayed over or in place of existing content in a motion picture.

Nothing in paragraph (11) shall be construed to imply further rights under section 106 of this title, or to have any effect on defenses or limitations on rights granted under any other section of this title or under any other paragraph of this section.

§ 111 · Limitations on exclusive rights: Secondary transmissions⁴⁴

(a) CERTAIN SECONDARY TRANSMISSIONS EXEMPTED. — The secondary transmission of a performance or display of a work embodied in a primary transmission is not an infringement of copyright if—

(1) the secondary transmission is not made by a cable system, and consists entirely of the relaying, by the management of a hotel, apartment house, or similar establishment, of signals transmitted by a broadcast station licensed by the Federal Communications Commission, within the local service area of such station, to the private lodgings of guests or residents of such establishment, and no direct charge is made to see or hear the secondary transmission; or

(2) the secondary transmission is made solely for the purpose and under the conditions specified by clause (2) of section 110; or

(3) the secondary transmission is made by any carrier who has no direct or indirect control over the content or selection of the primary transmission or over the particular recipients of the secondary transmission, and whose activities with respect to the secondary transmission consist solely of providing wires, cables, or other communications channels for the use of others: *Provided*, That the provisions of this clause extend only to the activities of said carrier with respect to secondary transmissions and do not exempt from liability the activities of others with respect to their own primary or secondary transmissions;

(4) the secondary transmission is made by a satellite carrier pursuant to a statutory license under section 119; or

(5) the secondary transmission is not made by a cable system but is made by a governmental body, or other nonprofit organization, without any purpose of direct or indirect commercial advantage, and without charge to the recipients of the secondary transmission other than assessments necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service.

(b) SECONDARY TRANSMISSION OF PRIMARY TRANSMISSION TO CONTROLLED GROUP. — Notwithstanding the provisions of subsections (a) and (c), the secondary transmission to the public of a performance or display of a work embodied in a primary transmission is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the primary transmission is not made for reception by the public at large but is controlled and limited to reception by particular

§113 · Scope of exclusive rights in pictorial, graphic, and sculptural works⁴⁷

(a) Subject to the provisions of subsections (b) and (c) of this section, the exclusive right to reproduce a copyrighted pictorial, graphic, or sculptural work in copies under section 106 includes the right to reproduce the work in or on any kind of article, whether useful or otherwise.

(b) This title does not afford, to the owner of copyright in a work that portrays a useful article as such, any greater or lesser rights with respect to the making, distribution, or display of the useful article so portrayed than those afforded to such works under the law, whether title 17 or the common law or statutes of a State, in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.

(c) In the case of a work lawfully reproduced in useful articles that have been offered for sale or other distribution to the public, copyright does not include any right to prevent the making, distribution, or display of pictures or photographs of such articles in connection with advertisements or commentaries related to the distribution or display of such articles, or in connection with news reports.

(d)(1) In a case in which—

(A) a work of visual art has been incorporated in or made part of a building in such a way that removing the work from the building will cause the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), and

(B) the author consented to the installation of the work in the building either before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, or in a written instrument executed on or after such effective date that is signed by the owner of the building and the author and that specifies that installation of the work may subject the work to destruction, distortion, mutilation, or other modification, by reason of its removal, then the rights conferred by paragraphs (2) and (3) of section 106A(a) shall not apply.

(2) If the owner of a building wishes to remove a work of visual art which is a part of such building and which can be removed from the building without the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3), the author's rights under paragraphs (2) and (3) of section 106A(a) shall apply unless—

(A) the owner has made a diligent, good faith attempt without success to notify the author of the owner's intended action affecting the work of visual art, or

(B) the owner did provide such notice in writing and the person so notified failed, within 90 days after receiving such notice, either to remove the work or to pay for its removal.

For purposes of subparagraph (A), an owner shall be presumed to have made a diligent, good faith attempt to send notice if the owner sent such notice by registered mail to the author at the most recent address of the author that was recorded with the Register of Copyrights pursuant to paragraph (3). If the work is removed at the expense of the author, title to that copy of the work shall be deemed to be in the author.

(3) The Register of Copyrights shall establish a system of records whereby any author of a work of visual art that has been incorporated in or made part of a building, may record his or her identity and address with the Copyright Office. The Register shall also establish procedures under which any such author may update the information so recorded, and procedures under which owners of buildings may record with the Copyright Office evidence of their efforts to comply with this subsection.

§ 114 · Scope of exclusive rights in sound recordings⁴⁸

(a) The exclusive rights of the owner of copyright in a sound recording are limited to the rights specified by clauses (1), (2), (3) and (6) of section 106, and do not include any right of performance under section 106(4).

(b) The exclusive right of the owner of copyright in a sound recording under clause (1) of section 106 is limited to the right to duplicate the sound recording in the form of phonorecords or copies that directly or indirectly recapture the actual sounds fixed in the recording. The exclusive right of the owner of copyright in a sound recording under clause (2) of section 106 is limited to the right to prepare a derivative work in which the actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality. The exclusive rights of the owner of copyright in a sound recording under clauses (1) and (2) of section 106 do not extend to the making or duplication of another sound recording that consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording. The exclusive rights of the owner of copyright in a sound recording under clauses (1), (2), and (3) of section 106 do not apply to sound recordings included in educational television and radio programs (as defined in section 397 of title 47) distributed or transmitted by or through public broadcasting entities (as defined by section 118(g)): *Provided*, That copies or phonorecords of said programs are not commercially distributed by or through public broadcasting entities to the general public.

(c) This section does not limit or impair the exclusive right to perform publicly, by means of a phonorecord, any of the works specified by section 106(4).

(d) LIMITATIONS ON EXCLUSIVE RIGHT. — Notwithstanding the provisions of section 106(6) —

(1) EXEMPT TRANSMISSIONS AND RETRANSMISSIONS.—The performance of a sound recording publicly by means of a digital audio transmission, other than as a part of an interactive service, is not an infringement of section 106(6) if the performance is part of—

(A) a nonsubscription broadcast transmission;

(B) a retransmission of a nonsubscription broadcast transmission: *Provided*, That, in the case of a retransmission of a radio station's broadcast transmission—

(i) the radio station's broadcast transmission is not willfully or repeatedly retransmitted more than a radius of 150 miles from the site of the radio broadcast transmitter, however—

(I) the 150 mile limitation under this clause shall not apply when a nonsubscription broadcast transmission by a radio station licensed by the Federal Communications Commission is retransmitted on a nonsubscription basis by a terrestrial broadcast station, terrestrial translator, or terrestrial repeater licensed by the Federal Communications Commission; and

(II) in the case of a subscription retransmission of a nonsubscription broadcast retransmission covered by subclause (I), the 150 mile radius shall be measured from the transmitter site of such broadcast retransmitter;

(ii) the retransmission is of radio station broadcast transmissions that are—

(I) obtained by the retransmitter over the air;

(II) not electronically processed by the retransmitter to deliver separate and discrete signals; and

(III) retransmitted only within the local communities served by the retransmitter;

(iii) the radio station's broadcast transmission was being retransmitted to cable systems (as defined in section 111(f)) by a satellite carrier on January 1, 1995, and that retransmission was being retransmitted by cable systems as a separate and discrete signal, and the satellite carrier obtains the radio station's broadcast transmission in an analog format: *Provided*, That the broadcast transmission being retransmitted may embody the programming of no more than one radio station; or

(iv) the radio station's broadcast transmission is made by a noncommercial educational broadcast station funded on or after January 1, 1995, under section 396(k) of the Communications Act of 1934 (47 U.S.C. 396(k)), consists solely of noncommercial educational and cultural radio programs, and the retransmission, whether or not simultaneous, is a nonsubscription terrestrial broadcast retransmission; or

(C) a transmission that comes within any of the following categories—

Provided, That the transmission of selections in excess of the numerical limits provided for in clauses (A) and (B) from multiple phonorecords shall nonetheless qualify as a sound recording performance complement if the programming of the multiple phonorecords was not willfully intended to avoid the numerical limitations prescribed in such clauses.

(14) A “subscription” transmission is a transmission that is controlled and limited to particular recipients, and for which consideration is required to be paid or otherwise given by or on behalf of the recipient to receive the transmission or a package of transmissions including the transmission.

(15) A “transmission” is either an initial transmission or a retransmission.

§ 115 · Scope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords⁵⁰

In the case of nondramatic musical works, the exclusive rights provided by clauses (1) and (3) of section 106, to make and to distribute phonorecords of such works, are subject to compulsory licensing under the conditions specified by this section.

(a) AVAILABILITY AND SCOPE OF COMPULSORY LICENSE. —

(1) When phonorecords of a nondramatic musical work have been distributed to the public in the United States under the authority of the copyright owner, any other person, including those who make phonorecords or digital phonorecord deliveries, may, by complying with the provisions of this section, obtain a compulsory license to make and distribute phonorecords of the work. A person may obtain a compulsory license only if his or her primary purpose in making phonorecords is to distribute them to the public for private use, including by means of a digital phonorecord delivery. A person may not obtain a compulsory license for use of the work in the making of phonorecords duplicating a sound recording fixed by another, unless:

(i) such sound recording was fixed lawfully; and

(ii) the making of the phonorecords was authorized by the owner of copyright in the sound recording or, if the sound recording was fixed before February 15, 1972, by any person who fixed the sound recording pursuant to an express license from the owner of the copyright in the musical work or pursuant to a valid compulsory license for use of such work in a sound recording.

(2) A compulsory license includes the privilege of making a musical arrangement of the work to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the arrangement shall not change the basic melody or fundamental character of the work, and

shall not be subject to protection as a derivative work under this title, except with the express consent of the copyright owner.

(b) NOTICE OF INTENTION TO OBTAIN COMPULSORY LICENSE. —

(1) Any person who wishes to obtain a compulsory license under this section shall, before or within thirty days after making, and before distributing any phonorecords of the work, serve notice of intention to do so on the copyright owner. If the registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which notice can be served, it shall be sufficient to file the notice of intention in the Copyright Office. The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(2) Failure to serve or file the notice required by clause (1) forecloses the possibility of a compulsory license and, in the absence of a negotiated license, renders the making and distribution of phonorecords actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509.

(c) ROYALTY PAYABLE UNDER COMPULSORY LICENSE.⁵¹ —

(1) To be entitled to receive royalties under a compulsory license, the copyright owner must be identified in the registration or other public records of the Copyright Office. The owner is entitled to royalties for phonorecords made and distributed after being so identified, but is not entitled to recover for any phonorecords previously made and distributed.

(2) Except as provided by clause (1), the royalty under a compulsory license shall be payable for every phonorecord made and distributed in accordance with the license. For this purpose, and other than as provided in paragraph (3), a phonorecord is considered “distributed” if the person exercising the compulsory license has voluntarily and permanently parted with its possession. With respect to each work embodied in the phonorecord, the royalty shall be either two and three-fourths cents, or one-half of one cent per minute of playing time or fraction thereof, whichever amount is larger.

(3)(A) A compulsory license under this section includes the right of the compulsory licensee to distribute or authorize the distribution of a phonorecord of a nondramatic musical work by means of a digital transmission which constitutes a digital phonorecord delivery, regardless of whether the digital transmission is also a public performance of the sound recording under section 106(6) of this title or of any nondramatic musical work embodied therein under section 106(4) of this title. For every digital phonorecord delivery by or under the authority of the compulsory licensee —

(i) on or before December 31, 1997, the royalty payable by the compulsory licensee shall be the royalty prescribed under paragraph (2) and chapter 8 of this title; and

(d) **DEFINITION.**—As used in this section, the following term has the following meaning: A “digital phonorecord delivery” is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. A digital phonorecord delivery does not result from a real-time, non-interactive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible.

§116 · Negotiated licenses for public performances by means of coin-operated phonorecord players⁵²

(a) **APPLICABILITY OF SECTION.**—This section applies to any nondramatic musical work embodied in a phonorecord.

(b) **NEGOTIATED LICENSES.**—

(1) **AUTHORITY FOR NEGOTIATIONS.**—Any owners of copyright in works to which this section applies and any operators of coin-operated phonorecord players may negotiate and agree upon the terms and rates of royalty payments for the performance of such works and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

(2) **CHAPTER 8 PROCEEDING.**—Parties not subject to such a negotiation may have the terms and rates and the division of fees described in paragraph (1) determined in a proceeding in accordance with the provisions of chapter 8.

(c) **LICENSE AGREEMENTS SUPERIOR TO DETERMINATIONS BY COPYRIGHT ROYALTY JUDGES.**—License agreements between one or more copyright owners and one or more operators of coin-operated phonorecord players, which are negotiated in accordance with subsection (b), shall be given effect in lieu of any otherwise applicable determination by the Copyright Royalty Judges.

(d) **DEFINITIONS.**—As used in this section, the following terms mean the following:

(1) A “coin-operated phonorecord player” is a machine or device that—

(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by the insertion of coins, currency, tokens, or other monetary units or their equivalent;

(B) is located in an establishment making no direct or indirect charge for admission;

(C) is accompanied by a list which is comprised of the titles of all the musical works available for performance on it, and is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

(D) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

(2) An “operator” is any person who, alone or jointly with others—

(A) owns a coin-operated phonorecord player;

(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

(C) has the power to exercise primary control over the selection of the musical works made available for public performance on a coin-operated phonorecord player.

§ 117 • Limitations on exclusive rights: Computer programs⁵³

(a) **MAKING OF ADDITIONAL COPY OR ADAPTATION BY OWNER OF COPY.**— Notwithstanding the provisions of section 106, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

(1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or

(2) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

(b) **LEASE, SALE, OR OTHER TRANSFER OF ADDITIONAL COPY OR ADAPTATION.**— Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program. Adaptations so prepared may be transferred only with the authorization of the copyright owner.

(c) **MACHINE MAINTENANCE OR REPAIR.**— Notwithstanding the provisions of section 106, it is not an infringement for the owner or lessee of a machine to make or authorize the making of a copy of a computer program if such copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes only of maintenance or repair of that machine, if—

(1) such new copy is used in no other manner and is destroyed immediately after the maintenance or repair is completed; and

(2) with respect to any computer program or part thereof that is not necessary for that machine to be activated, such program or part thereof is not accessed or used other than to make such new copy by virtue of the activation of the machine.

(d) DEFINITIONS. — For purposes of this section —

(1) the “maintenance” of a machine is the servicing of the machine in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that machine; and

(2) the “repair” of a machine is the restoring of the machine to the state of working in accordance with its original specifications and any changes to those specifications authorized for that machine.

§118 · Scope of exclusive rights: Use of certain works in connection with noncommercial broadcasting⁵⁴

(a) The exclusive rights provided by section 106 shall, with respect to the works specified by subsection (b) and the activities specified by subsection (d), be subject to the conditions and limitations prescribed by this section.

(b) Notwithstanding any provision of the antitrust laws, any owners of copyright in published nondramatic musical works and published pictorial, graphic, and sculptural works and any public broadcasting entities, respectively, may negotiate and agree upon the terms and rates of royalty payments and the proportionate division of fees paid among various copyright owners, and may designate common agents to negotiate, agree to, pay, or receive payments.

(1) Any owner of copyright in a work specified in this subsection or any public broadcasting entity may submit to the Copyright Royalty Judges proposed licenses covering such activities with respect to such works.

(2) License agreements voluntarily negotiated at any time between one or more copyright owners and one or more public broadcasting entities shall be given effect in lieu of any determination by the Librarian of Congress or the Copyright Royalty Judges, if copies of such agreements are filed with the Copyright Royalty Judges within 30 days of execution in accordance with regulations that the Copyright Royalty Judges shall issue.

(3) Voluntary negotiation proceedings initiated pursuant to a petition filed under section 804(a) for the purpose of determining a schedule of terms and rates of royalty payments by public broadcasting entities to owners of copyright in works specified by this subsection and the proportionate division of fees paid among various copyright owners shall cover the 5-year period beginning on January 1 of the second year following the year in which the petition is filed. The parties to each negotiation proceeding shall bear their own costs.

(4) In the absence of license agreements negotiated under paragraph (2) or (3), the Copyright Royalty Judges shall, pursuant to chapter 8, conduct a proceeding to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Copyright Royalty Judges. In establishing such rates and terms the Copyright Royalty Judges may consider the rates for comparable circumstances under voluntary license agreements negotiated as provided in paragraph (2) or (3). The Copyright Royalty Judges shall also establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept by public broadcasting entities.

(c) Subject to the terms of any voluntary license agreements that have been negotiated as provided by subsection (b) (2) or (3), a public broadcasting entity may, upon compliance with the provisions of this section, including the rates and terms established by the Copyright Royalty Judges under subsection (b)(4), engage in the following activities with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works:

(1) performance or display of a work by or in the course of a transmission made by a noncommercial educational broadcast station referred to in subsection (f); and

(2) production of a transmission program, reproduction of copies or phonorecords of such a transmission program, and distribution of such copies or phonorecords, where such production, reproduction, or distribution is made by a nonprofit institution or organization solely for the purpose of transmissions specified in paragraph (1); and

(3) the making of reproductions by a governmental body or a nonprofit institution of a transmission program simultaneously with its transmission as specified in paragraph (1), and the performance or display of the contents of such program under the conditions specified by paragraph (1) of section 110, but only if the reproductions are used for performances or displays for a period of no more than seven days from the date of the transmission specified in paragraph (1), and are destroyed before or at the end of such period. No person supplying, in accordance with paragraph (2), a reproduction of a transmission program to governmental bodies or nonprofit institutions under this paragraph shall have any liability as a result of failure of such body or institution to destroy such reproduction: *Provided*, That it shall have notified such body or institution of the requirement for such destruction pursuant to this paragraph: *And provided further*, That if such body or institution itself fails to destroy such reproduction it shall be deemed to have infringed.

(d) Except as expressly provided in this subsection, this section shall have no applicability to works other than those specified in subsection (b). Owners of copyright in nondramatic literary works and public broadcasting entities may, during the course of voluntary negotiations, agree among themselves, respectively, as to the terms and rates of royalty payments without liability under the antitrust laws. Any such terms and rates of royalty payments shall be effective upon filing with the Copyright Royalty Judges, in accordance with regulations that the Copyright Royalty Judges shall prescribe as provided in section 803(b)(6).

(e) Nothing in this section shall be construed to permit, beyond the limits of fair use as provided by section 107, the unauthorized dramatization of a nondramatic musical work, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works, or the unauthorized use of any portion of an audiovisual work.

(f) As used in this section, the term “public broadcasting entity” means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in paragraph (2) of subsection (c).

§ 119 · Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing⁵⁵

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS. —

(1) SUPERSTATIONS. — Subject to the provisions of paragraphs (5), (6), and (8) of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a superstation shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing or for viewing in a commercial establishment, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, and the carrier makes a direct or indirect charge for each retransmission service to each subscriber receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing or for viewing in a commercial establishment.⁵⁶

(2) NETWORK STATIONS. —

(A) IN GENERAL. — Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (5), (6), (7), and (8) of this subsection and section 114(d), secondary transmissions of a performance or display of

or predicted by the Federal Communications Commission using the Individual Location Longley-Rice methodology described by the Federal Communications Commission in Docket No. 98-201) of a local network television broadcast station shall remain eligible to receive signals of network stations affiliated with the same network, if that subscriber had satellite service of such network signal terminated after July 11, 1998, and before October 31, 1999, as required by this section, or received such service on October 31, 1999.

(f) EXPEDITED CONSIDERATION BY JUSTICE DEPARTMENT OF VOLUNTARY AGREEMENTS TO PROVIDE SATELLITE SECONDARY TRANSMISSIONS TO LOCAL MARKETS. —

(1) IN GENERAL. — In a case in which no satellite carrier makes available, to subscribers located in a local market, as defined in section 122(j)(2), the secondary transmission into that market of a primary transmission of one or more television broadcast stations licensed by the Federal Communications Commission, and two or more satellite carriers request a business review letter in accordance with section 50.6 of title 28, Code of Federal Regulations (as in effect on July 7, 2004), in order to assess the legality under the antitrust laws of proposed business conduct to make or carry out an agreement to provide such secondary transmission into such local market, the appropriate official of the Department of Justice shall respond to the request no later than 90 days after the date on which the request is received.

(2) DEFINITION. — For purposes of this subsection, the term “antitrust laws” —

(A) has the meaning given that term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

(B) includes any State law similar to the laws referred to in paragraph (1).

§120 · Scope of exclusive rights in architectural works⁶²

(a) PICTORIAL REPRESENTATIONS PERMITTED. — The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.

(b) ALTERATIONS TO AND DESTRUCTION OF BUILDINGS. — Notwithstanding the provisions of section 106(2), the owners of a building embodying an architectural work may, without the consent of the author or copyright owner of the architectural work, make or authorize the making of alterations to such building, and destroy or authorize the destruction of such building.

**§ 121 · Limitations on exclusive rights:
Reproduction for blind or other people with disabilities⁶³**

(a) Notwithstanding the provisions of section 106, it is not an infringement of copyright for an authorized entity to reproduce or to distribute copies or phonorecords of a previously published, nondramatic literary work if such copies or phonorecords are reproduced or distributed in specialized formats exclusively for use by blind or other persons with disabilities.

(b)(1) Copies or phonorecords to which this section applies shall—

(A) not be reproduced or distributed in a format other than a specialized format exclusively for use by blind or other persons with disabilities;

(B) bear a notice that any further reproduction or distribution in a format other than a specialized format is an infringement; and

(C) include a copyright notice identifying the copyright owner and the date of the original publication.

(2) The provisions of this subsection shall not apply to standardized, secure, or norm-referenced tests and related testing material, or to computer programs, except the portions thereof that are in conventional human language (including descriptions of pictorial works) and displayed to users in the ordinary course of using the computer programs.

(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a publisher of print instructional materials for use in elementary or secondary schools to create and distribute to the National Instructional Materials Access Center copies of the electronic files described in sections 612(a)(23)(C), 613(a)(6), and section 674(e) of the Individuals with Disabilities Education Act that contain the contents of print instructional materials using the National Instructional Material Accessibility Standard (as defined in section 674(e)(3) of that Act), if—

(1) the inclusion of the contents of such print instructional materials is required by any State educational agency or local educational agency;

(2) the publisher had the right to publish such print instructional materials in print formats; and

(3) such copies are used solely for reproduction or distribution of the contents of such print instructional materials in specialized formats.

(d) For purposes of this section, the term—

(1) “authorized entity” means a nonprofit organization or a governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities;

(2) “blind or other persons with disabilities” means individuals who are eligible or who may qualify in accordance with the Act entitled “An Act to provide books for the adult blind”, approved March 3, 1931 (2 U.S.C. 135a; 46

Stat. 1487) to receive books and other publications produced in specialized formats;

(3) “print instructional materials” has the meaning given under section 674(e)(3)(C) of the Individuals with Disabilities Education Act; and

(4) “specialized formats” means—

(A) braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities; and

(B) with respect to print instructional materials, includes large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities.

§ 122 • Limitations on exclusive rights: Secondary transmissions by satellite carriers within local markets⁶⁴

(a) SECONDARY TRANSMISSIONS OF TELEVISION BROADCAST STATIONS BY SATELLITE CARRIERS. — A secondary transmission of a performance or display of a work embodied in a primary transmission of a television broadcast station into the station’s local market shall be subject to statutory licensing under this section if—

(1) the secondary transmission is made by a satellite carrier to the public;

(2) with regard to secondary transmissions, the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals; and

(3) the satellite carrier makes a direct or indirect charge for the secondary transmission to—

(A) each subscriber receiving the secondary transmission; or

(B) a distributor that has contracted with the satellite carrier for direct or indirect delivery of the secondary transmission to the public.

(b) REPORTING REQUIREMENTS. —

(1) INITIAL LISTS. — A satellite carrier that makes secondary transmissions of a primary transmission made by a network station under subsection (a) shall, within 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station a list identifying (by name in alphabetical order and street address, including county and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission under subsection (a).

(2) SUBSEQUENT LISTS. — After the list is submitted under paragraph (1), the satellite carrier shall, on the 15th of each month, submit to the network a list identifying (by name in alphabetical order and street address, including county and zip code) any subscribers who have been added or dropped as subscribers since the last submission under this subsection.

under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station; and

(B) includes a television broadcast station licensed by an appropriate governmental authority of Canada or Mexico if the station broadcasts primarily in the English language and is a network station as defined in section 119(d)(2)(A).

Chapter 1 • Endnotes

1. In 1980, section 117 was amended in its entirety and given a new title. However, the table of sections was not changed to reflect the new title. Pub. L. No. 96-517, 94 Stat. 3015, 3028. In 1997, a technical amendment made that change. Pub. L. No. 105-80, 111 Stat. 1529, 1534.

2. The Audio Home Recording Act of 1992 amended section 101 by inserting “Except as otherwise provided in this title,” at the beginning of the first sentence. Pub. L. No. 102-563, 106 Stat. 4237, 4248.

The Berne Convention Implementation Act of 1988 amended section 101 by adding a definition for “Berne Convention work.” Pub. L. No. 100-568, 102 Stat. 2853, 2854. In 1990, the Architectural Works Copyright Protection Act amended the definition of “Berne Convention work” by adding paragraph (5). Pub. L. No. 101-650, 104 Stat. 5089, 5133. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 deleted the definition of “Berne Convention work” from section 101. Pub. L. No. 105-304, 112 Stat. 2860, 2861. The definition of “Berne Convention work,” as deleted, is contained in Appendix L.

3. In 1990, the Architectural Works Copyright Protection Act amended section 101 by adding the definition for “architectural work.” Pub. L. No. 101-650, 104 Stat. 5089, 5133. That Act states that the definition is applicable to “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.”

4. The Berne Convention Implementation Act of 1988 amended section 101 by adding the definition of “Berne Convention.” Pub. L. No. 100-568, 102 Stat. 2853, 2854.

5. In 1980, the definition of “computer program” was added to section 101 and placed at the end. Pub. L. No. 96-517, 94 Stat. 3015, 3028. The Intellectual Property and High Technology Technical Amendments Act of 2002 amended section 101 by moving the definition for computer program from the end of section 101 to be in alphabetical order, after “compilation.” Pub. L. No. 107-273, 116 Stat. 1758, 1909.

6. The Copyright Royalty and Distribution Reform Act of 2004 amended section 101 by adding the definition for “Copyright Royalty Judge.” It inserted the definition in the wrong alphabetical order, placing it after “copies,” instead of “copyright owner.” Pub. L. No. 108-419, 118 Stat. 2341, 2361.

7. The Digital Performance Right in Sound Recordings Act of 1995 amended section 101 by adding the definition of “digital transmission.” Pub. L. No. 104-39, 109 Stat. 336, 348.

8. The Fairness in Music Licensing Act of 1998 amended section 101 by adding the definition of “establishment.” Pub. L. No. 105-298, 112 Stat. 2827, 2833.

9. The Fairness in Music Licensing Act of 1998 amended section 101 by adding the definition of “food service or drinking establishment.” Pub. L. No. 105-298, 112 Stat. 2827, 2833.

10. In 1997, the No Electronic Theft (NET) Act amended section 101 by adding the definition for “financial gain.” Pub. L. No. 105-147, 111 Stat. 2678.

11. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended section 101 by adding the definition of “Geneva Phonograms Convention.” Pub. L. No. 105-304, 112 Stat. 2860, 2861.

12. The Fairness in Music Licensing Act of 1998 amended section 101 by adding the definition of “gross square feet of space.” Pub. L. No. 105-298, 112 Stat. 2827, 2833.

13. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 requires that paragraph (5) of the definition of “international agreement” take effect upon entry into force of the WIPO Copyright Treaty with respect to the United States, which occurred March 6, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

14. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 requires that paragraph (6) of the definition of “international agreement” take effect upon entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States, which occurred May 20, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

15. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended section 101 by adding the definition of “international agreement.” Pub. L. No. 105-304, 112 Stat. 2860, 2861.

16. The Artists’ Rights and Theft Prevention Act of 2005 amended section 101 by adding the definition for “motion picture exhibition facility.” It inserted the definition in the wrong alphabetical order, placing it after “motion pictures,” instead of before. Pub. L. No. 109-9, 119 Stat. 218, 220.

17. The Fairness in Music Licensing Act of 1998 amended section 101 by adding the definition of “performing rights society.” Pub. L. No. 105-298, 112 Stat. 2827, 2833.

18. The Berne Convention Implementation Act of 1988 amended the definition of “Pictorial, graphic, and sculptural works” by inserting “diagrams, models, and technical drawings, including architectural plans” in the first sentence, in lieu of “technical drawings, diagrams, and models.” Pub. L. No. 100-568, 102 Stat. 2853, 2854.

19. The Fairness in Music Licensing Act of 1998 amended section 101 by adding the definition of “proprietor.” Pub. L. No. 105-298, 112 Stat. 2827, 2833. In 1999, a technical amendment added the phrase “For purposes of section 513,” to the beginning of the definition of “proprietor.” Pub. L. No. 106-44, 113 Stat. 221, 222.

20. The Copyright Renewal Act of 1992 amended section 101 by adding the definition of “registration.” Pub. L. No. 102-307, 106 Stat. 264, 266.

21. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended section 101 by adding the definition of “treaty party.” Pub. L. No. 105-304, 112 Stat. 2860, 2861.

22. The Berne Convention Implementation Act of 1988 amended section 101 by adding the definition of “country of origin” of a Berne Convention work, for purposes of section 411. Pub. L. No. 100-568, 102 Stat. 2853, 2854. The WIPO Copyright and Performances and

Phonograms Treaties Implementation Act of 1998 amended that definition by changing it to a definition for “United States work,” for purposes of section 411. Pub. L. No. 105-304, 112 Stat. 2860, 2861. In 1999, a technical amendment moved the definition of “United States work” to place it in alphabetical order, after the definition for “United States.” Pub. L. No. 106-44, 113 Stat. 221, 222.

23. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended section 101 by adding the definition of “WIPO Copyright Treaty.” Pub. L. No. 105-304, 112 Stat. 2860, 2861. That definition is required to take effect upon entry into force of the WIPO Copyright Treaty with respect to the United States, which occurred March 6, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

24. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended section 101 by adding the definition of “WIPO Performances and Phonograms Treaty.” Pub. L. No. 105-304, 112 Stat. 2860, 2862. That definition is required to take effect upon entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States, which occurred May 20, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

25. The Visual Artists Rights Act of 1990 amended section 101 by adding the definition of “work of visual art.” Pub. L. No. 101-650, 104 Stat. 5089, 5128.

26. The Satellite Home Viewer Improvement Act of 1999 amended the definition of “a work made for hire” by inserting “as a sound recording” after “audiovisual work.” Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-544. The Work Made for Hire and Copyright Corrections Act of 2000 amended the definition of “work made for hire” by deleting “as a sound recording” after “audiovisual work.” Pub. L. No. 106-379, 114 Stat. 1444. The Act also added a second paragraph to part (2) of that definition. *Id.* These changes are effective retroactively, as of November 29, 1999.

27. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended section 101 by adding the definitions of “WTO Agreement” and “WTO member country,” thereby transferring those definitions to section 101 from section 104A. Pub. L. No. 105-304, 112 Stat. 2860, 2862. See also endnote 31, *infra*.

28. In 1990, the Architectural Works Copyright Protection Act amended subsection 102(a) by adding at the end thereof paragraph (8). Pub. L. No. 101-650, 104 Stat. 5089, 5133.

29. The Berne Convention Implementation Act of 1988 amended section 104(b) by redesignating paragraph (4) as paragraph (5), by inserting after paragraph (3) a new paragraph (4), and by adding subsection (c) at the end. Pub. L. No. 100-568, 102 Stat. 2853, 2855. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended section 104 as follows: 1) by amending subsection (b) to redesignate paragraphs (3) and (5) as (5) and (6), respectively, and by adding a new paragraph (3); 2) by amending section 104(b), throughout; and 3) by adding section 104(d). Pub. L. No. 105-304, 112 Stat. 2860, 2862.

30. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 requires that subsection (d), regarding the effect of phonograms treaties, take effect upon entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States, which occurred May 20, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

31. In 1993, the North American Free Trade Agreement Implementation Act added section 104A. Pub. L. No. 103-182, 107 Stat. 2057, 2115. In 1994, the Uruguay Round Agreements Act amended section 104A in its entirety with an amendment in the nature of a substitute. Pub. L. No. 103-465, 108 Stat. 4809, 4976. On November 13, 1997, section 104A was amended by replacing subsection (d)(3)(A), by striking the last sentence of subsection (e)(1)(B)(ii), and by rewriting paragraphs (2) and (3) of subsection (h). Pub. L. No. 105-80, 111 Stat. 1529, 1530. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended section 104A by rewriting paragraphs (1) and (3) of subsection (h); by adding subparagraph (E) to subsection (h)(6); and by amending subsection (h)(8)(B)(i). Pub. L. No. 105-304, 112 Stat. 2860, 2862. That Act also deleted paragraph (9), thereby transferring the definitions for “WTO Agreement” and “WTO member country” from section 104A to section 101. Pub. L. No. 105-304, 112 Stat. 2860, 2863. See also endnote 27, *supra*.

32. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 requires that subparagraph (C) of the definition of “date of adherence or proclamation” take effect upon entry into force of the WIPO Copyright Treaty with respect to the United States, which occurred March 6, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

33. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 requires that subparagraph (D) of the definition of “date of adherence or proclamation” take effect upon entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States, which occurred May 20, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

34. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 requires that subparagraph (C) of the definition of “eligible country” take effect upon entry into force of the WIPO Copyright Treaty with respect to the United States, which occurred March 6, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

35. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 requires that subparagraph (D) of the definition of “eligible country” take effect upon entry into force of the WIPO Performance and Phonograms Treaty with respect to the United States, which occurred May 20, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

36. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 requires that subparagraph (E) of the definition of “restored work” take effect upon entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States, which occurred May 20, 2002. Pub. L. No. 105-304, 112 Stat. 2860, 2877.

37. In 1968, the Standard Reference Data Act provided an exception to section 105, Pub. L. No. 90-396, 82 Stat. 339. Section 6 of that act amended title 15 of the *United States Code* by authorizing the Secretary of Commerce, at 15 U.S.C. 290e, to secure copyright and renewal thereof on behalf of the United States as author or proprietor “in all or any part of any standard reference data which he prepares or makes available under this chapter,” and to “authorize the reproduction and publication thereof by others.” See also section 105(f) of the Transitional and Supplementary Provisions of the Copyright Act of 1976, in Appendix A. Pub. L. No. 94-553, 90 Stat. 2541.

Concerning the liability of the United States Government for copyright infringement, also see 28 U.S.C. 1498. Title 28 of the *United States Code* is entitled “Judiciary and Judicial Procedure,” included in the appendices to this volume.

38. The Digital Performance Right in Sound Recordings Act of 1995 amended section 106 by adding paragraph (6). Pub. L. No. 104-39, 109 Stat. 336. In 1999, a technical amendment substituted “121” for “120.” Pub. L. No. 106-44, 113 Stat. 221, 222. The Intellectual Property and High Technology Technical Amendments Act of 2002 amended section 106 by substituting sections “107 through 122” for “107 through 121.” Pub. L. No. 107-273, 116 Stat. 1758, 1909.

39. The Visual Artists Rights Act of 1990 added section 106A. Pub. L. No. 101-650, 104 Stat. 5089, 5128. The Act states that, generally, section 106A is to take effect 6 months after its date of enactment, December 1, 1990, and that the rights created by section 106A shall apply to (1) works created before such effective date 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 any work which occurred before such effective date. See also, endnote 3, chapter 3.

40. The Visual Artists Rights Act of 1990 amended section 107 by adding the reference to section 106A. Pub. L. No. 101-650, 104 Stat. 5089, 5132. In 1992, section 107 was also amended to add the last sentence. Pub. L. No. 102-492, 106 Stat. 3145.

41. The Copyright Amendments Act of 1992 amended section 108 by repealing subsection (i) in its entirety. Pub. L. No. 102-307, 106 Stat. 264, 272. In 1998, the Sonny Bono Copyright Term Extension Act amended section 108 by redesignating subsection (h) as (i) and adding a new subsection (h). Pub. L. No. 105-298, 112 Stat. 2827, 2829. Also in 1998, the Digital Millennium Copyright Act amended section 108 by making changes in subsections (a), (b), and (c). Pub. L. No. 105-304, 112 Stat. 2860, 2889.

In 2005, the Preservation of Orphan Works Act amended subsection 108(i) by adding a reference to subsection (h). It substituted “(b), (c), and (h)” for “(b) and (c).” Pub. L. No. 109-9, 119 Stat. 218, 226, 227.

42. The Record Rental Amendment of 1984 amended section 109 by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting a new subsection (b) after subsection (a). Pub. L. No. 98-450, 98 Stat. 1727. Section 4(b) of the Act states that the provisions of section 109(b), as added by section 2 of the Act, “shall not affect the right of an owner of a particular phonorecord of a sound recording, who acquired such ownership before [October 4, 1984], to dispose of the possession of that particular phonorecord on or after such date of enactment in any manner permitted by section 109 of title 17, United States Code, as in effect on the day before the date of the enactment of this Act.” Pub. L. No. 98-450, 98 Stat. 1727, 1728. Section 4(c) of the Act also states that the amendments “shall not apply to rentals, leaseings, lendings (or acts or practices in the nature of rentals, leaseings, or lendings) occurring after the date which is 13 years after [October 4, 1984].” In 1988, the Record Rental Amendment Act of 1984 was amended to extend the time period in section 4(c) from 5 years to 13 years. Pub. L. No. 100-617, 102 Stat. 3194. In 1993, the North American Free Trade Agreement Implementation Act repealed section 4(c) of the Record Rental Amendment of 1984. Pub. L. No. 103-182, 107 Stat. 2057, 2114. Also in 1988, technical amendments to section 109(d) inserted “(c)” in lieu of “(b)” and substituted “copyright” in lieu of “coyright.” Pub. L. No. 100-617, 102 Stat. 3194.

The Computer Software Rental Amendments Act of 1990 amended section 109(b) as follows: 1) paragraphs (2) and (3) were redesignated as paragraphs (3) and (4), respectively;

2) paragraph (1) was struck out and new paragraphs (1) and (2) were inserted in lieu thereof; and 3) paragraph (4), as redesignated, was amended in its entirety with a new paragraph (4) inserted in lieu thereof. Pub. L. No. 101-650, 104 Stat. 5089, 5134. The Act states that section 109(b), as amended, “shall not affect the right of a person in possession of a particular copy of a computer program, who acquired such copy before the date of the enactment of this Act, to dispose of the possession of that copy on or after such date of enactment in any manner permitted by section 109 of title 17, United States Code, as in effect on the day before such date of enactment.” The Act also states that the amendments made to section 109(b) “shall not apply to rentals, leaseings, or lendings (or acts or practices in the nature of rentals, leaseings, or lendings) occurring on or after October 1, 1997.” However, this limitation, which is set forth in the first sentence of section 804 (c) of the Computer Software Rental Amendments Act of 1990, at 104 Stat. 5136, was subsequently deleted in 1994 by the Uruguay Round Agreements Act. Pub. L. No. 103-465, 108 Stat. 4809, 4974.

The Computer Software Rental Amendments Act of 1990 also amended section 109 by adding at the end thereof subsection (e). Pub. L. No. 101-650, 104 Stat. 5089, 5135. That Act states that the provisions contained in the new subsection (e) shall take effect 1 year after its date of enactment. It was enacted on December 1, 1990. The Act also states that such amendments so made “shall not apply to public performances or displays that occur on or after October 1, 1995.”

In 1994, the Uruguay Round Agreements Act amended section 109(a) by adding the second sentence, which begins with “Notwithstanding the preceding sentence.” Pub. L. No. 103-465, 108 Stat. 4809, 4981.

43. In 1988, the Extension of Record Rental Amendment amended section 110 by adding paragraph (10). Pub. L. No. 97-366, 96 Stat. 1759. In 1997, the Technical Corrections to the Satellite Home Viewer Act amended section 110 by inserting a semicolon in lieu of the period at the end of paragraph (8); by inserting “; and” in lieu of the period at the end of paragraph (9); and by inserting “(4)” in lieu of “4 above” in paragraph (10). Pub. L. No. 105-80, 111 Stat. 1529, 1534. The Fairness in Music Licensing Act of 1998 amended section 110, in paragraph 5, by adding subparagraph (B) and by making conforming amendments to subparagraph (A); by adding the phrase “or of the audiovisual or other devices utilized in such performance” to paragraph 7; and by adding the last paragraph to section 110 that begins “The exemptions provided under paragraph (5).” Pub. L. No. 105-298, 112 Stat. 2827, 2830. In 1999, a technical amendment made corrections to conform paragraph designations that were affected by amendments previously made by the Fairness in Music Licensing Act of 1998. Pub. L. No. 106-44, 113 Stat. 221. The Technology, Education, and Copyright Harmonization Act of 2002 amended section 110 by substituting new language for paragraph 110(2) and by adding all the language at the end of section 110 that concerns paragraph 110(2). Pub. L. No. 107-273, 116 Stat. 1758, 1910.

The Family Movie Act of 2005 amended section 110 by adding paragraph (11) and by adding a new paragraph at the end of that section. Pub. L. No. 109-9, 119 Stat. 218, 223.

44. In 1986, section 111(d) was amended by striking out paragraph (1) and by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (1), (2), (3), and (4), respectively. Pub. L. 99-397, 100 Stat. 848. Also, in 1986, section 111(f) was amended by substituting “subsection (d)(1)” for “subsection (d)(2)” in the last sentence of the definition of “secondary transmission”

and by adding a new sentence after the first sentence in the definition of “local service area of a primary transmitter.” Pub. L. No. 99-397, 100 Stat. 848.

The Satellite Home Viewer Act of 1988 amended subsection 111(a) by striking “or” at the end of paragraph (3), by redesignating paragraph (4) as paragraph (5), and by inserting a new paragraph (4). Pub. L. No. 100-667, 102 Stat. 3935, 3949. That Act also amended section (d)(1)(A) by adding the second sentence, which begins with “In determining the total number.” *Id.*

The Copyright Royalty Tribunal Reform Act of 1993 amended section 111(d) by substituting “Librarian of Congress” for “Copyright Royalty Tribunal” where appropriate, by inserting a new sentence in lieu of the second and third sentences of paragraph (2), and, in paragraph (4), by amending subparagraph (B) in its entirety. Pub. L. No. 103-198, 107 Stat. 2304, 2311.

The Satellite Home Viewer Act of 1994 amended section 111(f) by inserting “microwave” after “wires, cables,” in the paragraph relating to the definition of “cable system” and by inserting new matter after “April 15, 1976,” in the paragraph relating to the definition of “local service area of a primary transmitter.” Pub. L. No. 103-369, 108 Stat. 3477, 3480. That Act provides that the amendment “relating to the definition of the local service area of a primary transmitter, shall take effect on July 1, 1994.” *Id.*

In 1995, the Digital Performance in Sound Recordings Act amended section 111(c)(1) by inserting “and section 114(d)” in the first sentence, after “of this subsection.” Pub. L. No. 104-39, 109 Stat. 336, 348.

The Satellite Home Viewer Improvement Act of 1999 amended section 111 by substituting “statutory” for “compulsory” and “programming” for “programing,” wherever they appeared. Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-543. The Act also amended sections 111(a) and (b) by inserting “performance or display of a work embodied in a primary transmission” in lieu of “primary transmission embodying a performance or display of a work.” It amended paragraph (1) of section 111(c) by inserting “a performance or display of a work embodied in” after “by a cable system of” and by striking “and embodying a performance or display of a work.” It amended subparagraphs (3) and (4) of section 111(a) by inserting “a performance or display of a work embodied in a primary transmission” in lieu of “a primary transmission” and by striking “and embodying a performance or display of a work.” *Id.*

The Copyright Royalty and Distribution Reform Act of 2004 made amendments to subsection 111(d) to conform it to revised chapter 8, substituting “Copyright Royalty Judges” for “Librarian of Congress” where appropriate, along with making other conforming amendments. Pub. L. No. 108-419, 118 Stat. 2341, 2361. The Satellite Home Viewer Extension and Reauthorization Act of 2004 amended section 111 by deleting “for private home viewing” in subsections (a)(4) and (d)(1)(A). Pub. L. No. 108-447, 118 Stat. 2809, 3393, 3406.

In 2006, the Copyright Royalty Judges Program Technical Corrections Act amended section 111(d)(2) by substituting “upon authorization by the Copyright Royalty Judges for everything in the second sentence after “Librarian of Congress”; by substituting new text for the second sentence of (4)(B); by making a technical correction in the last sentence of (4)(B) to change “finds” to “find”; and by revising (4)(C) in its entirety. Pub. L. No. 109-303, 120 Stat. 1478, 1481.

45. Royalty rates specified by the compulsory licensing provisions of this section are subject to adjustment by copyright royalty judges appointed by the Librarian of Congress in accordance with the provisions of chapter 8 of title 17 of the *United States Code*, as amended by the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. No. 108-419, 118 Stat. 2341. See, *infra*. Regulations for adjusting royalty rates may be found in subchapter B of chapter 11, title 37, *Code of Federal Regulations*.

46. In 1998, the Digital Millennium Copyright Act amended section 112 by redesignating subsection (a) as subsection (a)(1); by redesignating former sections (a)(1), (a)(2), and (a)(3) as subsections (a)(1)(A), (a)(1)(B), and (a)(1)(C), respectively; by adding subsection (a)(2); and by amending the language in new subsection (a)(1). Pub. L. No. 105-304, 112 Stat. 2860, 2888. The Digital Millennium Copyright Act also amended section 112 by redesignating subsection (e) as subsection (f) and adding a new subsection (e). Pub. L. No. 105-304, 112 Stat. 2860, 2899. In 1999, a technical amendment to section 112(e) redesignated paragraphs (3) through (10) as (2) through (9) and corrected the paragraph references throughout that section to conform to those redesignations. Pub. L. No. 106-44, 113 Stat. 221. The Technology, Education, and Copyright Harmonization Act of 2002 amended section 112 by redesignating subsection 112(f) as 112(g) and adding a new paragraph (f). Pub. L. No. 107-273, 116 Stat. 1758, 1912.

The Copyright Royalty and Distribution Reform Act of 2004 amended subsection 112(e) to conform it to revised chapter 8, by substituting new language for the first sentences of paragraphs (3) and (4); by deleting paragraph (6) and renumbering paragraphs (7) through (9) as (6) through (8); by changing references to the “Librarian of Congress” to “Copyright Royalty Judges,” with corresponding grammatical changes, throughout; and by striking references to negotiations in paragraphs (3) and (4) along with making other conforming amendments. Pub. L. No. 108-419, 118 Stat. 2341, 2361.

47. The Visual Artists Rights Act of 1990 amended section 113 by adding subsection (d) at the end thereof. Pub. L. No. 101-650, 104 Stat. 5089, 5130.

48. The Digital Performance Right in Sound Recordings Act of 1995 amended section 114 as follows: 1) in subsection (a), by striking “and (3)” and inserting in lieu thereof “(3) and (6)”; 2) in subsection (b) in the first sentence, by striking “phonorecords, or of copies of motion pictures and other audiovisual works,” and inserting “phonorecords or copies”; and 3) by striking subsection (d) and inserting in lieu thereof new subsections (d), (e), (f), (g), (h), (i), and (j). Pub. L. No. 104-39, 109 Stat. 336. In 1997, subsection 114(f) was amended by inserting all the text that appears after “December 31, 2000” and by striking “and publish in the Federal Register.” Pub. L. No. 105-80, 111 Stat. 1529, 1531.

In 1998, the Digital Millennium Copyright Act amended section 114(d) by replacing paragraphs (1)(A) and (2) with amendments in the nature of substitutes. Pub. L. No. 105-304, 112 Stat. 2860, 2890. That Act also amended section 114(f) by revising the title; by redesignating paragraph (1) as paragraph (1)(A); by adding paragraph (1)(B) in lieu of paragraphs (2), (3), (4), and (5); and by amending the language in newly designated paragraph (1)(A), including revising the effective date from December 31, 2000, to December 31, 2001. Pub. L. No. 105-304, 112 Stat. 2860, 2894. The Digital Millennium Copyright Act also amended subsection 114(g) by substituting “transmission” in lieu of “subscription transmission,” wherever it appears and, in the first sentence in paragraph (g)(1), by substituting “transmission licensed

under a statutory license” in lieu of “subscription transmission licensed.” Pub. L. No. 105-304, 112 Stat. 2860, 2897. That Act also amended subsection 114(j) by redesignating paragraphs (2), (3), (5), (6), (7), and (8) as (3), (5), (9), (12), (13), and (14), respectively; by amending paragraphs (4) and (9) in their entirety and redesignating them as paragraphs (7) and (15), respectively; and by adding new definitions, including, paragraph (2) defining “archived program,” paragraph (4) defining “continuous program,” paragraph (6) defining “eligible nonsubscription transmission,” paragraph (8) defining “new subscription service,” paragraph (10) defining “preexisting satellite digital audio radio service,” and paragraph (11) defining “preexisting subscription service.” Pub. L. No. 105-304, 112 Stat. 2860, 2897.

The Small Webcaster Settlement Act of 2002 amended section 114 by adding paragraph (5) to subsection 114(f), by amending paragraph 114(g)(2), and by adding paragraph 114(g)(3). Pub. L. No. 107-321, 116 Stat. 2780, 2781 and 2784.

The Copyright Royalty and Distribution Reform Act of 2004 amended subsection 114(f) to conform it to revised chapter 8, by substituting new language for the first sentences of subparagraphs (1)(A), (1)(B), (2)(A), and (2)(B); by substituting new language for subparagraphs (1)(C) and (2)(C); by changing references to the “Librarian of Congress” in paragraphs (1), (2), (3), and (4) to “Copyright Royalty Judges,” and making corresponding grammatical changes; by striking references to negotiations in paragraphs (1), (2), (3), and (4) and replacing with corresponding grammatical changes and conforming language; and by adding new language at the end of subparagraph (4)(A). Pub. L. No. 108-419, 118 Stat. 2341, 2362-2364.

In 2006, the Copyright Royalty Judges Program Technical Corrections Act amended section 114 by substituting new text after “proceedings are to be commenced” in the first sentence in (f)(1)(A); by amending (2)(A) in its entirety; and by inserting “described in” in the last sentence of (2)(B) which repeats an amendment already made by the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. No. 108 419, 118 Stat. 2341, 2364. Pub. L. No. 109-303, 120 Stat. 1478, 1481-82.

49. The Copyright Royalty and Distribution Reform Act of 2004 did not conform the pronoun “its” to “their” when it substituted “Copyright Royalty Judges” for “copyright arbitration royalty panel.” Pub. L. No. 108-419, 118 Stat. 2341, 2362.

50. The Record Rental Amendment of 1984 amended section 115 by redesignating paragraphs (3) and (4) of subsection (c) as paragraphs (4) and (5), respectively, and by adding a new paragraph (3). Pub. L. No. 98-450, 98 Stat. 1727.

The Digital Performance Right in Sound Recordings Act of 1995 amended section 115 as follows: 1) in the first sentence of subsection (a)(1), by striking “any other person” and inserting in lieu thereof “any other person, including those who make phonorecords or digital phonorecord deliveries;”; 2) in the second sentence of the same subsection, by inserting before the period “including by means of a digital phonorecord delivery”; 3) in the second sentence of subsection (c)(2), by inserting “and other than as provided in paragraph (3),” after “For this purpose;”; 4) by redesignating paragraphs (3), (4), and (5) of subsection (c) as paragraphs (4), (5), and (6), respectively, and by inserting after paragraph (2) a new paragraph (3); and (5) by adding after subsection (c) a new subsection (d). Pub. L. No. 104-39, 109 Stat. 336, 344.

In 1997, section 115 was amended by striking “and publish in the Federal Register” in subparagraph 115(c)(3)(D). Pub. L. No. 105-80, 111 Stat. 1529, 1531. The same legislation also amended section 115(c)(3)(E) by replacing the phrases “sections 106(1) and (3)” and “sections

106(1) and 106(3)” with “paragraphs (1) and (3) of section 106.” Pub. L. No. 105-80, 111 Stat. 1529, 1534.

The Copyright Royalty and Distribution Reform Act of 2004 amended paragraph 115(c)(3) to conform it to revised chapter 8, by substituting new language for the first sentences of subparagraphs (3)(C) and (3)(D); by changing references to the “Librarian of Congress” in subparagraphs (3)(C), (3)(D), and (3)(E) to “Copyright Royalty Judges,” with corresponding grammatical changes; by striking references to negotiations in subparagraphs (3)(C) and (D) and making corresponding grammatical changes and conforming language; by deleting subparagraph (F); and by redesignating paragraphs (G) through (L) as paragraphs (F) through (K) with corresponding technical changes in subparagraphs (A), (B), and (E) to conform references to the subparagraphs subject to that redesignation. Pub. L. No. 108-419, 118 Stat. 2341, 2364–2365. The Copyright Royalty and Distribution Act of 2004 also amended the first sentence of subparagraph 115(c)(3)(B) by substituting “section” for “paragraph” and by inserting “on a nonexclusive basis” after “common agents.” *Id.* at 2364. It also amended subparagraph 115(c)(3)(E) by inserting “as to digital phonorecord deliveries” after “shall be given effect.” *Id.* at 2365.

In 2006, the Copyright Royalty Judges Program Technical Corrections Act amended 115(c)(3)(B) by inserting “this subparagraph and subparagraphs (C) through (E)” in lieu of “subparagraphs (B) through (F).” The Act also amended the third sentence of 115(c)(3)(D) by inserting “in subparagraphs (B) and (C)” after “described”; and 115(c)(3)(E)(i) and (ii)(I) by substituting “(C) and (D)” for “(C) or (D)” wherever it appears. Pub. L. No. 109-303, 120 Stat. 1478, 1482.

51. See endnote 45, *supra*.

52. The Berne Convention Implementation Act of 1988 added section 116A. Pub. L. No. 100-568, 102 Stat. 2853, 2855. The Copyright Royalty Tribunal Reform Act of 1993 redesignated section 116A as section 116; repealed the preexisting section 116; in the redesignated section 116, struck subsections (b), (e), (f), and (g), and redesignated subsections (c) and (d) as subsections (b) and (c), respectively; and substituted, where appropriate, “Librarian of Congress” or “copyright arbitration royalty panel” for “Copyright Royalty Tribunal.” Pub. L. No. 103-198, 107 Stat. 2304, 2309. In 1997, section 116 was amended by rewriting subsection (b)(2) and by adding a new subsection (d). Pub. L. No. 105-80, 111 Stat. 1529, 1531.

The Copyright Royalty and Distribution Reform Act of 2004 amended section 116 to conform it to revised chapter 8, by substituting new language for subsection (b)(2); by changing the title of subsection (c) to “License Agreements Superior to Determinations by Copyright Royalty Judges” from “License Agreements Superior to Copyright Arbitration Royalty Panel Determinations”; and, in subsection (c), by striking “copyright arbitration royalty panel” and replacing it with “Copyright Royalty Judges.” Pub. L. No. 108-419, 118 Stat. 2341, 2365.

53. In 1980, section 117 was amended in its entirety. Pub. L. No. 96-517, 94 Stat. 3015, 3028. In 1998, the Computer Maintenance Competition Assurance Act amended section 117 by inserting headings for subsections (a) and (b) and by adding subsections (c) and (d). Pub. L. No. 105-304, 112 Stat. 2860, 2887.

54. The Copyright Royalty Tribunal Reform Act of 1993 amended section 118 by striking the first two sentences of subsection (b), by substituting a new first sentence in paragraph (3), and by making general conforming amendments throughout. Pub. L. 103-198, 107 Stat.

2304, 2309. In 1999, a technical amendment deleted paragraph (2) from section 118(e). Pub. L. No. 106-44, 113 Stat. 221, 222. The Intellectual Property and High Technology Technical Amendments Act of 2002 amended section 118 by deleting “to it” in the second sentence in subsection (b)(1). Pub. L. No. 107-273, 116 Stat. 1758, 1909.

The Copyright Royalty and Distribution Reform Act of 2004 amended section 118 to conform it to revised chapter 8, by deleting the last sentence in paragraph (b)(1); by revising paragraph (b)(2) by rewriting the end of sentence after “determination by the”; by substituting new language for the first sentence of paragraph (3), thereby, creating new paragraphs (3) and (4); by deleting subsection (c) and redesignating sections (d) through (g) as (c) through (f) with a corresponding technical change in section (f) to refer to “subsection (c)” instead of “subsection (d)”; and by changing references to the “Librarian of Congress” in subsections (b) and (d), as redesignated, to “Copyright Royalty Judges,” with corresponding grammatical or procedural changes. Pub. L. No. 108-419, 118 Stat. 2341, 2365–2366. The Copyright Royalty and Distribution Act of 2004 also amended section 116 in text that became the second sentence of new subparagraph (4), see *supra*, by inserting “or (3)” after “paragraph 2”. *Id.* at 2366. It further amended subsection 116(c) by inserting “or (3)” after “provided by subsection (b)(2)” and by inserting “to the extent that they were accepted by the Librarian of Congress” after “under subsection (b)(3)” and before the comma. *Id.*

In 2006, the Copyright Royalty Judges Program Technical Corrections Act amended subsection 118(b)(3) by inserting “owners of copyright in works” in lieu of “copyright owners in works”; by amending the first sentence of (c); and by substituting “(f)” for “(g)” in (c)(1). Pub. L. No. 109-303, 120 Stat. 1478, 1482.

55. The Satellite Home Viewer Act of 1988 added section 119. Pub. L. No. 100-667, 102 Stat. 3935, 3949. The Copyright Royalty Tribunal Reform Act of 1993 amended subsections (b) and (c) of section 119 by substituting “Librarian of Congress” in lieu of “Copyright Royalty Tribunal” wherever it appeared and by making related conforming amendments. Pub. L. No. 103-198, 107 Stat. 2304, 2310. The Copyright Royalty Tribunal Reform Act of 1993 also amended paragraph (c)(3) by deleting subparagraphs (B), (C), (E), and (F) and by redesignating subparagraph (D) as (B), (G) as (C), and (H) as (D). The redesignated subparagraph (C) was amended in its entirety and paragraph (c)(4) was deleted. *Id.*

The Satellite Home Viewer Act of 1994 further amended section 119. Pub. L. No. 103-369, 108 Stat. 3477. In 1997, technical corrections and clarifications were made to the Satellite Home Viewer Act of 1994. Pub. L. No. 105-80, 111 Stat. 1529. Those two acts amended section 119 as follows: 1) by deleting or replacing obsolete effective dates; 2) in subsection (a)(5), by adding subparagraph (D); 3) in subsection (a), by adding paragraphs (8), (9), and (10); 4) in subsection (b)(1)(B), by adjusting the royalty rate for retransmitted superstations; 5) in subsection (c)(3), by replacing subparagraph (B) with an amendment in the nature of a substitute; 6) in subsections (d)(2) and (d)(6), by modifying the definition of “network station” and “satellite carrier”; and 7) in subsection (d), by adding paragraph 11 to define “local market.”

Pursuant to section 4 of the Satellite Home Viewer Act of 1994, the changes made by that Act to section 119 of the *United States Code* ceased to be effective on December 31, 1999. Pub. L. No. 103-369, 108 Stat. 3477, 3481. However, section 1003 of the Satellite Home Viewer Improvement Act of 1999 extended that date to December 31, 2004. Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-527.

The Digital Performance Right in Sound Recordings Act of 1995 amended section 119 in the first sentence of subsections (a)(1) and (a)(2)(A), respectively, by inserting the words “and section 114(d)” after “of this subsection.” Pub. L. No. 104-39, 109 Stat. 336, 348. In 1999, a technical amendment substituted “network station’s” for “network’s stations” in section 119(a)(8)(C)(ii). Pub. L. No. 106-44, 113 Stat. 221, 222.

The Satellite Home Viewer Improvement Act of 1999 amended section 119(a)(1) as follows: 1) by inserting “AND PBS SATELLITE FEED” after “SUPERSTATIONS” in the paragraph heading; 2) by inserting “performance or display of a work embodied in a primary transmission made by a superstation or by the Public Broadcasting Service satellite feed” in lieu of “primary transmission made by a superstation and embodying a performance or display of a work,” (see this endnote, *infra*); and 3) by adding the last sentence, which begins “In the case of the Public Broadcasting Service.” Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-530 and 543. The Act states that these amendments shall be effective as of July 1, 1999, except for a portion of the second item, starting with “performance or display” through “superstation.” Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-544. The Act also amended section 119(a) by inserting the phrase “with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorization of the Federal Communications Commission governing the carriage of television broadcast stations signals” in paragraphs (1) and (2) and by inserting into paragraph (2), “a performance or display of a work embodied in a primary transmission made by a network station” in lieu of “programming contained in a primary transmission made by a network station and embodying a performance or display of a work.” *Id.* at 1501A-531 and 544. The Act amended section 119(a)(2) by substituting new language for paragraph (B) and, in paragraph (C), by deleting “currently” after “the satellite carrier” near the end of the first sentence. *Id.* at 1501A-528 and 544. It also amended section 119(a)(4) by inserting “a performance or display of a work embodied in” after “by a satellite carrier of” and by deleting “and embodying a performance or display of a work.” *Id.* at 1501A-544. The Satellite Home Viewer Improvement Act of 1999 further amended section 119(a) by adding subparagraph (E) to paragraph (5). *Id.* at 1501A-528. It amended section 119(a)(6) by inserting “performance or display of a work embodied in” after “by a satellite carrier of” and by deleting “and embodying a performance or display of a work.” *Id.* The Act also amended section 119(a) by adding paragraphs (11) and (12). *Id.* at 1501A-529 and 531.

The Satellite Home Viewer Improvement Act of 1999 amended section 119(b)(1) by inserting “or the Public Broadcasting Service satellite feed” into subparagraph (B). (See endnote 59, *supra*.) *Id.* at 1501A-530. The Act amended section 119(c) by adding a new paragraph (4). *Id.* at 1501A-527. The Act amended section 119(d) by substituting new language for paragraphs (9) through (11) and by adding paragraph (12). *Id.* at 1501A-527, 530, and 531. The Act substituted new language for section 119(e). *Id.* at 1501A-529.

The Intellectual Property and High Technology Technical Amendments Act of 2002 amended section 119(a)(6) by substituting “of a performance” for “of performance.” Pub. L. No. 107-273, 116 Stat. 1758, 1909. The Act also amended section 119(b)(1)(A) by substituting “retransmitted” and “retransmissions” for “transmitted” and “transmitted,” respectively, in paragraph (1)(A). *Id.*

The Copyright Royalty and Distribution Reform Act of 2004 amended section 119 to conform it to revised chapter 8 by changing references to the “Librarian of Congress” in subsections (b) and (c) to “Copyright Royalty Judges,” with corresponding grammatical

adjustments and procedural references; by substituting new language for subparagraphs (b)(4)(B) and (C); by deleting the term “arbitration” wherever it appears with “proceedings,” along with corresponding grammatical adjustments; by amending the title of subparagraph 119(c)(3)(C) to insert “Determination under Chapter 8” in lieu of “Decision of Arbitration Panel or Order of Librarian”; and, also, in subparagraph (c)(3)(C), by substituting new language for clauses (i) and (ii). Pub. L. No. 108-419, 118 Stat. 2341, 2364–2365.

The Satellite Home Viewer Extension and Reauthorization Act of 2004 amended paragraph 119(a)(1) by deleting “AND PBS SATELLITE FEED” from the title; by deleting “or by the Public Broadcasting Service satellite feed” from the first sentence; by deleting the last sentence, which concerned Public Broadcasting Service satellite feed; by inserting “or for viewing in a commercial establishment” after “for private home viewing”; and by substituting “subscriber” for “household.” Pub. L. No. 108-447, 118 Stat. 2809, 3393, 3394 and 3406. It amended subparagraph 119(a)(2)(B) by inserting at the end of clause (i) “The limitation in this clause shall not apply to secondary transmissions under paragraph (3).” *Id.* at 3397. It amended subsection (C) in its entirety by substituting new language. *Id.* at 3394. It amended paragraph 119(a)(5), which is now renumbered as 119(a)(7), in the first sentence of subparagraph (A), by inserting “who is not eligible to receive the transmission under this section” in lieu of “who does not reside in an unserved household” and, in the first sentence of subparagraph (B), by making the same change but using “are” instead of “is”; and, in subparagraph (D), by substituting “is to a subscriber who is eligible to receive the secondary transmission under this section” in lieu of “is for private home viewing to an unserved household.” *Id.* at 3404. The Act further amended subsection 119(a) by adding new paragraphs, redesignated as paragraphs (3) and (4); by deleting paragraph eight; by renumbering the paragraphs affected by those changes; and by revising the references to old paragraph numbers, accordingly, in paragraphs (1) and (2), to be the new numbers as redesignated. *Id.* at 3394, 3396, and 3397. The Act further amended subsection 119(a) by adding at the end three new paragraphs, designated as new paragraphs (14), (15) and (16). *Id.* at 3400, 3404 and 3408.

The Satellite Home Viewer Extension and Reauthorization Act of 2004 amended the title of subsection 119(b) by deleting “for Private Home Viewing.” *Id.* at 3406. It also amended subparagraph 119(b)(A) and paragraph 119(b)(3) by deleting “for private home viewing.” *Id.* The Act amended subparagraph (119)(b)(1)(B) in its entirety by substituting new language. *Id.* at 3400. It added a new paragraph at the end of paragraph 119(b)(1). *Id.* at 3401.

The Satellite Home Viewer Extension and Reauthorization Act of 2004 amended subsection 119(c) in its entirety. *Id.* The Satellite Home Viewer Extension and Reauthorization Act of 2004 amended paragraph 119(d)(1) by deleting “for private home viewing” after “individual subscribers” and by adding at the end “in accordance with the provisions of this section.” *Id.* at 3406. It amended paragraph 119(d)(2)(A) by substituting, at the beginning of the first sentence, “a television station licensed by the Federal Communications Commission” in lieu of “a television broadcast station.” *Id.* The Act amended paragraph 119(d)(8) by substituting “or entity that” in lieu of “who”; by deleting “for private home viewing”; and by inserting at the end “in accordance with the provisions of this section.” *Id.* It amended subparagraph 119(d)(10)(D) by changing “(a)(11)” to “(a)(12).” *Id.* at 3405. It amended in their entireties paragraph 119(d)(9), subparagraph (119)(d)(10)(B) and paragraphs 119(d)(11) and (12). *Id.* at 3405 and 3406.

The Satellite Home Viewer Extension and Reauthorization Act of 2004 amended subsection 119(e) by changing the date at the beginning of the sentence from “December 31, 2004” to “December 31, 2009.” *Id.* at 3394. The Satellite Home Viewer Extension and Reauthorization Act of 2004 amended section 119 by adding a new subsection (f). *Id.* at 3394.

In 2006, the Copyright Royalty Judges Program Technical Corrections Act amended section 119 by revising the second sentence of (b)(4)(B); by amending (b)(4)(C) in its entirety; and by making a technical correction to substitute “arbitration” for “arbitrary” in (c)(1)(F)(i). Pub. L. No. 109-303, 120 Stat. 1478, 1482–83.

56. The Satellite Home Viewer Improvement Act of 1999 amended section 119(a)(1) by deleting “primary transmission made by a superstation and embodying a performance or display of a work” and inserting in its place “performance or display of a work embodied in a primary transmission made by a superstation.” Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-543. This amendatory language did not take into account a prior amendment that had inserted “or by the Public Broadcasting Service satellite feed” after “superstation” into the phrase quoted above that was deleted. Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-530. There was no mention of the phrase “or by the Public Broadcasting Service satellite feed” in that second amendment. The Intellectual Property and High Technology Technical Amendments Act of 2002 clarified these provisions. Pub. L. No. 107-273, 116 Stat. 1758, 1908. The Act deleted the first change and amended the second to clarify that the amended language should read, “performance or display of a work embodied in a primary transmission made by a superstation or by the Public Broadcasting Service satellite feed.” *Id.*

57. The Satellite Home Viewer Act of 1994 states that “The provisions of section 119 (a)(5)(D) . . . relating to the burden of proof of satellite carriers, shall take effect on January 1, 1997, with respect to civil actions relating to the eligibility of subscribers who subscribed to service as an unserved household before the date of the enactment of this Act [, October 18, 1994].” Pub. L. No. 103-369, 108 Stat. 3477, 3481.

58. The Intellectual Property and High Technology Technical Amendments Act of 2002 made a technical correction to insert the word “a” before “performance.” Pub. L. No. 107-273, 116 Stat. 1758, 1909.

59. The Satellite Home Viewer Improvement Act of 1999 stated that section 119(a), “as amended by section 1005(e)” of the same Act, was amended to add a new paragraph at the end of that subsection. Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-531. The Intellectual Property and High Technology Technical Amendments Act of 2002 made a technical correction to clarify that the amendment was to section 119(a) as amended by “section 1005(d)” of the Satellite Home Viewer Improvement Act of 1999 rather than “section 1005(e).” Pub. L. No. 107-273, 116 Stat. 1758, 1908.

60. The Satellite Home Viewer Extension and Reauthorization Act of 2004 was enacted on December 8, 2004.

61. See endnote 60, *supra*.

62. In 1990, the Architectural Works Copyright Protection Act added section 120. Pub. L. No. 101-650, 104 Stat. 5089, 5133. The effective date provision of the Act states that its amendments apply to any work created on or after the date it was enacted, which was December 1, 1990. It also states that the amendments apply to “any architectural work that, on [December 1, 1990], 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 [the Act], shall terminate on December 31, 2002, unless the work is constructed by that date." *Id.*, 104 Stat. 5089, 5134.

63. The Legislative Branch Appropriations Act, 1997, added section 121. Pub. L. No. 104-197, 110 Stat. 2394, 2416. The Work Made for Hire and Copyright Corrections Act of 2000 amended section 121 by substituting "section 106" for "sections 106 and 710." Pub. L. No. 106-379, 114 Stat. 1444, 1445.

The Individuals with Disabilities Education Improvement Act of 2004 amended section 121 by amending paragraph (c)(3) in its entirety; by adding a new paragraph (c)(4); by redesignating subsection (c) as (d); and by adding a new subsection (c). Pub. L. No. 108-446, 118 Stat. 2647, 2807.

64. The Satellite Home Viewer Improvement Act of 1999 added section 122. Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-523. The Act states that section 122 shall be effective as of November 29, 1999. Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-544.

The Satellite Home Viewer Extension and Reauthorization Act of 2004 amended section 122 by adding a subparagraph (D) to paragraph (j)(2). Pub. L. No. 108-447, 118 Stat. 2809, 3393, 3409.

Chapter 2

Copyright Ownership and Transfer

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§201 · Ownership of copyright¹

(a) **INITIAL OWNERSHIP.**— Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are coowners of copyright in the work.

(b) **WORKS MADE FOR HIRE.**— In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

(c) **CONTRIBUTIONS TO COLLECTIVE WORKS.**— Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.

(d) **TRANSFER OF OWNERSHIP.**—

(1) The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

(2) Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by section 106, may be transferred as provided by clause (1) and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this title.

(e) **INVOLUNTARY TRANSFER.**— When an individual author's ownership of a copyright, or of any of the exclusive rights under a copyright, has not previously been transferred voluntarily by that individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect under this title, except as provided under title 11.²

§202 · Ownership of copyright as distinct from ownership of material object

Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of any material object, including the copy or phonorecord

in which the work is first fixed, does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does transfer of ownership of a copyright or of any exclusive rights under a copyright convey property rights in any material object.

§203 · Termination of transfers and licenses granted by the author³

(a) **CONDITIONS FOR TERMINATION.** — In the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1978, otherwise than by will, is subject to termination under the following conditions:

(1) In the case of a grant executed by one author, termination of the grant may be effected by that author or, if the author is dead, by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's termination interest. In the case of a grant executed by two or more authors of a joint work, termination of the grant may be effected by a majority of the authors who executed it; if any of such authors is dead, the termination interest of any such author may be exercised as a unit by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's interest.

(2) Where an author is dead, his or her termination interest is owned, and may be exercised, as follows:

(A) The widow or widower owns the author's entire termination interest unless there are any surviving children or grandchildren of the author, in which case the widow or widower owns one-half of the author's interest.

(B) The author's surviving children, and the surviving children of any dead child of the author, own the author's entire termination interest unless there is a widow or widower, in which case the ownership of one-half of the author's interest is divided among them.

(C) The rights of the author's children and grandchildren are in all cases divided among them and exercised on a per stirpes basis according to the number of such author's children represented; the share of the children of a dead child in a termination interest can be exercised only by the action of a majority of them.

(D) In the event that the author's widow or widower, children, and grandchildren are not living, the author's executor, administrator, personal representative, or trustee shall own the author's entire termination interest.

(3) Termination of the grant may be effected at any time during a period of five years beginning at the end of thirty-five years from the date of execution

of the grant; or, if the grant covers the right of publication of the work, the period begins at the end of thirty-five years from the date of publication of the work under the grant or at the end of forty years from the date of execution of the grant, whichever term ends earlier.

(4) The termination shall be effected by serving an advance notice in writing, signed by the number and proportion of owners of termination interests required under clauses (1) and (2) of this subsection, or by their duly authorized agents, upon the grantee or the grantee's successor in title.

(A) The notice shall state the effective date of the termination, which shall fall within the five-year period specified by clause (3) of this subsection, and the notice shall be served not less than two or more than ten years before that date. A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.

(B) The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(5) Termination of the grant may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or to make any future grant.

(b) **EFFECT OF TERMINATION.**— Upon the effective date of termination, all rights under this title that were covered by the terminated grants revert to the author, authors, and other persons owning termination interests under clauses (1) and (2) of subsection (a), including those owners who did not join in signing the notice of termination under clause (4) of subsection (a), but with the following limitations:

(1) A derivative work prepared under authority of the grant before its termination may continue to be utilized under the terms of the grant after its termination, but this privilege does not extend to the preparation after the termination of other derivative works based upon the copyrighted work covered by the terminated grant.

(2) The future rights that will revert upon termination of the grant become vested on the date the notice of termination has been served as provided by clause (4) of subsection (a). The rights vest in the author, authors, and other persons named in, and in the proportionate shares provided by, clauses (1) and (2) of subsection (a).

(3) Subject to the provisions of clause (4) of this subsection, a further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is signed by the same number and proportion of the owners, in whom the right has vested under clause (2) of this subsection, as are required to terminate the grant under clauses (1) and (2) of subsection (a). Such further grant or agreement is effective with respect to all of the persons in whom the right it covers has vested under clause (2) of this subsection, including those who did not join in signing it. If any person dies after rights under a

terminated grant have vested in him or her, that person's legal representatives, legatees, or heirs at law represent him or her for purposes of this clause.

(4) A further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is made after the effective date of the termination. As an exception, however, an agreement for such a further grant may be made between the persons provided by clause (3) of this subsection and the original grantee or such grantee's successor in title, after the notice of termination has been served as provided by clause (4) of subsection (a).

(5) Termination of a grant under this section affects only those rights covered by the grants that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws.

(6) Unless and until termination is effected under this section, the grant, if it does not provide otherwise, continues in effect for the term of copyright provided by this title.

§ 204 · Execution of transfers of copyright ownership

(a) A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent.

(b) A certificate of acknowledgment is not required for the validity of a transfer, but is prima facie evidence of the execution of the transfer if—

(1) in the case of a transfer executed in the United States, the certificate is issued by a person authorized to administer oaths within the United States; or

(2) in the case of a transfer executed in a foreign country, the certificate is issued by a diplomatic or consular officer of the United States, or by a person authorized to administer oaths whose authority is proved by a certificate of such an officer.

§ 205 · Recordation of transfers and other documents⁴

(a) **CONDITIONS FOR RECORDATION.** — Any transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document.

(b) **CERTIFICATE OF RECORDATION.** — The Register of Copyrights shall, upon receipt of a document as provided by subsection (a) and of the fee provided by section 708, record the document and return it with a certificate of recordation.

(c) RECORDATION AS CONSTRUCTIVE NOTICE. — Recordation of a document in the Copyright Office gives all persons constructive notice of the facts stated in the recorded document, but only if—

(1) the document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work; and

(2) registration has been made for the work.

(d) PRIORITY BETWEEN CONFLICTING TRANSFERS. — As between two conflicting transfers, the one executed first prevails if it is recorded, in the manner required to give constructive notice under subsection (c), within one month after its execution in the United States or within two months after its execution outside the United States, or at any time before recordation in such manner of the later transfer. Otherwise the later transfer prevails if recorded first in such manner, and if taken in good faith, for valuable consideration or on the basis of a binding promise to pay royalties, and without notice of the earlier transfer.

(e) PRIORITY BETWEEN CONFLICTING TRANSFER OF OWNERSHIP AND NONEXCLUSIVE LICENSE. — A nonexclusive license, whether recorded or not, prevails over a conflicting transfer of copyright ownership if the license is evidenced by a written instrument signed by the owner of the rights licensed or such owner's duly authorized agent, and if

(1) the license was taken before execution of the transfer; or

(2) the license was taken in good faith before recordation of the transfer and without notice of it.

Chapter 2 • Endnotes

1. In 1978, section 201(e) was amended by deleting the period at the end and adding “, except as provided under title 11.”

2. Title 11 of the *United States Code* is entitled “Bankruptcy.”

3. In 1998, the Sonny Bono Copyright Term Extension Act amended section 203 by deleting “by his widow or her widower and his or her grandchildren” from the first sentence in paragraph (2) of subsection (a) and by adding subparagraph (D) to paragraph (2). Pub. L. No. 105-298, 112 Stat. 2827, 2829.

4. The Berne Convention Implementation Act of 1988 amended section 205 by deleting subsection (d) and redesignating subsections (e) and (f) as subsections (d) and (e), respectively. Pub. L. No. 100-568, 102 Stat. 2853, 2857.

Chapter 3¹

Duration of Copyright

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§301 · Preemption with respect to other laws²

(a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

(b) Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any State with respect to—

(1) subject matter that does not come within the subject matter of copyright as specified by sections 102 and 103, including works of authorship not fixed in any tangible medium of expression; or

(2) any cause of action arising from undertakings commenced before January 1, 1978;

(3) activities violating legal or equitable rights that are not equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106; or

(4) State and local landmarks, historic preservation, zoning, or building codes, relating to architectural works protected under section 102(a)(8).

(c) With respect to sound recordings fixed before February 15, 1972, any rights or remedies under the common law or statutes of any State shall not be annulled or limited by this title until February 15, 2067. The preemptive provisions of subsection (a) shall apply to any such rights and remedies pertaining to any cause of action arising from undertakings commenced on and after February 15, 2067. Notwithstanding the provisions of section 303, no sound recording fixed before February 15, 1972, shall be subject to copyright under this title before, on, or after February 15, 2067.

(d) Nothing in this title annuls or limits any rights or remedies under any other Federal statute.

(e) The scope of Federal preemption under this section is not affected by the adherence of the United States to the Berne Convention or the satisfaction of obligations of the United States thereunder.

(f)(1) On or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, all legal or equitable rights that are equivalent to any of the rights conferred by section 106A with respect to works of visual art to which the rights conferred by section 106A apply are governed exclusively by section 106A and section 113(d) and the provisions of this title relating to such sections. Thereafter, no person is entitled to any such right or equivalent right in any work of visual art under the common law or statutes of any State.³

(2) Nothing in paragraph (1) annuls or limits any rights or remedies under the common law or statutes of any State with respect to—

(A) any cause of action from undertakings commenced before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990;

(B) activities violating legal or equitable rights that are not equivalent to any of the rights conferred by section 106A with respect to works of visual art; or

(C) activities violating legal or equitable rights which extend beyond the life of the author.

§ 302 · Duration of copyright: Works created on or after January 1, 1978⁴

(a) **IN GENERAL.**— Copyright in a work created on or after January 1, 1978, subsists from its creation and, except as provided by the following subsections, endures for a term consisting of the life of the author and 70 years after the author's death.

(b) **JOINT WORKS.**— In the case of a joint work prepared by two or more authors who did not work for hire, the copyright endures for a term consisting of the life of the last surviving author and 70 years after such last surviving author's death.

(c) **ANONYMOUS WORKS, PSEUDONYMOUS WORKS, AND WORKS MADE FOR HIRE.**— In the case of an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication, or a term of 120 years from the year of its creation, whichever expires first. If, before the end of such term, the identity of one or more of the authors of an anonymous or pseudonymous work is revealed in the records of a registration made for that work under subsections (a) or (d) of section 408, or in the records provided by this subsection, the copyright in the work endures for the term specified by subsection (a) or (b), based on the life of the author or authors whose identity has been revealed. Any person having an interest in the copyright in an anonymous or pseudonymous work may at any time record, in records to be maintained by the Copyright Office for that purpose, a statement identifying one or more authors of the work; the statement shall also identify the person filing it, the nature of that person's interest, the source of the information recorded, and the particular work affected, and shall comply in form and content with requirements that the Register of Copyrights shall prescribe by regulation.

(d) **RECORDS RELATING TO DEATH OF AUTHORS.**— Any person having an interest in a copyright may at any time record in the Copyright Office a statement of the date of death of the author of the copyrighted work, or a statement that the author is still living on a particular date. The statement shall identify

the person filing it, the nature of that person's interest, and the source of the information recorded, and shall comply in form and content with requirements that the Register of Copyrights shall prescribe by regulation. The Register shall maintain current records of information relating to the death of authors of copyrighted works, based on such recorded statements and, to the extent the Register considers practicable, on data contained in any of the records of the Copyright Office or in other reference sources.

(e) **PRESUMPTION AS TO AUTHOR'S DEATH.**— After a period of 95 years from the year of first publication of a work, or a period of 120 years from the year of its creation, whichever expires first, any person who obtains from the Copyright Office a certified report that the records provided by subsection (d) disclose nothing to indicate that the author of the work is living, or died less than 70 years before, is entitled to the benefit of a presumption that the author has been dead for at least 70 years. Reliance in good faith upon this presumption shall be a complete defense to any action for infringement under this title.

§303 · Duration of copyright: Works created but not published or copyrighted before January 1, 1978⁵

(a) Copyright in a work created before January 1, 1978, but not theretofore in the public domain or copyrighted, subsists from January 1, 1978, and endures for the term provided by section 302. In no case, however, shall the term of copyright in such a work expire before December 31, 2002; and, if the work is published on or before December 31, 2002, the term of copyright shall not expire before December 31, 2047.

(b) The distribution before January 1, 1978, of a phonorecord shall not for any purpose constitute a publication of the musical work embodied therein.

§304 · Duration of copyright: Subsisting copyrights⁶

(a) **COPYRIGHTS IN THEIR FIRST TERM ON JANUARY 1, 1978.**—

(1)(A) Any copyright, in the first term of which is subsisting on January 1, 1978, shall endure for 28 years from the date it was originally secured.

(B) In the case of—

(i) any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or

(ii) any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire,

the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of 67 years.

(C) In the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work—

- (i) the author of such work, if the author is still living,
- (ii) the widow, widower, or children of the author, if the author is not living,
- (iii) the author's executors, if such author, widow, widower, or children are not living, or
- (iv) the author's next of kin, in the absence of a will of the author, shall be entitled to a renewal and extension of the copyright in such work for a further term of 67 years.

(2)(A) At the expiration of the original term of copyright in a work specified in paragraph (1)(B) of this subsection, the copyright shall endure for a renewed and extended further term of 67 years, which—

(i) if an application to register a claim to such further term has been made to the Copyright Office within 1 year before the expiration of the original term of copyright, and the claim is registered, shall vest, upon the beginning of such further term, in the proprietor of the copyright who is entitled to claim the renewal of copyright at the time the application is made; or

(ii) if no such application is made or the claim pursuant to such application is not registered, shall vest, upon the beginning of such further term, in the person or entity that was the proprietor of the copyright as of the last day of the original term of copyright.

(B) At the expiration of the original term of copyright in a work specified in paragraph (1)(C) of this subsection, the copyright shall endure for a renewed and extended further term of 67 years, which—

(i) if an application to register a claim to such further term has been made to the Copyright Office within 1 year before the expiration of the original term of copyright, and the claim is registered, shall vest, upon the beginning of such further term, in any person who is entitled under paragraph (1)(C) to the renewal and extension of the copyright at the time the application is made; or

(ii) if no such application is made or the claim pursuant to such application is not registered, shall vest, upon the beginning of such further term, in any person entitled under paragraph (1)(C), as of the last day of the original term of copyright, to the renewal and extension of the copyright.

(3)(A) An application to register a claim to the (renewed and extended term of copyright in a work may be made to the Copyright Office—

(i) within 1 year before the expiration of the original term of copyright by any person entitled under paragraph (1)(B) or (C) to such further term of 67 years; and

(ii) at any time during the renewed and extended term by any person in whom such further term vested, under paragraph (2)(A) or (B), or by any successor or assign of such person, if the application is made in the name of such person.

(B) Such an application is not a condition of the renewal and extension of the copyright in a work for a further term of 67 years.

(4)(A) If an application to register a claim to the renewed and extended term of copyright in a work is not made within 1 year before the expiration of the original term of copyright in a work, or if the claim pursuant to such application is not registered, then a derivative work prepared under authority of a grant of a transfer or license of the copyright that is made before the expiration of the original term of copyright may continue to be used under the terms of the grant during the renewed and extended term of copyright without infringing the copyright, except that such use does not extend to the preparation during such renewed and extended term of other derivative works based upon the copyrighted work covered by such grant.

(B) If an application to register a claim to the renewed and extended term of copyright in a work is made within 1 year before its expiration, and the claim is registered, the certificate of such registration shall constitute prima facie evidence as to the validity of the copyright during its renewed and extended term and of the facts stated in the certificate. The evidentiary weight to be accorded the certificates of a registration of a renewed and extended term of copyright made after the end of that 1-year period shall be within the discretion of the court.

(b) COPYRIGHTS IN THEIR RENEWAL TERM AT THE TIME OF THE EFFECTIVE DATE OF THE SONNY BONO COPYRIGHT TERM EXTENSION ACT⁷—Any copyright still in its renewal term at the time that the Sonny Bono Copyright Term Extension Act becomes effective shall have a copyright term of 95 years from the date copyright was originally secured.⁸

(c) TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM.—In the case of any copyright subsisting in either its first or renewal term on January 1, 1978, other than a copyright in a work made for hire, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated by subsection (a)(1)(C) of this section, otherwise than by will, is subject to termination under the following conditions:

(1) In the case of a grant executed by a person or persons other than the author, termination of the grant may be effected by the surviving person or persons who executed it. In the case of a grant executed by one or more of the

authors of the work, termination of the grant may be effected, to the extent of a particular author's share in the ownership of the renewal copyright, by the author who executed it or, if such author is dead, by the person or persons who, under clause (2) of this subsection, own and are entitled to exercise a total of more than one-half of that author's termination interest.

(2) Where an author is dead, his or her termination interest is owned, and may be exercised, as follows:

(A) The widow or widower owns the author's entire termination interest unless there are any surviving children or grandchildren of the author, in which case the widow or widower owns one-half of the author's interest.

(B) The author's surviving children, and the surviving children of any dead child of the author, own the author's entire termination interest unless there is a widow or widower, in which case the ownership of one-half of the author's interest is divided among them.

(C) The rights of the author's children and grandchildren are in all cases divided among them and exercised on a per stirpes basis according to the number of such author's children represented; the share of the children of a dead child in a termination interest can be exercised only by the action of a majority of them.

(D) In the event that the author's widow or widower, children, and grandchildren are not living, the author's executor, administrator, personal representative, or trustee shall own the author's entire termination interest.

(3) Termination of the grant may be effected at any time during a period of five years beginning at the end of fifty-six years from the date copyright was originally secured, or beginning on January 1, 1978, whichever is later.

(4) The termination shall be effected by serving an advance notice in writing upon the grantee or the grantee's successor in title. In the case of a grant executed by a person or persons other than the author, the notice shall be signed by all of those entitled to terminate the grant under clause (1) of this subsection, or by their duly authorized agents. In the case of a grant executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or his or her duly authorized agent or, if that author is dead, by the number and proportion of the owners of his or her termination interest required under clauses (1) and (2) of this subsection, or by their duly authorized agents.

(A) The notice shall state the effective date of the termination, which shall fall within the five-year period specified by clause (3) of this subsection, or, in the case of a termination under subsection (d), within the five-year period specified by subsection (d)(2), and the notice shall be served not less than two or more than ten years before that date. A copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.

(B) The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

(5) Termination of the grant may be effected notwithstanding any agreement to the contrary, including an agreement to make a will or to make any future grant.

(6) In the case of a grant executed by a person or persons other than the author, all rights under this title that were covered by the terminated grant revert, upon the effective date of termination, to all of those entitled to terminate the grant under clause (1) of this subsection. In the case of a grant executed by one or more of the authors of the work, all of a particular author's rights under this title that were covered by the terminated grant revert, upon the effective date of termination, to that author or, if that author is dead, to the persons owning his or her termination interest under clause (2) of this subsection, including those owners who did not join in signing the notice of termination under clause (4) of this subsection. In all cases the reversion of rights is subject to the following limitations:

(A) A derivative work prepared under authority of the grant before its termination may continue to be utilized under the terms of the grant after its termination, but this privilege does not extend to the preparation after the termination of other derivative works based upon the copyrighted work covered by the terminated grant.

(B) The future rights that will revert upon termination of the grant become vested on the date the notice of termination has been served as provided by clause (4) of this subsection.

(C) Where the author's rights revert to two or more persons under clause (2) of this subsection, they shall vest in those persons in the proportionate shares provided by that clause. In such a case, and subject to the provisions of subclause (D) of this clause, a further grant, or agreement to make a further grant, of a particular author's share with respect to any right covered by a terminated grant is valid only if it is signed by the same number and proportion of the owners, in whom the right has vested under this clause, as are required to terminate the grant under clause (2) of this subsection. Such further grant or agreement is effective with respect to all of the persons in whom the right it covers has vested under this subclause, including those who did not join in signing it. If any person dies after rights under a terminated grant have vested in him or her, that person's legal representatives, legatees, or heirs at law represent him or her for purposes of this subclause.

(D) A further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is made after the effective date of the termination. As an exception, however, an agreement for such a further grant may be made between the author or any of the persons

provided by the first sentence of clause (6) of this subsection, or between the persons provided by subclause (C) of this clause, and the original grantee or such grantee's successor in title, after the notice of termination has been served as provided by clause (4) of this subsection.

(E) Termination of a grant under this subsection affects only those rights covered by the grant that arise under this title, and in no way affects rights arising under any other Federal, State, or foreign laws.

(F) Unless and until termination is effected under this subsection, the grant, if it does not provide otherwise, continues in effect for the remainder of the extended renewal term.

(d) TERMINATION RIGHTS PROVIDED IN SUBSECTION (c) WHICH HAVE EXPIRED ON OR BEFORE THE EFFECTIVE DATE OF THE SONNY BONO COPYRIGHT TERM EXTENSION ACT. — In the case of any copyright other than a work made for hire, subsisting in its renewal term on the effective date of the Sonny Bono Copyright Term Extension Act⁹ for which the termination right provided in subsection (c) has expired by such date, where the author or owner of the termination right has not previously exercised such termination right, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated in subsection (a)(1)(C) of this section, other than by will, is subject to termination under the following conditions:

(1) The conditions specified in subsections (c) (1), (2), (4), (5), and (6) of this section apply to terminations of the last 20 years of copyright term as provided by the amendments made by the Sonny Bono Copyright Term Extension Act.

(2) Termination of the grant may be effected at any time during a period of 5 years beginning at the end of 75 years from the date copyright was originally secured.

§305 · Duration of copyright: Terminal date

All terms of copyright provided by sections 302 through 304 run to the end of the calendar year in which they would otherwise expire.

Chapter 3 · Endnotes

1. Private Law 92-60, 85 Stat. 857, effective December 15, 1971, states that:

[A]ny provision of law to the contrary notwithstanding, copyright is hereby granted to the trustees under the will of Mary Baker Eddy, their successors, and assigns, in the work "Science and Health with Key to the Scriptures" (entitled also in some editions "Science and Health" or "Science and Health; with a Key to the Scriptures"), by Mary Baker Eddy, including

all editions thereof in English and translation heretofore published, or hereafter published by or on behalf of said trustees, their successors or assigns, for a term of seventy-five years from the effective date of this Act or from the date of first publication, whichever is later.

But cf. *United Christian Scientists v. Christian Science Board of Directors, First Church of Christ, Scientist*, 829 F.2d 1152, 4 USPQ2d 1177 (D.C. Cir. 1987) (holding Priv. L. 92-60, 85 Stat. 857, to be unconstitutional because it violates the Establishment Clause).

2. The Berne Convention Implementation Act of 1988 amended section 301 by adding at the end thereof subsection (e). Pub. L. No. 100-568, 102 Stat. 2853, 2857. In 1990, the Architectural Works Copyright Protection Act amended section 301(b) by adding at the end thereof paragraph (4). Pub. L. No. 101-650, 104 Stat. 5133, 5134. The Visual Artists Rights Act of 1990 amended section 301 by adding at the end thereof subsection (f). Pub. L. No. 101-650, 104 Stat. 5089, 5131. In 1998, the Sonny Bono Copyright Term Extension Act amended section 301 by changing “February 15, 2047” to “February 15, 2067” each place it appeared in subsection (c). Pub. L. No. 105-298, 112 Stat. 2827.

3. The Visual Artists Rights Act of 1990, which added subsection (f), states, “Subject to subsection (b) and except as provided in subsection (c), this title and the amendments made by this title take effect 6 months after the date of the enactment of this Act,” that is, 6 months after December 1, 1990. Pub. L. No. 101-650, 104 Stat. 5089, 5132. See also endnote 39, chapter 1.

4. In 1998, the Sonny Bono Copyright Term Extension Act amended section 302 by substituting “70” for “fifty,” “95” for “seventy-five,” and “120” for “one hundred” each place they appeared. Pub. L. No. 105-298, 112 Stat. 2827. This change was effective October 27, 1998. *Id.*

5. In 1997, section 303 was amended by adding subsection (b). Pub. L. No. 105-80, 111 Stat. 1529, 1534. In 1998, the Sonny Bono Copyright Term Extension Act amended section 303 by substituting “December 31, 2047” for “December 31, 2027.” Pub. L. No. 105-298, 112 Stat. 2827.

6. The Copyright Renewal Act of 1992 amended section 304 by substituting a new subsection (a) and by making a conforming amendment in the matter preceding paragraph (1) of subsection (c). Pub. L. No. 102-307, 106 Stat. 264. The Act, as amended by the Sonny Bono Copyright Term Extension Act, states that the renewal and extension of a copyright for a further term of 67 years “shall have the same effect with respect to any grant, before the effective date of the Sonny Bono Copyright Term Extension Act [October 27, 1998], of a transfer or license of the further term as did the renewal of a copyright before the effective date of the Sonny Bono Copyright Term Extension Act [October 27, 1998] under the law in effect at the time of such grant.” The Act also states that the 1992 amendments “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 ... [enactment on June 26, 1992], except each reference to forty-seven years in such provisions shall be deemed to be 67 years.” Pub. L. No. 102-307, 106 Stat. 264, 266, as amended by the Sonny Bono Copyright Term Extension Act, Pub. L. No. 105-298, 112 Stat. 2827, 2828.

In 1998, the Sonny Bono Copyright Term Extension Act amended section 304 by substituting “67” for “47” wherever it appeared in subsection (a), by substituting a new subsection (b), and by adding subsection (d) at the end thereof. Pub. L. No. 105-298, 112 Stat. 2827. That

Act also amended subsection 304(c) by deleting “by his widow or her widower and his or her children or grandchildren” from the first sentence of paragraph (2), by adding subparagraph (D) at the end of paragraph (2), and by inserting “or, in the case of a termination under subsection (d), within the five-year period specified by subsection (d)(2),” into the first sentence of subparagraph (4)(A). *Id.*

7. In 1998, the Sonny Bono Copyright Term Extension Act amendment to subsection 304(b) completely deleted the previous language that was originally part of the 1976 Copyright Act. Pub. L. No. 105-298, 112 Stat. 2827. That earlier statutory language continues to be relevant for calculating the term of protection for copyrights commencing between September 19, 1906, and December 31, 1949. The 1976 Copyright Act extended the terms for those copyrights by 20 years, provided they were in their renewal term between December 31, 1976, and December 31, 1977. The deleted language states:

The duration of any copyright, the renewal term of which is subsisting at any time between December 31, 1976, and December 31, 1977, inclusive, or for which renewal registration is made between December 31, 1976, and December 31, 1977, inclusive, is extended to endure for a term of seventy-five years from the date copyright was originally secured.

The effective date of this provision was October 19, 1976. That effective date provision is contained in Appendix A, herein, as section 102 of the Transitional and Supplementary Provisions of the Copyright Act of 1976. Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541, 2598.

In addition, prior to the 1976 Copyright Act, Congress enacted a series of nine interim extensions for works whose copyright protection began between September 19, 1906, and December 31, 1918, if they were in their renewal terms. Without these interim extensions, copyrights commencing during that time period would have otherwise expired after 56 years, at the end of their renewal terms, between September 19, 1962, and December 31, 1976. The nine Acts authorizing the interim extensions are as follows, in chronological order:

Pub. L. No. 87-668, 76 Stat. 555 (extending copyrights from September 19, 1962, to December 31, 1965)

Pub. L. No. 89-142, 79 Stat. 581 (extending copyrights to December 31, 1967)

Pub. L. No. 90-141, 81 Stat. 464 (extending copyrights to December 31, 1968)

Pub. L. No. 90-416, 82 Stat. 397 (extending copyrights to December 31, 1969)

Pub. L. No. 91-147, 83 Stat. 360 (extending copyrights to December 31, 1970)

Pub. L. No. 91-555, 84 Stat. 1441 (extending copyrights to December 31, 1971)

Pub. L. No. 92-170, 85 Stat. 490 (extending copyrights to December 31, 1972)

Pub. L. No. 92-566, 86 Stat. 1181 (extending copyrights to December 31, 1974)

Pub. L. No. 93-573, 88 Stat. 1873 (extending copyrights to December 31, 1976)

8. The effective date of the Sonny Bono Copyright Term Extension Act is October 27, 1998.

9. See endnote 8, *supra*.

Chapter 4

Copyright Notice, Deposit, and Registration

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§401 · Notice of copyright: Visually perceptible copies¹

(a) **GENERAL PROVISIONS.**—Whenever a work protected under this title is published in the United States or elsewhere by authority of the copyright owner, a notice of copyright as provided by this section may be placed on publicly distributed copies from which the work can be visually perceived, either directly or with the aid of a machine or device.

(b) **FORM OF NOTICE.**—If a notice appears on the copies, it shall consist of the following three elements:

(1) the symbol © (the letter C in a circle), or the word “Copyright”, or the abbreviation “Copr.”; and

(2) the year of first publication of the work; in the case of compilations or derivative works incorporating previously published material, the year date of first publication of the compilation or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying text matter, if any, is reproduced in or on greeting cards, postcards, stationery, jewelry, dolls, toys, or any useful articles; and

(3) the name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

(c) **POSITION OF NOTICE.**—The notice shall be affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright. The Register of Copyrights shall prescribe by regulation, as examples, specific methods of affixation and positions of the notice on various types of works that will satisfy this requirement, but these specifications shall not be considered exhaustive.

(d) **EVIDENTIARY WEIGHT OF NOTICE.**—If a notice of copyright in the form and position specified by this section appears on the published copy or copies to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant’s interposition of a defense based on innocent infringement in mitigation of actual or statutory damages, except as provided in the last sentence of section 504(c)(2).

§402 · Notice of copyright: Phonorecords of sound recordings²

(a) **GENERAL PROVISIONS.**—Whenever a sound recording protected under this title is published in the United States or elsewhere by authority of the copyright owner, a notice of copyright as provided by this section may be placed on publicly distributed phonorecords of the sound recording.

(b) **FORM OF NOTICE.**—If a notice appears on the phonorecords, it shall consist of the following three elements:

(1) the symbol ℗ (the letter P in a circle); and

(2) the year of first publication of the sound recording; and

(3) the name of the owner of copyright in the sound recording, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner; if the producer of the sound recording is named on the phonorecord labels or containers, and if no other name appears in conjunction with the notice, the producer's name shall be considered a part of the notice.

(c) POSITION OF NOTICE. — The notice shall be placed on the surface of the phonorecord, or on the phonorecord label or container, in such manner and location as to give reasonable notice of the claim of copyright.

(d) EVIDENTIARY WEIGHT OF NOTICE. — If a notice of copyright in the form and position specified by this section appears on the published phonorecord or phonorecords to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages, except as provided in the last sentence of section 504(c)(2).

§403 · Notice of copyright: Publications incorporating United States Government works³

Sections 401(d) and 402(d) shall not apply to a work published in copies or phonorecords consisting predominantly of one or more works of the United States Government unless the notice of copyright appearing on the published copies or phonorecords to which a defendant in the copyright infringement suit had access includes a statement identifying, either affirmatively or negatively, those portions of the copies or phonorecords embodying any work or works protected under this title.

§404 · Notice of copyright: Contributions to collective works⁴

(a) A separate contribution to a collective work may bear its own notice of copyright, as provided by sections 401 through 403. However, a single notice applicable to the collective work as a whole is sufficient to invoke the provisions of section 401(d) or 402(d), as applicable with respect to the separate contributions it contains (not including advertisements inserted on behalf of persons other than the owner of copyright in the collective work), regardless of the ownership of copyright in the contributions and whether or not they have been previously published.

(b) With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention

Implementation Act of 1988, where the person named in a single notice applicable to a collective work as a whole is not the owner of copyright in a separate contribution that does not bear its own notice, the case is governed by the provisions of section 406(a).

§405 · Notice of copyright: Omission of notice on certain copies and phonorecords⁵

(a) **EFFECT OF OMISSION ON COPYRIGHT.**— With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, the omission of the copyright notice described in sections 401 through 403 from copies or phonorecords publicly distributed by authority of the copyright owner does not invalidate the copyright in a work if—

(1) the notice has been omitted from no more than a relatively small number of copies or phonorecords distributed to the public; or

(2) registration for the work has been made before or is made within five years after the publication without notice, and a reasonable effort is made to add notice to all copies or phonorecords that are distributed to the public in the United States after the omission has been discovered; or

(3) the notice has been omitted in violation of an express requirement in writing that, as a condition of the copyright owner's authorization of the public distribution of copies or phonorecords, they bear the prescribed notice.

(b) **EFFECT OF OMISSION ON INNOCENT INFRINGERS.**— Any person who innocently infringes a copyright, in reliance upon an authorized copy or phonorecord from which the copyright notice has been omitted and which was publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, incurs no liability for actual or statutory damages under section 504 for any infringing acts committed before receiving actual notice that registration for the work has been made under section 408, if such person proves that he or she was misled by the omission of notice. In a suit for infringement in such a case the court may allow or disallow recovery of any of the infringer's profits attributable to the infringement, and may enjoin the continuation of the infringing undertaking or may require, as a condition for permitting the continuation of the infringing undertaking, that the infringer pay the copyright owner a reasonable license fee in an amount and on terms fixed by the court.

(c) **REMOVAL OF NOTICE.**— Protection under this title is not affected by the removal, destruction, or obliteration of the notice, without the authorization of the copyright owner, from any publicly distributed copies or phonorecords.

§ 406 · Notice of copyright: Error in name or date on certain copies and phonorecords⁶

(a) **ERROR IN NAME.**—With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, where the person named in the copyright notice on copies or phonorecords publicly distributed by authority of the copyright owner is not the owner of copyright, the validity and ownership of the copyright are not affected. In such a case, however, any person who innocently begins an undertaking that infringes the copyright has a complete defense to any action for such infringement if such person proves that he or she was misled by the notice and began the undertaking in good faith under a purported transfer or license from the person named therein, unless before the undertaking was begun—

(1) registration for the work had been made in the name of the owner of copyright; or

(2) a document executed by the person named in the notice and showing the ownership of the copyright had been recorded.

The person named in the notice is liable to account to the copyright owner for all receipts from transfers or licenses purportedly made under the copyright by the person named in the notice.

(b) **ERROR IN DATE.**—When the year date in the notice on copies or phonorecords distributed before the effective date of the Berne Convention Implementation Act of 1988 by authority of the copyright owner is earlier than the year in which publication first occurred, any period computed from the year of first publication under section 302 is to be computed from the year in the notice. Where the year date is more than one year later than the year in which publication first occurred, the work is considered to have been published without any notice and is governed by the provisions of section 405.

(c) **OMISSION OF NAME OR DATE.**—Where copies or phonorecords publicly distributed before the effective date of the Berne Convention Implementation Act of 1988 by authority of the copyright owner contain no name or no date that could reasonably be considered a part of the notice, the work is considered to have been published without any notice and is governed by the provisions of section 405 as in effect on the day before the effective date of the Berne Convention Implementation Act of 1988.

§ 407 · Deposit of copies or phonorecords for Library of Congress⁷

(a) Except as provided by subsection (c), and subject to the provisions of subsection (e), the owner of copyright or of the exclusive right of publication in a

work published in the United States shall deposit, within three months after the date of such publication —

(1) two complete copies of the best edition; or

(2) if the work is a sound recording, two complete phonorecords of the best edition, together with any printed or other visually perceptible material published with such phonorecords.

Neither the deposit requirements of this subsection nor the acquisition provisions of subsection (e) are conditions of copyright protection.

(b) The required copies or phonorecords shall be deposited in the Copyright Office for the use or disposition of the Library of Congress. The Register of Copyrights shall, when requested by the depositor and upon payment of the fee prescribed by section 708, issue a receipt for the deposit.

(c) The Register of Copyrights may by regulation exempt any categories of material from the deposit requirements of this section, or require deposit of only one copy or phonorecord with respect to any categories. Such regulations shall provide either for complete exemption from the deposit requirements of this section, or for alternative forms of deposit aimed at providing a satisfactory archival record of a work without imposing practical or financial hardships on the depositor, where the individual author is the owner of copyright in a pictorial, graphic, or sculptural work and (i) less than five copies of the work have been published, or (ii) the work has been published in a limited edition consisting of numbered copies, the monetary value of which would make the mandatory deposit of two copies of the best edition of the work burdensome, unfair, or unreasonable.

(d) At any time after publication of a work as provided by subsection (a), the Register of Copyrights may make written demand for the required deposit on any of the persons obligated to make the deposit under subsection (a). Unless deposit is made within three months after the demand is received, the person or persons on whom the demand was made are liable —

(1) to a fine of not more than \$250 for each work; and

(2) to pay into a specially designated fund in the Library of Congress the total retail price of the copies or phonorecords demanded, or, if no retail price has been fixed, the reasonable cost to the Library of Congress of acquiring them; and

(3) to pay a fine of \$2,500, in addition to any fine or liability imposed under clauses (1) and (2), if such person willfully or repeatedly fails or refuses to comply with such a demand.

(e) With respect to transmission programs that have been fixed and transmitted to the public in the United States but have not been published, the Register of Copyrights shall, after consulting with the Librarian of Congress and other interested organizations and officials, establish regulations governing the acquisition, through deposit or otherwise, of copies or phonorecords of such programs for the collections of the Library of Congress.

(1) The Librarian of Congress shall be permitted, under the standards and conditions set forth in such regulations, to make a fixation of a transmission program directly from a transmission to the public, and to reproduce one copy or phonorecord from such fixation for archival purposes.

(2) Such regulations shall also provide standards and procedures by which the Register of Copyrights may make written demand, upon the owner of the right of transmission in the United States, for the deposit of a copy or phonorecord of a specific transmission program. Such deposit may, at the option of the owner of the right of transmission in the United States, be accomplished by gift, by loan for purposes of reproduction, or by sale at a price not to exceed the cost of reproducing and supplying the copy or phonorecord. The regulations established under this clause shall provide reasonable periods of not less than three months for compliance with a demand, and shall allow for extensions of such periods and adjustments in the scope of the demand or the methods for fulfilling it, as reasonably warranted by the circumstances. Willful failure or refusal to comply with the conditions prescribed by such regulations shall subject the owner of the right of transmission in the United States to liability for an amount, not to exceed the cost of reproducing and supplying the copy or phonorecord in question, to be paid into a specially designated fund in the Library of Congress.

(3) Nothing in this subsection shall be construed to require the making or retention, for purposes of deposit, of any copy or phonorecord of an unpublished transmission program, the transmission of which occurs before the receipt of a specific written demand as provided by clause (2).

(4) No activity undertaken in compliance with regulations prescribed under clauses (1) and (2) of this subsection shall result in liability if intended solely to assist in the acquisition of copies or phonorecords under this subsection.

§408 · Copyright registration in general⁸

(a) **REGISTRATION PERMISSIVE.** — At any time during the subsistence of the first term of copyright in any published or unpublished work in which the copyright was secured before January 1, 1978, and during the subsistence of any copyright secured on or after that date, the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim by delivering to the Copyright Office the deposit specified by this section, together with the application and fee specified by sections 409 and 708. Such registration is not a condition of copyright protection.

(b) **DEPOSIT FOR COPYRIGHT REGISTRATION.** — Except as provided by subsection (c), the material deposited for registration shall include—

(1) in the case of an unpublished work, one complete copy or phonorecord;

(2) in the case of a published work, two complete copies or phonorecords of the best edition;

(3) in the case of a work first published outside the United States, one complete copy or phonorecord as so published;

(4) in the case of a contribution to a collective work, one complete copy or phonorecord of the best edition of the collective work.

Copies or phonorecords deposited for the Library of Congress under section 407 may be used to satisfy the deposit provisions of this section, if they are accompanied by the prescribed application and fee, and by any additional identifying material that the Register may, by regulation, require. The Register shall also prescribe regulations establishing requirements under which copies or phonorecords acquired for the Library of Congress under subsection (e) of section 407, otherwise than by deposit, may be used to satisfy the deposit provisions of this section.

(C) ADMINISTRATIVE CLASSIFICATION AND OPTIONAL DEPOSIT —

(1) The Register of Copyrights is authorized to specify by regulation the administrative classes into which works are to be placed for purposes of deposit and registration, and the nature of the copies or phonorecords to be deposited in the various classes specified. The regulations may require or permit, for particular classes, the deposit of identifying material instead of copies or phonorecords, the deposit of only one copy or phonorecord where two would normally be required, or a single registration for a group of related works. This administrative classification of works has no significance with respect to the subject matter of copyright or the exclusive rights provided by this title.

(2) Without prejudice to the general authority provided under clause (1), the Register of Copyrights shall establish regulations specifically permitting a single registration for a group of works by the same individual author, all first published as contributions to periodicals, including newspapers, within a twelve-month period, on the basis of a single deposit, application, and registration fee, under the following conditions—

(A) if the deposit consists of one copy of the entire issue of the periodical, or of the entire section in the case of a newspaper, in which each contribution was first published; and

(B) if the application identifies each work separately, including the periodical containing it and its date of first publication.

(3) As an alternative to separate renewal registrations under subsection (a) of section 304, a single renewal registration may be made for a group of works by the same individual author, all first published as contributions to periodicals, including newspapers, upon the filing of a single application and fee, under all of the following conditions:

(A) the renewal claimant or claimants, and the basis of claim or claims under section 304(a), is the same for each of the works; and

(B) the works were all copyrighted upon their first publication, either through separate copyright notice and registration or by virtue of a general copyright notice in the periodical issue as a whole; and

(C) the renewal application and fee are received not more than twenty-eight or less than twenty-seven years after the thirty-first day of December of the calendar year in which all of the works were first published; and

(D) the renewal application identifies each work separately, including the periodical containing it and its date of first publication.

(d) **CORRECTIONS AND AMPLIFICATIONS.**— The Register may also establish, by regulation, formal procedures for the filing of an application for supplementary registration, to correct an error in a copyright registration or to amplify the information given in a registration. Such application shall be accompanied by the fee provided by section 708, and shall clearly identify the registration to be corrected or amplified. The information contained in a supplementary registration augments but does not supersede that contained in the earlier registration.

(e) **PUBLISHED EDITION OF PREVIOUSLY REGISTERED WORK.**— Registration for the first published edition of a work previously registered in unpublished form may be made even though the work as published is substantially the same as the unpublished version.

(f) **PREREGISTRATION OF WORKS BEING PREPARED FOR COMMERCIAL DISTRIBUTION.**—

(1) **RULEMAKING.**— Not later than 180 days after the date of enactment of this subsection, the Register of Copyrights shall issue regulations to establish procedures for preregistration of a work that is being prepared for commercial distribution and has not been published.

(2) **CLASS OF WORKS.**— The regulations established under paragraph (1) shall permit preregistration for any work that is in a class of works that the Register determines has had a history of infringement prior to authorized commercial distribution.

(3) **APPLICATION FOR REGISTRATION.**— Not later than 3 months after the first publication of a work preregistered under this subsection, the applicant shall submit to the Copyright Office—

- (A) an application for registration of the work;
- (B) a deposit; and
- (C) the applicable fee.

(4) **EFFECT OF UNTIMELY APPLICATION.**— An action under this chapter for infringement of a work preregistered under this subsection, in a case in which the infringement commenced no later than 2 months after the first publication of the work, shall be dismissed if the items described in paragraph (3) are not submitted to the Copyright Office in proper form within the earlier of—

- (A) 3 months after the first publication of the work; or
- (B) 1 month after the copyright owner has learned of the infringement.

§409 · Application for copyright registration⁹

The application for copyright registration shall be made on a form prescribed by the Register of Copyrights and shall include—

- (1) the name and address of the copyright claimant;
- (2) in the case of a work other than an anonymous or pseudonymous work, the name and nationality or domicile of the author or authors, and, if one or more of the authors is dead, the dates of their deaths;
- (3) if the work is anonymous or pseudonymous, the nationality or domicile of the author or authors;
- (4) in the case of a work made for hire, a statement to this effect;
- (5) if the copyright claimant is not the author, a brief statement of how the claimant obtained ownership of the copyright;
- (6) the title of the work, together with any previous or alternative titles under which the work can be identified;
- (7) the year in which creation of the work was completed;
- (8) if the work has been published, the date and nation of its first publication;
- (9) in the case of a compilation or derivative work, an identification of any preexisting work or works that it is based on or incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered;
- (10) in the case of a published work containing material of which copies are required by section 601 to be manufactured in the United States, the names of the persons or organizations who performed the processes specified by subsection (c) of section 601 with respect to that material, and the places where those processes were performed; and
- (11) any other information regarded by the Register of Copyrights as bearing upon the preparation or identification of the work or the existence, ownership, or duration of the copyright.

If an application is submitted for the renewed and extended term provided for in section 304(a)(3)(A) and an original term registration has not been made, the Register may request information with respect to the existence, ownership, or duration of the copyright for the original term.

§410 · Registration of claim and issuance of certificate

(a) When, after examination, the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of this title have been met, the Register shall register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office. The

certificate shall contain the information given in the application, together with the number and effective date of the registration.

(b) In any case in which the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, the Register shall refuse registration and shall notify the applicant in writing of the reasons for such refusal.

(c) In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration made thereafter shall be within the discretion of the court.

(d) The effective date of a copyright registration is the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office.

§ 411 · Registration and infringement actions¹⁰

(a) Except for an action brought for a violation of the rights of the author under section 106A(a), and subject to the provisions of subsection (b), no action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title. In any case, however, where the deposit, application, and fee required for registration have been delivered to the Copyright Office in proper form and registration has been refused, the applicant is entitled to institute an action for infringement if notice thereof, with a copy of the complaint, is served on the Register of Copyrights. The Register may, at his or her option, become a party to the action with respect to the issue of registrability of the copyright claim by entering an appearance within sixty days after such service, but the Register's failure to become a party shall not deprive the court of jurisdiction to determine that issue.

(b) In the case of a work consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, the copyright owner may, either before or after such fixation takes place, institute an action for infringement under section 501, fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if, in accordance with requirements that the Register of Copyrights shall prescribe by regulation, the copyright owner —

(1) serves notice upon the infringer, not less than 48 hours before such fixation, identifying the work and the specific time and source of its first transmission, and declaring an intention to secure copyright in the work; and

(2) makes registration for the work, if required by subsection (a), within three months after its first transmission.

§412 · Registration as prerequisite to certain remedies for infringement¹¹

In any action under this title, other than an action brought for a violation of the rights of the author under section 106A(a), an action for infringement of the copyright of a work that has been preregistered under section 408(f) before the commencement of the infringement and that has an effective date of registration not later than the earlier of 3 months after the first publication of the work or 1 month after the copyright owner has learned of the infringement, or an action instituted under section 411(b), no award of statutory damages or of attorney's fees, as provided by sections 504 and 505, shall be made for —

- (1) any infringement of copyright in an unpublished work commenced before the effective date of its registration; or
- (2) any infringement of copyright commenced after first publication of the work and before the effective date of its registration, unless such registration is made within three months after the first publication of the work.

Chapter 4 · Endnotes

1. The Berne Convention Implementation Act of 1988 amended section 401 as follows: 1) in subsection (a), by changing the heading to "General Provisions" and by inserting "may be placed on" in lieu of "shall be placed on all"; 2) in subsection (b), by inserting "If a notice appears on the copies, it" in lieu of "The notice appearing on the copies"; and 3) by adding subsection (d). Pub. L. No. 100-568, 102 Stat. 2853, 2857.

2. The Berne Convention Implementation Act of 1988 amended section 402 as follows: 1) in subsection (a), by changing the heading to "General Provisions" and by inserting "may be placed on" in lieu of "shall be placed on all"; 2) in subsection (b), by inserting "If a notice appears on the phonorecords, it" in lieu of "The notice appearing on the phonorecords"; and 3) by adding subsection (d). Pub. L. No. 100-568, 102 Stat. 2853, 2857.

3. The Berne Convention Implementation Act of 1988 amended section 403 in its entirety. Pub. L. No. 100-568, 102 Stat. 2853, 2858.

4. The Berne Convention Implementation Act of 1988 amended section 404 as follows: 1) in the second sentence of subsection (a), by inserting "to invoke the provisions of section 401(d) or 402(d), as applicable" in lieu of "to satisfy the requirements of sections 401 through 403" and 2) in subsection (b), by inserting "With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988," at the beginning of the sentence. Pub. L. No. 100-568, 102 Stat. 2853, 2858.

5. The Berne Convention Implementation Act of 1988 amended section 405 as follows: 1) in subsection (a), by inserting “With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, the omission of the copyright notice described in” at the beginning of the first sentence, in lieu of “The omission of the copyright notice prescribed by”; 2) in subsection (b), by inserting after “omitted,” in the first sentence, “and which was publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988”; and 3) by amending the section heading to add “on certain copies and phonorecords” at the end thereof. Pub. L. No. 100-568, 102 Stat. 2853, 2858.

6. The Berne Convention Implementation Act of 1988 amended section 406 as follows: 1) in subsection (a), by inserting “With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988,” at the beginning of the first sentence; 2) in subsection (b), by inserting “before the effective date of the Berne Convention Implementation Act of 1988” after “distributed”; 3) in subsection (c), by inserting “before the effective date of the Berne Convention Implementation Act of 1988” after “publicly distributed” and by inserting “as in effect on the day before the effective date of the Berne Convention Implementation Act of 1988” after “405”; and 4) by amending the section heading to add “on certain copies and phonorecords” at the end thereof. Pub. L. No. 100-568, 102 Stat. 2853, 2858.

7. The Berne Convention Implementation Act of 1988 amended section 407 by striking out the words “with notice of copyright” in subsection (a). Pub. L. No. 100-568, 102 Stat. 2853, 2859.

8. The Berne Convention Implementation Act of 1988 amended section 408 by deleting “Subject to the provisions of section 405(a),” at the beginning of the second sentence of subsection (a). Pub. L. No. 100-568, 102 Stat. 2853, 2859. That Act also amended section 408(c)(2) by inserting “the following conditions:” in lieu of “all of the following conditions” and by striking subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively. *Id.* The Copyright Renewal Act of 1992 amended section 408 by revising the first sentence of subsection (a), preceding the words “the owner of copyright or of any exclusive right.” Pub. L. No. 102-307, 106 Stat. 264, 266.

The Artists’ Rights and Theft Prevention Act of 2005 amended section 408 by adding a new subsection (f). Pub. L. No. 109-9, 119 Stat. 218, 221.

9. The Copyright Renewal Act of 1992 amended section 409 by adding the last sentence. Pub. L. No. 102-307, 106 Stat. 264, 266.

10. The Berne Convention Implementation Act of 1988 amended section 411 as follows: 1) in subsection (a), by inserting “Except for actions for infringement of copyright in Berne Convention works whose country of origin is not the United States, and” before “subject”; 2) in paragraph (b)(2), by inserting “, if required by subsection (a),” after “work”; and 3) by inserting “and infringement actions” in the heading, in lieu of “as prerequisite to infringement suit.” Pub. L. No. 100-568, 102 Stat. 2853, 2859.

The Visual Artists Rights Act of 1990 amended section 411(a) by inserting “and an action brought for a violation of the rights of the author under section 106A(a)” after “United States.” Pub. L. No. 101-650, 104 Stat. 5089, 5131. In 1997, section 411(b)(1) was amended in its entirety. Pub. L. No. 105-80, 111 Stat. 1529, 1532.

The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 amended the first sentence in section 411(a) by deleting “actions for infringement of copyright in Berne Convention works whose country of origin is not the United and” and by inserting “United States” after “no action for infringement of the copyright in any.” Pub. L. No. 105-304, 112 Stat. 2860, 2863.

The Artists’ Rights and Theft Prevention Act of 2005 amended subsection 411(a) by inserting “preregistration” in the first sentence, after “shall be instituted until” in the first sentence. Pub. L. No. 109-9, 119 Stat. 218, 222.

11. The Visual Artists Rights Act of 1990 amended section 412 by inserting “an action brought for a violation of the rights of the author under section 106A(a) or” after “other than.” Pub. L. No. 101-650, 104 Stat. 5089, 5131.

The Artists’ Rights and Theft Prevention Act of 2005 amended subsection 412 by inserting the clause that follows “section 106A(a),” in the text preceding subparagraph (1). Pub. L. No. 109-9, 119 Stat. 218, 222.

Chapter 5

Copyright Infringement and Remedies

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§501 · Infringement of copyright²

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 122 or of the author as provided in section 106A(a), or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a). As used in this subsection, the term “anyone” includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it. The court may require such owner to serve written notice of the action with a copy of the complaint upon any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the case. The court may require the joinder, and shall permit the intervention, of any person having or claiming an interest in the copyright.

(c) For any secondary transmission by a cable system that embodies a performance or a display of a work which is actionable as an act of infringement under subsection (c) of section 111, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that television station.

(d) For any secondary transmission by a cable system that is actionable as an act of infringement pursuant to section 111(c)(3), the following shall also have standing to sue: (i) the primary transmitter whose transmission has been altered by the cable system; and (ii) any broadcast station within whose local service area the secondary transmission occurs.

(e) With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.

(f)(1) With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under section 122, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local market of that station.

(2) A television broadcast station may file a civil action against any satellite carrier that has refused to carry television broadcast signals, as required under section 122(a)(2), to enforce that television broadcast station's rights under section 338(a) of the Communications Act of 1934.

§502 · Remedies for infringement: Injunctions

(a) Any court having jurisdiction of a civil action arising under this title may, subject to the provisions of section 1498 of title 28, grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.

(b) Any such injunction may be served anywhere in the United States on the person enjoined; it shall be operative throughout the United States and shall be enforceable, by proceedings in contempt or otherwise, by any United States court having jurisdiction of that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all the papers in the case on file in such clerk's office.

§503 · Remedies for infringement: Impounding and disposition of infringing articles

(a) At any time while an action under this title is pending, the court may order the impounding, on such terms as it may deem reasonable, of all copies or phonorecords claimed to have been made or used in violation of the copyright owner's exclusive rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced.

(b) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all copies or phonorecords found to have been made or used in violation of the copyright owner's exclusive rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced.

§504 · Remedies for infringement: Damages and profits³

(a) **IN GENERAL.** — Except as otherwise provided by this title, an infringer of copyright is liable for either —

(1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or

(2) statutory damages, as provided by subsection (c).

(b) **ACTUAL DAMAGES AND PROFITS.** — The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.

(c) **STATUTORY DAMAGES.** —

(1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$750 or more than \$30,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$200. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in subsection (g) of section 118) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

(3) (A) In a case of infringement, it shall be a rebuttable presumption that the infringement was committed willfully for purposes of determining relief

if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the infringement.

(B) Nothing in this paragraph limits what may be considered willful infringement under this subsection.

(C) For purposes of this paragraph, the term “domain name” has the meaning given that term in section 45 of the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes” approved July 5, 1946 (commonly referred to as the “Trademark Act of 1946”; 15 U.S.C. 1127).

(d) **ADDITIONAL DAMAGES IN CERTAIN CASES.** — In any case in which the court finds that a defendant proprietor of an establishment who claims as a defense that its activities were exempt under section 110(5) did not have reasonable grounds to believe that its use of a copyrighted work was exempt under such section, the plaintiff shall be entitled to, in addition to any award of damages under this section, an additional award of two times the amount of the license fee that the proprietor of the establishment concerned should have paid the plaintiff for such use during the preceding period of up to 3 years.

§ 505 · Remedies for infringement: Costs and attorney’s fees

In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney’s fee to the prevailing party as part of the costs.

§ 506 · Criminal offenses⁴

(a) **CRIMINAL INFRINGEMENT.** —

(1) **IN GENERAL.** — Any person who willfully infringes a copyright shall be punished as provided under section 2319 of title 18, if the infringement was committed —

(A) for purposes of commercial advantage or private financial gain;

(B) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000; or

(C) by the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution.

(2) EVIDENCE. — For purposes of this subsection, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement of a copyright.

(3) DEFINITION. — In this subsection, the term “work being prepared for commercial distribution” means —

(A) a computer program, a musical work, a motion picture or other audiovisual work, or a sound recording, if, at the time of unauthorized distribution —

(i) the copyright owner has a reasonable expectation of commercial distribution; and

(ii) the copies or phonorecords of the work have not been commercially distributed; or

(B) a motion picture, if, at the time of unauthorized distribution, the motion picture —

(i) has been made available for viewing in a motion picture exhibition facility; and

(ii) has not been made available in copies for sale to the general public in the United States in a format intended to permit viewing outside a motion picture exhibition facility.

(b) FORFEITURE AND DESTRUCTION. — When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all infringing copies or phonorecords and all implements, devices, or equipment used in the manufacture of such infringing copies or phonorecords.

(c) FRAUDULENT COPYRIGHT NOTICE. — Any person who, with fraudulent intent, places on any article a notice of copyright or words of the same purport that such person knows to be false, or who, with fraudulent intent, publicly distributes or imports for public distribution any article bearing such notice or words that such person knows to be false, shall be fined not more than \$2,500.

(d) FRAUDULENT REMOVAL OF COPYRIGHT NOTICE. — Any person who, with fraudulent intent, removes or alters any notice of copyright appearing on a copy of a copyrighted work shall be fined not more than \$2,500.

(e) FALSE REPRESENTATION. — Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

(f) RIGHTS OF ATTRIBUTION AND INTEGRITY. — Nothing in this section applies to infringement of the rights conferred by section 106A(a).

§ 507 · Limitations on actions⁵

(a) **CRIMINAL PROCEEDINGS.**— Except as expressly provided otherwise in this title, no criminal proceeding shall be maintained under the provisions of this title unless it is commenced within 5 years after the cause of action arose.

(b) **CIVIL ACTIONS.**— No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.

§ 508 · Notification of filing and determination of actions

(a) Within one month after the filing of any action under this title, the clerks of the courts of the United States shall send written notification to the Register of Copyrights setting forth, as far as is shown by the papers filed in the court, the names and addresses of the parties and the title, author, and registration number of each work involved in the action. If any other copyrighted work is later included in the action by amendment, answer, or other pleading, the clerk shall also send a notification concerning it to the Register within one month after the pleading is filed.

(b) Within one month after any final order or judgment is issued in the case, the clerk of the court shall notify the Register of it, sending with the notification a copy of the order or judgment together with the written opinion, if any, of the court.

(c) Upon receiving the notifications specified in this section, the Register shall make them a part of the public records of the Copyright Office.

§ 509 · Seizure and forfeiture

(a) All copies or phonorecords manufactured, reproduced, distributed, sold, or otherwise used, intended for use, or possessed with intent to use in violation of section 506 (a), and all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced, and all electronic, mechanical, or other devices for manufacturing, reproducing, or assembling such copies or phonorecords may be seized and forfeited to the United States.

(b) The applicable procedures relating to

(i) the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violations of the customs laws contained in title 19,

(ii) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof,

(iii) the remission or mitigation of such forfeiture,
(iv) the compromise of claims, and
(v) the award of compensation to informers in respect of such forfeitures, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section; except that such duties as are imposed upon any officer or employee of the Treasury Department or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the provisions of the customs laws contained in title 19 shall be performed with respect to seizure and forfeiture of all articles described in subsection (a) by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

§ 510 · Remedies for alteration of programming by cable systems⁶

(a) In any action filed pursuant to section 111(c)(3), the following remedies shall be available:

(1) Where an action is brought by a party identified in subsections (b) or (c) of section 501, the remedies provided by sections 502 through 505, and the remedy provided by subsection (b) of this section; and

(2) When an action is brought by a party identified in subsection (d) of section 501, the remedies provided by sections 502 and 505, together with any actual damages suffered by such party as a result of the infringement, and the remedy provided by subsection (b) of this section.

(b) In any action filed pursuant to section 111(c)(3), the court may decree that, for a period not to exceed thirty days, the cable system shall be deprived of the benefit of a statutory license for one or more distant signals carried by such cable system.

§ 511 · Liability of States, instrumentalities of States, and State officials for infringement of copyright⁷

(a) *IN GENERAL.*— Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal Court by any person, including any governmental or nongovernmental entity, for a violation of any of the exclusive rights of a copyright owner provided by sections 106 through 122, for importing copies

of phonorecords in violation of section 602, or for any other violation under this title.

(b) REMEDIES. — In a suit described in subsection (a) for a violation described in that subsection, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any public or private entity other than a State, instrumentality of a State, or officer or employee of a State acting in his or her official capacity. Such remedies include impounding and disposition of infringing articles under section 503, actual damages and profits and statutory damages under section 504, costs and attorney's fees under section 505, and the remedies provided in section 510.

§512 · Limitations on liability relating to material online⁸

(a) TRANSITORY DIGITAL NETWORK COMMUNICATIONS. — A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider's transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if—

(1) the transmission of the material was initiated by or at the direction of a person other than the service provider;

(2) the transmission, routing, provision of connections, or storage is carried out through an automatic technical process without selection of the material by the service provider;

(3) the service provider does not select the recipients of the material except as an automatic response to the request of another person;

(4) no copy of the material made by the service provider in the course of such intermediate or transient storage is maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary for the transmission, routing, or provision of connections; and

(5) the material is transmitted through the system or network without modification of its content.

(b) SYSTEM CACHING. —

(1) LIMITATION ON LIABILITY. — A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the intermediate

**§513 · Determination of reasonable license fees
for individual proprietors⁹**

In the case of any performing rights society subject to a consent decree which provides for the determination of reasonable license rates or fees to be charged by the performing rights society, notwithstanding the provisions of that consent decree, an individual proprietor who owns or operates fewer than 7 nonpublicly traded establishments in which nondramatic musical works are performed publicly and who claims that any license agreement offered by that performing rights society is unreasonable in its license rate or fee as to that individual proprietor, shall be entitled to determination of a reasonable license rate or fee as follows:

(1) The individual proprietor may commence such proceeding for determination of a reasonable license rate or fee by filing an application in the applicable district court under paragraph (2) that a rate disagreement exists and by serving a copy of the application on the performing rights society. Such proceeding shall commence in the applicable district court within 90 days after the service of such copy, except that such 90-day requirement shall be subject to the administrative requirements of the court.

(2) The proceeding under paragraph (1) shall be held, at the individual proprietor's election, in the judicial district of the district court with jurisdiction over the applicable consent decree or in that place of holding court of a district court that is the seat of the Federal circuit (other than the Court of Appeals for the Federal Circuit) in which the proprietor's establishment is located.

(3) Such proceeding shall be held before the judge of the court with jurisdiction over the consent decree governing the performing rights society. At the discretion of the court, the proceeding shall be held before a special master or magistrate judge appointed by such judge. Should that consent decree provide for the appointment of an advisor or advisors to the court for any purpose, any such advisor shall be the special master so named by the court.

(4) In any such proceeding, the industry rate shall be presumed to have been reasonable at the time it was agreed to or determined by the court. Such presumption shall in no way affect a determination of whether the rate is being correctly applied to the individual proprietor.

(5) Pending the completion of such proceeding, the individual proprietor shall have the right to perform publicly the copyrighted musical compositions in the repertoire of the performing rights society by paying an interim license rate or fee into an interest bearing escrow account with the clerk of the court, subject to retroactive adjustment when a final rate or fee has been determined, in an amount equal to the industry rate, or, in the absence of an industry rate, the amount of the most recent license rate or fee agreed to by the parties.

(6) Any decision rendered in such proceeding by a special master or magistrate judge named under paragraph (3) shall be reviewed by the judge of

the court with jurisdiction over the consent decree governing the performing rights society. Such proceeding, including such review, shall be concluded within 6 months after its commencement.

(7) Any such final determination shall be binding only as to the individual proprietor commencing the proceeding, and shall not be applicable to any other proprietor or any other performing rights society, and the performing rights society shall be relieved of any obligation of nondiscrimination among similarly situated music users that may be imposed by the consent decree governing its operations.

(8) An individual proprietor may not bring more than one proceeding provided for in this section for the determination of a reasonable license rate or fee under any license agreement with respect to any one performing rights society.

(9) For purposes of this section, the term “industry rate” means the license fee a performing rights society has agreed to with, or which has been determined by the court for, a significant segment of the music user industry to which the individual proprietor belongs.

Chapter 5 • Endnotes

1. In 1998, two sections 512 were enacted into law. On October 17, 1998, the Fairness in Music Licensing Act of 1998 was enacted. This Act amended chapter 5 to add section 512 entitled “Determination of reasonable license fees for individual proprietors.” Pub. L. No. 105-298, 112 Stat. 2827, 2831. On October 28, 1998, the Online Copyright Infringement Liability Limitation Act was enacted. This Act amended chapter 5 to add section 512 entitled “Limitations on liability relating to material online.” Pub. L. No. 105-304, 112 Stat. 2860, 2877. In 1999, a technical correction was enacted to redesignate the section 512 that was entitled “Determination of reasonable license fees for individual proprietors” as section 513. Also, the table of sections was amended to reflect that change. Pub. L. No. 106-44, 113 Stat. 221. See also endnote 9, *infra*.

2. The Berne Convention Implementation Act of 1988 amended section 501(b) by striking out “sections 205(d) and 411” and inserting in lieu thereof “section 411.” Pub. L. No. 100-568, 102 Stat. 2853, 2860. The Satellite Home Viewer Act of 1988 amended section 501 by adding subsection (e). Pub. L. No. 100-667, 102 Stat. 3935, 3957.

In 1990, the Copyright Remedy Clarification Act amended section 501(a) by adding the last two sentences. Pub. L. No. 101-553, 104 Stat. 2749. The Visual Artists Rights Act of 1990 also amended section 501(a) as follows: 1) by inserting “or of the author as provided in section 106A(a)” after “118” and 2) by striking out “copyright.” and inserting in lieu thereof “copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a).” Pub. L. No. 101-650, 104 Stat. 5089, 5131.

In 1999, a technical correction amended the first sentence in subsection 501(a) by inserting “121” in lieu of “118.” Pub. L. No. 106-44, 113 Stat. 221, 222. The Satellite Home Viewer

Improvement Act of 1999 amended section 501 by adding a subsection (f) and, in subsection (e), by inserting “performance or display of a work embodied in a primary transmission” in lieu of “primary transmission embodying the performance or display of a work.” Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-527 and 544. The Satellite Home Viewer Improvement Act of 1999 states that section 501(f) shall be effective as of July 1, 1999. Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-544.

The Intellectual Property and High Technology Technical Amendments Act of 2002 amended section 501(a) by substituting sections “106 through 122” for “106 through 121.” Pub. L. No. 107-273, 116 Stat. 1758, 1909.

3. The Berne Convention Implementation Act of 1988 amended section 504(c) as follows: 1) in paragraph (1), by inserting “\$500” in lieu of “\$250” and by inserting “\$20,000” in lieu of “\$10,000” and 2) in paragraph (2), by inserting “\$100,000” in lieu of “\$50,000” and by inserting “\$200” in lieu of “\$100.” Pub. L. No. 100-568, 102 Stat. 2853, 2860. The Digital Theft Deterrence and Copyright Damages Improvement Act of 1999 amended section 504(c), in paragraph (1), by substituting “\$750” for “\$500” and “\$30,000” for “\$20,000” and, in paragraph (2), by substituting “\$150,000” for “\$100,000.” Pub. L. No. 106-160, 113 Stat. 1774.

The Fraudulent Online Identity Sanctions Act amended section 504(c) by adding a new subparagraph (3). Pub. L. No. 108-482, 118 Stat. 3912, 3916.

4. The Piracy and Counterfeiting Amendments Act of 1982 amended section 506 by substituting a new subsection (a). Pub. L. No. 97-180, 96 Stat. 91, 93. The Visual Artists Rights Act of 1990 amended section 506 by adding subsection (f). Pub. L. No. 101-650, 104 Stat. 5089, 5131. In 1997, the No Electronic Theft (NET) Act again amended section 506 by amending subsection (a) in its entirety. Pub. L. No. 105-147, 111 Stat. 2678. That Act also directed the United States Sentencing Commission to “ensure that the applicable guideline range for a defendant convicted of a crime against intellectual property ... is sufficiently stringent to deter such a crime” and to “ensure that the guidelines provide for consideration of the retail value and quantity of the items with respect to which the crime against intellectual property was committed.” Pub. L. No. 105-147, 111 Stat. 2678, 2680. See also endnote 2 in Appendix F.

The Artists’ Rights and Theft Prevention Act of 2005 amended subsection 506(a) in its entirety. Pub. L. No. 109-9, 119 Stat. 218, 220.

5. In 1997, the No Electronic Theft (NET) Act amended section 507(a) by inserting “5” in lieu of “three.” Pub. L. No. 105-147, 111 Stat. 2678.

6. The Satellite Home Viewer Improvement Act of 1999 amended the heading for section 510 by substituting “programming” for “programing” and, in subsection (b), by substituting “statutory” for “compulsory.” Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-543.

7. In 1990, the Copyright Remedy Clarification Act added section 511. Pub. L. No. 101-553, 104 Stat. 2749. In 1999, a technical correction amended subsection 511(a) by inserting “121” in lieu of “119.” Pub. L. No. 106-44, 113 Stat. 221, 222. The Intellectual Property and High Technology Technical Amendments Act of 2002 amended section 511(a) by substituting sections “106 through 122” for “106 through 121.” Pub. L. No. 107-273, 116 Stat. 1758, 1909.

8. In 1998, the Online Copyright Infringement Liability Limitation Act added section 512. Pub. L. No. 105-304, 112 Stat. 2860, 2877. In 1999, a technical correction deleted the heading for paragraph (2) of section 512(e), which was “Injunctions.” Pub. L. No. 106-44, 113 Stat. 221, 222.

9. The Fairness in Music Licensing Act of 1998 added section 513. Pub. L. No. 105-298, 112 Stat. 2827, 2831. This section was originally designated as section 512. However, because two sections 512 had been enacted into law in 1998, a technical amendment redesignated this as section 513. Pub. L. No. 106-44, 113 Stat. 221. See also endnote 1, *supra*.

Chapter 12¹

Copyright Protection and Management Systems

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§1201 · Circumvention of copyright protection systems²

(a) VIOLATIONS REGARDING CIRCUMVENTION OF TECHNOLOGICAL MEASURES. — (1)(A) No person shall circumvent a technological measure that effectively controls access to a work protected under this title. The prohibition contained in the preceding sentence shall take effect at the end of the 2-year period beginning on the date of the enactment of this chapter.

(B) The prohibition contained in subparagraph (A) shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title, as determined under subparagraph (C).

(C) During the 2-year period described in subparagraph (A), and during each succeeding 3-year period, the Librarian of Congress, upon the recommendation of the Register of Copyrights, who shall consult with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on his or her views in making such recommendation, shall make the determination in a rulemaking proceeding for purposes of subparagraph (B) of whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition under subparagraph (A) in their ability to make noninfringing uses under this title of a particular class of copyrighted works. In conducting such rulemaking, the Librarian shall examine —

- (i) the availability for use of copyrighted works;
- (ii) the availability for use of works for nonprofit archival, preservation, and educational purposes;
- (iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;
- (iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and
- (v) such other factors as the Librarian considers appropriate.

(D) The Librarian shall publish any class of copyrighted works for which the Librarian has determined, pursuant to the rulemaking conducted under subparagraph (C), that noninfringing uses by persons who are users of a copyrighted work are, or are likely to be, adversely affected, and the prohibition contained in subparagraph (A) shall not apply to such users with respect to such class of works for the ensuing 3-year period.

(E) Neither the exception under subparagraph (B) from the applicability of the prohibition contained in subparagraph (A), nor any determination made in a rulemaking conducted under subparagraph (C), may be used as

a defense in any action to enforce any provision of this title other than this paragraph.

(2) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that—

(A) is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a work protected under this title;

(B) has only limited commercially significant purpose or use other than to circumvent a technological measure that effectively controls access to a work protected under this title; or

(C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing a technological measure that effectively controls access to a work protected under this title.

(3) As used in this subsection—

(A) to “circumvent a technological measure” means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner; and

(B) a technological measure “effectively controls access to a work” if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

(b) **ADDITIONAL VIOLATIONS.**—(1) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that—

(A) is primarily designed or produced for the purpose of circumventing protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof;

(B) has only limited commercially significant purpose or use other than to circumvent protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof; or

(C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof.

(2) As used in this subsection—

(A) to “circumvent protection afforded by a technological measure” means avoiding, bypassing, removing, deactivating, or otherwise impairing a technological measure; and

(B) a technological measure “effectively protects a right of a copyright owner under this title” if the measure, in the ordinary course of its operation, prevents, restricts, or otherwise limits the exercise of a right of a copyright owner under this title.

(c) OTHER RIGHTS, ETC., NOT AFFECTED. — (1) Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.

(2) Nothing in this section shall enlarge or diminish vicarious or contributory liability for copyright infringement in connection with any technology, product, service, device, component, or part thereof.

(3) Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such part or component, or the product in which such part or component is integrated, does not otherwise fall within the prohibitions of subsection (a)(2) or (b)(1).

(4) Nothing in this section shall enlarge or diminish any rights of free speech or the press for activities using consumer electronics, telecommunications, or computing products.

(d) EXEMPTION FOR NONPROFIT LIBRARIES, ARCHIVES, AND EDUCATIONAL INSTITUTIONS. — (1) A nonprofit library, archives, or educational institution which gains access to a commercially exploited copyrighted work solely in order to make a good faith determination of whether to acquire a copy of that work for the sole purpose of engaging in conduct permitted under this title shall not be in violation of subsection (a)(1)(A). A copy of a work to which access has been gained under this paragraph —

(A) may not be retained longer than necessary to make such good faith determination; and

(B) may not be used for any other purpose.

(2) The exemption made available under paragraph (1) shall only apply with respect to a work when an identical copy of that work is not reasonably available in another form.

(3) A nonprofit library, archives, or educational institution that willfully for the purpose of commercial advantage or financial gain violates paragraph (1) —

(A) shall, for the first offense, be subject to the civil remedies under section 1203; and

(B) shall, for repeated or subsequent offenses, in addition to the civil remedies under section 1203, forfeit the exemption provided under paragraph (1).

(4) This subsection may not be used as a defense to a claim under subsection (a)(2) or (b), nor may this subsection permit a nonprofit library, archives, or educational institution to manufacture, import, offer to the public, provide,

or otherwise traffic in any technology, product, service, component, or part thereof, which circumvents a technological measure.

(5) In order for a library or archives to qualify for the exemption under this subsection, the collections of that library or archives shall be—

(A) open to the public; or

(B) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field.

(e) **LAW ENFORCEMENT, INTELLIGENCE, AND OTHER GOVERNMENT ACTIVITIES.**— This section does not prohibit any lawfully authorized investigative, protective, information security, or intelligence activity of an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting pursuant to a contract with the United States, a State, or a political subdivision of a State. For purposes of this subsection, the term “information security” means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system, or computer network.

(f) **REVERSE ENGINEERING.**— (1) Notwithstanding the provisions of subsection (a)(1)(A), a person who has lawfully obtained the right to use a copy of a computer program may circumvent a technological measure that effectively controls access to a particular portion of that program for the sole purpose of identifying and analyzing those elements of the program that are necessary to achieve interoperability of an independently created computer program with other programs, and that have not previously been readily available to the person engaging in the circumvention, to the extent any such acts of identification and analysis do not constitute infringement under this title.

(2) Notwithstanding the provisions of subsections (a)(2) and (b), a person may develop and employ technological means to circumvent a technological measure, or to circumvent protection afforded by a technological measure, in order to enable the identification and analysis under paragraph (1), or for the purpose of enabling interoperability of an independently created computer program with other programs, if such means are necessary to achieve such interoperability, to the extent that doing so does not constitute infringement under this title.

(3) The information acquired through the acts permitted under paragraph (1), and the means permitted under paragraph (2), may be made available to others if the person referred to in paragraph (1) or (2), as the case may be, provides such information or means solely for the purpose of enabling interoperability of an independently created computer program with other programs, and to the extent that doing so does not constitute infringement under this title or violate applicable law other than this section.

(4) For purposes of this subsection, the term “interoperability” means the ability of computer programs to exchange information, and of such programs mutually to use the information which has been exchanged.

(g) ENCRYPTION RESEARCH. —

(1) DEFINITIONS. — For purposes of this subsection —

(A) the term “encryption research” means activities necessary to identify and analyze flaws and vulnerabilities of encryption technologies applied to copyrighted works, if these activities are conducted to advance the state of knowledge in the field of encryption technology or to assist in the development of encryption products; and

(B) the term “encryption technology” means the scrambling and de-scrambling of information using mathematical formulas or algorithms.

(2) PERMISSIBLE ACTS OF ENCRYPTION RESEARCH. — Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a person to circumvent a technological measure as applied to a copy, phonorecord, performance, or display of a published work in the course of an act of good faith encryption research if—

(A) the person lawfully obtained the encrypted copy, phonorecord, performance, or display of the published work;

(B) such act is necessary to conduct such encryption research;

(C) the person made a good faith effort to obtain authorization before the circumvention; and

(D) such act does not constitute infringement under this title or a violation of applicable law other than this section, including section 1030 of title 18 and those provisions of title 18 amended by the Computer Fraud and Abuse Act of 1986.

(3) FACTORS IN DETERMINING EXEMPTION. — In determining whether a person qualifies for the exemption under paragraph (2), the factors to be considered shall include—

(A) whether the information derived from the encryption research was disseminated, and if so, whether it was disseminated in a manner reasonably calculated to advance the state of knowledge or development of encryption technology, versus whether it was disseminated in a manner that facilitates infringement under this title or a violation of applicable law other than this section, including a violation of privacy or breach of security;

(B) whether the person is engaged in a legitimate course of study, is employed, or is appropriately trained or experienced, in the field of encryption technology; and

(C) whether the person provides the copyright owner of the work to which the technological measure is applied with notice of the findings and documentation of the research, and the time when such notice is provided.

(4) USE OF TECHNOLOGICAL MEANS FOR RESEARCH ACTIVITIES. — Notwithstanding the provisions of subsection (a)(2), it is not a violation of that subsection for a person to—

(A) develop and employ technological means to circumvent a technological measure for the sole purpose of that person performing the acts of good faith encryption research described in paragraph (2); and

(B) provide the technological means to another person with whom he or she is working collaboratively for the purpose of conducting the acts of good faith encryption research described in paragraph (2) or for the purpose of having that other person verify his or her acts of good faith encryption research described in paragraph (2).

(5) REPORT TO CONGRESS. — Not later than 1 year after the date of the enactment of this chapter, the Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall jointly report to the Congress on the effect this subsection has had on —

(A) encryption research and the development of encryption technology;

(B) the adequacy and effectiveness of technological measures designed to protect copyrighted works; and

(C) protection of copyright owners against the unauthorized access to their encrypted copyrighted works.

The report shall include legislative recommendations, if any.

(h) EXCEPTIONS REGARDING MINORS. — In applying subsection (a) to a component or part, the court may consider the necessity for its intended and actual incorporation in a technology, product, service, or device, which —

(1) does not itself violate the provisions of this title; and

(2) has the sole purpose to prevent the access of minors to material on the Internet.

(i) PROTECTION OF PERSONALLY IDENTIFYING INFORMATION. —

(1) CIRCUMVENTION PERMITTED. — Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a person to circumvent a technological measure that effectively controls access to a work protected under this title, if—

(A) the technological measure, or the work it protects, contains the capability of collecting or disseminating personally identifying information reflecting the online activities of a natural person who seeks to gain access to the work protected;

(B) in the normal course of its operation, the technological measure, or the work it protects, collects or disseminates personally identifying information about the person who seeks to gain access to the work protected, without providing conspicuous notice of such collection or dissemination to such person, and without providing such person with the capability to prevent or restrict such collection or dissemination;

(C) the act of circumvention has the sole effect of identifying and disabling the capability described in subparagraph (A), and has no other effect on the ability of any person to gain access to any work; and

(D) the act of circumvention is carried out solely for the purpose of preventing the collection or dissemination of personally identifying information about a natural person who seeks to gain access to the work protected, and is not in violation of any other law.

(2) INAPPLICABILITY TO CERTAIN TECHNOLOGICAL MEASURES. —

This subsection does not apply to a technological measure, or a work it protects, that does not collect or disseminate personally identifying information and that is disclosed to a user as not having or using such capability.

(j) SECURITY TESTING. —

(1) DEFINITION. — For purposes of this subsection, the term “security testing” means accessing a computer, computer system, or computer network, solely for the purpose of good faith testing, investigating, or correcting, a security flaw or vulnerability, with the authorization of the owner or operator of such computer, computer system, or computer network.

(2) PERMISSIBLE ACTS OF SECURITY TESTING. — Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a person to engage in an act of security testing, if such act does not constitute infringement under this title or a violation of applicable law other than this section, including section 1030 of title 18 and those provisions of title 18 amended by the Computer Fraud and Abuse Act of 1986.

(3) FACTORS IN DETERMINING EXEMPTION. — In determining whether a person qualifies for the exemption under paragraph (2), the factors to be considered shall include —

(A) whether the information derived from the security testing was used solely to promote the security of the owner or operator of such computer, computer system or computer network, or shared directly with the developer of such computer, computer system, or computer network; and

(B) whether the information derived from the security testing was used or maintained in a manner that does not facilitate infringement under this title or a violation of applicable law other than this section, including a violation of privacy or breach of security.

(4) USE OF TECHNOLOGICAL MEANS FOR SECURITY TESTING. — Notwithstanding the provisions of subsection (a)(2), it is not a violation of that subsection for a person to develop, produce, distribute or employ technological means for the sole purpose of performing the acts of security testing described in subsection (2), provided such technological means does not otherwise violate section (a)(2).

(k) CERTAIN ANALOG DEVICES AND CERTAIN TECHNOLOGICAL MEASURES. —

(1) CERTAIN ANALOG DEVICES. —

(A) Effective 18 months after the date of the enactment of this chapter, no person shall manufacture, import, offer to the public, provide or otherwise traffic in any —

(i) VHS format analog video cassette recorder unless such recorder conforms to the automatic gain control copy control technology;

(ii) 8mm format analog video cassette camcorder unless such camcorder conforms to the automatic gain control technology;

(iii) Beta format analog video cassette recorder, unless such recorder conforms to the automatic gain control copy control technology, except that this requirement shall not apply until there are 1,000 Beta format analog video cassette recorders sold in the United States in any one calendar year after the date of the enactment of this chapter;

(iv) 8mm format analog video cassette recorder that is not an analog video cassette camcorder, unless such recorder conforms to the automatic gain control copy control technology, except that this requirement shall not apply until there are 20,000 such recorders sold in the United States in any one calendar year after the date of the enactment of this chapter; or

(v) analog video cassette recorder that records using an NTSC format video input and that is not otherwise covered under clauses (i) through (iv), unless such device conforms to the automatic gain control copy control technology.

(B) Effective on the date of the enactment of this chapter, no person shall manufacture, import, offer to the public, provide or otherwise traffic in—

(i) any VHS format analog video cassette recorder or any 8mm format analog video cassette recorder if the design of the model of such recorder has been modified after such date of enactment so that a model of recorder that previously conformed to the automatic gain control copy control technology no longer conforms to such technology; or

(ii) any VHS format analog video cassette recorder, or any 8mm format analog video cassette recorder that is not an 8mm analog video cassette camcorder, if the design of the model of such recorder has been modified after such date of enactment so that a model of recorder that previously conformed to the four-line colorstripe copy control technology no longer conforms to such technology.

Manufacturers that have not previously manufactured or sold a VHS format analog video cassette recorder, or an 8mm format analog cassette recorder, shall be required to conform to the four-line colorstripe copy control technology in the initial model of any such recorder manufactured after the date of the enactment of this chapter, and thereafter to continue conforming to the four-line colorstripe copy control technology. For purposes of this subparagraph, an analog video cassette recorder “conforms to” the four-line colorstripe copy control technology if it records a signal that, when played back by the playback function of that recorder in the normal viewing mode, exhibits, on a reference display device, a display containing distracting visible lines through portions of the viewable picture.

(2) CERTAIN ENCODING RESTRICTIONS. — No person shall apply the automatic gain control copy control technology or colorstripe copy control technology to prevent or limit consumer copying except such copying—

(A) of a single transmission, or specified group of transmissions, of live events or of audiovisual works for which a member of the public has exercised choice in selecting the transmissions, including the content of the transmissions or the time of receipt of such transmissions, or both, and as to which such member is charged a separate fee for each such transmission or specified group of transmissions;

(B) from a copy of a transmission of a live event or an audiovisual work if such transmission is provided by a channel or service where payment is made by a member of the public for such channel or service in the form of a subscription fee that entitles the member of the public to receive all of the programming contained in such channel or service;

(C) from a physical medium containing one or more prerecorded audiovisual works; or

(D) from a copy of a transmission described in subparagraph (A) or from a copy made from a physical medium described in subparagraph (C).

In the event that a transmission meets both the conditions set forth in subparagraph (A) and those set forth in subparagraph (B), the transmission shall be treated as a transmission described in subparagraph (A).

(3) INAPPLICABILITY. — This subsection shall not—

(A) require any analog video cassette camcorder to conform to the automatic gain control copy control technology with respect to any video signal received through a camera lens;

(B) apply to the manufacture, importation, offer for sale, provision of, or other trafficking in, any professional analog video cassette recorder; or

(C) apply to the offer for sale or provision of, or other trafficking in, any previously owned analog video cassette recorder, if such recorder was legally manufactured and sold when new and not subsequently modified in violation of paragraph (1)(B).

(4) DEFINITIONS. — For purposes of this subsection:

(A) An “analog video cassette recorder” means a device that records, or a device that includes a function that records, on electromagnetic tape in an analog format the electronic impulses produced by the video and audio portions of a television program, motion picture, or other form of audiovisual work.

(B) An “analog video cassette camcorder” means an analog video cassette recorder that contains a recording function that operates through a camera lens and through a video input that may be connected with a television or other video playback device.

(C) An analog video cassette recorder “conforms” to the automatic gain control copy control technology if it—

(i) detects one or more of the elements of such technology and does not record the motion picture or transmission protected by such technology; or

(ii) records a signal that, when played back, exhibits a meaningfully distorted or degraded display.

(D) The term “professional analog video cassette recorder” means an analog video cassette recorder that is designed, manufactured, marketed, and intended for use by a person who regularly employs such a device for a lawful business or industrial use, including making, performing, displaying, distributing, or transmitting copies of motion pictures on a commercial scale.

(E) The terms “VHS format,” “8mm format,” “Beta format,” “automatic gain control copy control technology,” “colorstripe copy control technology,” “four-line version of the colorstripe copy control technology,” and “NTSC” have the meanings that are commonly understood in the consumer electronics and motion picture industries as of the date of the enactment of this chapter.

(5) VIOLATIONS. — Any violation of paragraph (1) of this subsection shall be treated as a violation of subsection (b)(1) of this section. Any violation of paragraph (2) of this subsection shall be deemed an “act of circumvention” for the purposes of section 1203(c)(3)(A) of this chapter.

§1202 · Integrity of copyright management information³

(a) FALSE COPYRIGHT MANAGEMENT INFORMATION. — No person shall knowingly and with the intent to induce, enable, facilitate, or conceal infringement —

(1) provide copyright management information that is false, or

(2) distribute or import for distribution copyright management information that is false.

(b) REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION. — No person shall, without the authority of the copyright owner or the law —

(1) intentionally remove or alter any copyright management information,

(2) distribute or import for distribution copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law, or

(3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law, knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title.

(c) **DEFINITION.** — As used in this section, the term “copyright management information” means any of the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form, except that such term does not include any personally identifying information about a user of a work or of a copy, phonorecord, performance, or display of a work:

(1) The title and other information identifying the work, including the information set forth on a notice of copyright.

(2) The name of, and other identifying information about, the author of a work.

(3) The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright.

(4) With the exception of public performances of works by radio and television broadcast stations, the name of, and other identifying information about, a performer whose performance is fixed in a work other than an audiovisual work.

(5) With the exception of public performances of works by radio and television broadcast stations, in the case of an audiovisual work, the name of, and other identifying information about, a writer, performer, or director who is credited in the audiovisual work.

(6) Terms and conditions for use of the work.

(7) Identifying numbers or symbols referring to such information or links to such information.

(8) Such other information as the Register of Copyrights may prescribe by regulation, except that the Register of Copyrights may not require the provision of any information concerning the user of a copyrighted work.

(d) **LAW ENFORCEMENT, INTELLIGENCE, AND OTHER GOVERNMENT ACTIVITIES.** — This section does not prohibit any lawfully authorized investigative, protective, information security, or intelligence activity of an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting pursuant to a contract with the United States, a State, or a political subdivision of a State. For purposes of this subsection, the term “information security” means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system, or computer network.

(e) **LIMITATIONS ON LIABILITY.** —

(1) **ANALOG TRANSMISSIONS.** — In the case of an analog transmission, a person who is making transmissions in its capacity as a broadcast station, or as a cable system, or someone who provides programming to such station or system, shall not be liable for a violation of subsection (b) if—

(A) avoiding the activity that constitutes such violation is not technically feasible or would create an undue financial hardship on such person; and

(B) such person did not intend, by engaging in such activity, to induce, enable, facilitate, or conceal infringement of a right under this title.

(2) DIGITAL TRANSMISSIONS. —

(A) If a digital transmission standard for the placement of copyright management information for a category of works is set in a voluntary, consensus standard-setting process involving a representative cross-section of broadcast stations or cable systems and copyright owners of a category of works that are intended for public performance by such stations or systems, a person identified in paragraph (1) shall not be liable for a violation of subsection (b) with respect to the particular copyright management information addressed by such standard if—

(i) the placement of such information by someone other than such person is not in accordance with such standard; and

(ii) the activity that constitutes such violation is not intended to induce, enable, facilitate, or conceal infringement of a right under this title.

(B) Until a digital transmission standard has been set pursuant to subparagraph (A) with respect to the placement of copyright management information for a category of works, a person identified in paragraph (1) shall not be liable for a violation of subsection (b) with respect to such copyright management information, if the activity that constitutes such violation is not intended to induce, enable, facilitate, or conceal infringement of a right under this title, and if—

(i) the transmission of such information by such person would result in a perceptible visual or aural degradation of the digital signal; or

(ii) the transmission of such information by such person would conflict with—

(I) an applicable government regulation relating to transmission of information in a digital signal;

(II) an applicable industry-wide standard relating to the transmission of information in a digital signal that was adopted by a voluntary consensus standards body prior to the effective date of this chapter; or

(III) an applicable industry-wide standard relating to the transmission of information in a digital signal that was adopted in a voluntary, consensus standards-setting process open to participation by a representative cross-section of broadcast stations or cable systems and copyright owners of a category of works that are intended for public performance by such stations or systems.

(3) DEFINITIONS. — As used in this subsection—

(A) the term “broadcast station” has the meaning given that term in section 3 of the Communications Act of 1934 (47 U.S.C. 153); and

(B) the term “cable system” has the meaning given that term in section 602 of the Communications Act of 1934 (47 U.S.C. 522).

§1203 · Civil remedies⁴

(a) **CIVIL ACTIONS.**—Any person injured by a violation of section 1201 or 1202 may bring a civil action in an appropriate United States district court for such violation.

(b) **POWERS OF THE COURT.**—In an action brought under subsection (a), the court—

(1) may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain a violation, but in no event shall impose a prior restraint on free speech or the press protected under the 1st amendment to the Constitution;

(2) at any time while an action is pending, may order the impounding, on such terms as it deems reasonable, of any device or product that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation;

(3) may award damages under subsection (c);

(4) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof;

(5) in its discretion may award reasonable attorney's fees to the prevailing party; and

(6) may, as part of a final judgment or decree finding a violation, order the remedial modification or the destruction of any device or product involved in the violation that is in the custody or control of the violator or has been impounded under paragraph (2).

(c) **AWARD OF DAMAGES.**—

(1) **IN GENERAL.**—Except as otherwise provided in this title, a person committing a violation of section 1201 or 1202 is liable for either—

(A) the actual damages and any additional profits of the violator, as provided in paragraph (2), or

(B) statutory damages, as provided in paragraph (3).

(2) **ACTUAL DAMAGES.**—The court shall award to the complaining party the actual damages suffered by the party as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages, if the complaining party elects such damages at any time before final judgment is entered.

(3) **STATUTORY DAMAGES.**—(A) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1201 in the sum of not less than \$200 or more than \$2,500 per act of circumvention, device, product, component, offer, or performance of service, as the court considers just.

(B) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1202 in the sum of not less than \$2,500 or more than \$25,000.

(4) REPEATED VIOLATIONS. — In any case in which the injured party sustains the burden of proving, and the court finds, that a person has violated section 1201 or 1202 within three years after a final judgment was entered against the person for another such violation, the court may increase the award of damages up to triple the amount that would otherwise be awarded, as the court considers just.

(5) INNOCENT VIOLATIONS. —

(A) IN GENERAL. — The court in its discretion may reduce or remit the total award of damages in any case in which the violator sustains the burden of proving, and the court finds, that the violator was not aware and had no reason to believe that its acts constituted a violation.

(B) NONPROFIT LIBRARY, ARCHIVES, EDUCATIONAL INSTITUTIONS, OR PUBLIC BROADCASTING ENTITIES. —

(i) DEFINITION. — In this subparagraph, the term “public broadcasting entity” has the meaning given such term under section 118(g).

(ii) IN GENERAL. — In the case of a nonprofit library, archives, educational institution, or public broadcasting entity, the court shall remit damages in any case in which the library, archives, educational institution, or public broadcasting entity sustains the burden of proving, and the court finds, that the library, archives, educational institution, or public broadcasting entity was not aware and had no reason to believe that its acts constituted a violation.

§ 1204 · Criminal offenses and penalties⁵

(a) IN GENERAL. — Any person who violates section 1201 or 1202 willfully and for purposes of commercial advantage or private financial gain —

(1) shall be fined not more than \$500,000 or imprisoned for not more than 5 years, or both, for the first offense; and

(2) shall be fined not more than \$1,000,000 or imprisoned for not more than 10 years, or both, for any subsequent offense.

(b) LIMITATION FOR NONPROFIT LIBRARY, ARCHIVES, EDUCATIONAL INSTITUTION, OR PUBLIC BROADCASTING ENTITY. — Subsection (a) shall not apply to a nonprofit library, archives, educational institution, or public broadcasting entity (as defined under section 118(g)).

(c) STATUTE OF LIMITATIONS. — No criminal proceeding shall be brought under this section unless such proceeding is commenced within five years after the cause of action arose.

§1205 • Savings clause

Nothing in this chapter abrogates, diminishes, or weakens the provisions of, nor provides any defense or element of mitigation in a criminal prosecution or civil action under, any Federal or State law that prevents the violation of the privacy of an individual in connection with the individual's use of the Internet.

Chapter 12 • Endnotes

1. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 added chapter 12, entitled "Copyright Protection and Management Systems," to title 17. Pub. L. No. 105-304, 112 Stat. 2860, 2863. The WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998 is title I of the Digital Millennium Copyright Act. Pub. L. No. 105-304, 112 Stat. 2860.

2. The Satellite Home Viewer Improvement Act of 1999 amended section 1201(a)(1)(C) by deleting "on the record." Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-594.

3. In 1999, section 1202 was amended by inserting "category of works" for "category or works," in subsection (e)(2)(B). Pub. L. No. 106-44, 113 Stat. 221, 222.

4. The Satellite Home Viewer Improvement Act of 1999 amended section 1203(c)(5)(B) in its entirety. Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-593.

5. The Satellite Home Viewer Improvement Act of 1999 amended section 1204(b) in its entirety. Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-593.