90–416, by Public Law 91–417, by Public Law 91–555, by Public Law 92–170, or by Public Law 92–556 (or by all or certain of said laws) [set out below], would expire prior to Dec. 31, 1976, such term was continued until Dec. 31, 1976.

Pub. L. 92–566, Oct. 25, 1972, 86 Stat. 1181, provided that in any case in which the renewal term of a copyright subsisting in any work on Oct. 25, 1972, or the term thereof as extended by Public Law 87–668, by Public Law 89–142, by Public Law 90–141, by Public Law 90–416, by Public Law 91–147, by Public Law 91–555, or by Public Law 92–170 (or by all or certain of said laws) [set out below], would expire prior to Dec. 31, 1974, such term was continued until Dec. 31, 1974.

Pub. L. 92–170, Nov. 24, 1971, 85 Stat. 490, provided that in any case in which the renewal term of a copyright subsisting in any work on Nov. 24, 1971, or the term thereof as extended by Public Law 87–668, by Public Law 89–142, by Public Law 90–141, by Public Law 90–416, by Public Law 91–147, or by Public Law 91–555 (or by all or certain of said laws), would expire prior to Dec. 31, 1972, such term was continued until Dec. 31, 1972.

Pub. L. 91–555, Dec. 17, 1970, 84 Stat. 1441, provided that in any case in which the renewal term of a copyright subsisting in any work on Dec. 17, 1970, or the term thereof as extended by Public Law 87–668, by Public Law 89–442 [89–142], by Public Law 90–141, by Public Law 90–416, or by Public Law 91–147 (or by all or certain of said laws) [set out below], would expire prior to Dec. 31, 1971, such term was continued until Dec. 31, 1971.

Pub. L. 91–147, Dec. 16, 1969, 83 Stat. 360, provided that in any case in which the renewal term of a copyright subsisting in any work on Dec. 16, 1969, or the term thereof as extended by Public Law 87–668, by Public Law 89–142, by Public Law 90–141, or by Public Law 90–416 (or by all or certain of said laws) [set out below], would expire prior to Dec. 31, 1970, such term was continued until Dec. 31, 1970.

Pub. L. 90–416, July 23, 1968, 82 Stat. 397, provided that in any case in which the renewal term of a copyright subsisting in any work on July 23, 1968, or the term thereof as extended by Public Law 87–668, by Public Law 89–142, or by Public Law 90–141 (or by all or certain of said laws) [set out below], would expire prior to Dec. 31, 1969, such term was continued until Dec. 31, 1969.

Pub. L. 90–141, Nov. 16, 1967, 81 Stat. 464, provided that in any case in which the renewal term of a copyright subsisting in any work on Nov. 16, 1967, or the term thereof as extended by Public Law 87–668, or by Public Law 89–142 (or by either or both of said laws) [set out below], would expire prior to Dec. 31, 1968, such term was continued until Dec. 31, 1968.

Pub. L. 89–142, Aug. 28, 1965, 79 Stat. 581, provided that in any case in which the renewal term of a copyright subsisting in any work on Aug. 28, 1965, or the term thereof as extended by Public Law 87–668 [set out below], would expire prior to Dec. 31, 1967, such term was continued until Dec. 31, 1967.

Pub. L. 87–668, Sept. 19, 1962, 76 Stat. 555, provided that in any case in which the renewal term of a copyright subsisting in any work on Sept. 19, 1962, would expire prior to Dec. 31, 1965, such term was continued until Dec. 31, 1965.

§ 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.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2576.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

Under section 305, which has its counterpart in the laws of most foreign countries, the term of copyright protection for a work extends through December 31 of the year in which the term would otherwise have expired. This will make the duration of copyright much easier to compute, since it will be enough to determine the year, rather than the exact date, of the event from which the term is based.

Section 305 applies only to ''terms of copyright provided by sections 302 through 304,'' which are the sections dealing with duration of copyright. It therefore has no effect on the other time periods specified in the bill; and, since they do not involve ''terms of copyright,'' the periods provided in section 304(c) with respect to termination of grants are not affected by section 305.

The terminal date section would change the duration of subsisting copyrights under section 304 by extending the total terms of protection under subsections (a) and (b) to the end of the 75th year from the date copyright was secured. A copyright subsisting in its first term on the effective date of the act [Jan. 1, 1978] would run through December 31 of the 28th year and would then expire unless renewed. Since all copyright terms under the bill expire on December 31, and since section 304(a) requires that renewal be made ''within one year prior to the expiration of the original term of copyright,'' the period for renewal registration in all cases will run from December 31 through December 31.

A special situation arises with respect to subsisting copyrights whose first 28-year term expires during the first year after the act comes into effect. As already explained in connection with section 304(b), if a renewal registration for a copyright of this sort is made before the effective date [Jan. 1, 1978], the total term is extended to 75 years without the need for a further renewal registration. But, if renewal has not yet been made when the act becomes effective [Jan. 1, 1978], the period for renewal registration may in some cases be extended. If, as the bill provides, the act becomes effective on January 1, 1978, a copyright that was originally secured on September 1, 1950, could have been renewed by virtue of the present statute between September 1, 1977, and December 31, 1977; if not, it can still be renewed under section 304(a) of the new act between January 1, 1978, and December 31, 1978.

CHAPTER 4—COPYRIGHT NOTICE, DEPOSIT, AND REGISTRATION

Editorial Notes

AMENDMENTS

2008—Pub. L. 110–403, title I, § 101(b)(2), Oct. 13, 2008, 122 Stat. 4258, inserted ''civil'' before ''infringement'' in item 411.

1988—Pub. L. 100–568, §§ 7(g), 9(b)(2), Oct. 31, 1988, 102 Stat. 2859, inserted in items 405 and 406 ''on certain copies and phonorecords'' and substituted in item 411 ''Registration and infringement actions'' for ''Registration as prerequisite to infringement suit''.

§ 401. Notice of copyright: Visually perceptible copies

(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).

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2576; Pub. L. 100–568, § 7(a), Oct. 31, 1988, 102 Stat. 2857.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

A requirement that the public be given formal notice of every work in which copyright is claimed was a part of the first U.S. copyright statute enacted in 1790, and since 1802 our copyright laws have always provided that the published copies of copyrighted works must bear a specified notice as a condition of protection. Under the present law the copyright notice serves four principal functions:

(1) It has the effect of placing in the public domain a substantial body of published material that no one is interested in copyrighting;

(2) It informs the public as to whether a particular work is copyrighted;

(3) It identifies the copyright owner; and

(4) It shows the date of publication.

Ranged against these values of a notice requirement are its burdens and unfairness to copyright owners. One of the strongest arguments for revision of the present statute has been the need to avoid the arbitrary and unjust forfeitures now resulting from unintentional or relatively unimportant omissions or errors in the copyright notice. It has been contended that the disadvantages of the notice requirement outweigh its values and that it should therefore be eliminated or substantially liberalized.

The fundamental principle underlying the notice provisions of the bill is that the copyright notice has real values which should be preserved, and that this should be done by inducing use of notice without causing outright forfeiture for errors or omissions. Subject to certain safeguards for innocent infringers, protection would not be lost by the complete omission of copyright notice from large numbers of copies or from a whole edition, if registration for the work is made before or within 5 years after publication. Errors in the name or date in the notice could be corrected without forfeiture of copyright.

Sections 401 and 402 set out the basic notice requirements of the bill, the former dealing with ''copies from which the work can be visually perceived,'' and the latter covering ''phonorecords'' of a ''sound recording.'' The notice requirements established by these parallel provisions apply only when copies or phonorecords of the work are ''publicly distributed.'' No copyright notice would be required in connection with the public display of a copy by any means, including projectors, television, or cathode ray tubes connected with information storage and retrieval systems, or in connection with the public performance of a work by means of copies or phonorecords, whether in the presence of an audience or through television, radio, computer transmission, or any other process.

It should be noted that, under the definition of ''publication'' in section 101, there would no longer be any basis for holding, as a few court decisions have done in the past, that the public display of a work of art under some conditions (e.g., without restriction against its reproduction) would constitute publication of the work. And, as indicated above, the public display of a work of art would not require that a copyright notice be placed on the copy displayed.

Subsections (a) of both section 401 and section 402 require that a notice be used whenever the work ''is published in the United States or elsewhere by authority of the copyright owner.'' The phrase ''or elsewhere,'' which does not appear in the present law, makes the notice requirements applicable to copies or phonorecords distributed to the public anywhere in the world, regardless of where and when the work was first published. The values of notice are fully applicable to foreign editions of works copyrighted in the United States, especially with the increased flow of intellectual materials across national boundaries, and the gains in the use of notice on editions published abroad under the Universal Copyright Convention should not be wiped out. The consequences of omissions or mistakes with respect to the notice are far less serious under the bill than under the present law, and section 405(a) makes doubly clear that a copyright owner may guard himself against errors or omissions by others if he makes use of the prescribed notice an express condition of his publishing licenses.

Subsection (b) of section 401, which sets out the form of notice to appear on visually-perceptible copies, retains the basic elements of the notice under the present law: the word ''Copyright'', the abbreviation ''Copr.'', or the symbol ''©''; the year of first publication; and the name of the copyright owner. The year of publication, which is still significant in computing the term and determining the status of a work, is required for all categories of copyrightable works. Clause (2) of subsection (b) makes clear that, in the case of a derivative work or compilation, it is not necessary to list the dates of publication of all preexisting material incorporated in the work; however, as noted below in connection with section 409, the application for registration covering a compilation or derivative work must

identify ''any preexisting work or works that it is based on or incorporates.'' Clause (3) establishes that a recognizable abbreviation or a generally known alternative designation may be used instead of the full name of the copyright owner.

By providing simply that the notice ''shall be affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright,'' subsection (c) follows the flexible approach of the Universal Copyright Convention. The further provision empowering the Register of Copyrights to set forth in regulations a list of examples of ''specific methods of affixation and positions of the notice on various types of works that will satisfy this requirement'' will offer substantial guidance and avoid a good deal of uncertainty. A notice placed or affixed in accordance with the regulations would clearly meet the requirements but, since the Register's specifications are not to ''be considered exhaustive,'' a notice placed or affixed in some other way might also comply with the law if it were found to ''give reasonable notice'' of the copyright claim.

Editorial Notes

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–568, § 7(a)(1), (2), substituted ''General provisions'' for ''General requirement'' in heading, and ''may be placed on'' for ''shall be placed on all'' in text.

Subsec. (b). Pub. L. 100–568, § 7(a)(3), substituted ''If a notice appears on the copies, it'' for ''The notice appearing on the copies''.

Subsec. (d). Pub. L. 100–568, § 7(a)(4), added subsec. (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

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

COMPLIANCE WITH PREDECESSOR NOTICE PROVISIONS; COPIES DISTRIBUTED AFTER DEC. 31, 1977

Pub. L. 94–553, title I, § 108, Oct. 19, 1976, 90 Stat. 2600, provided that: ''The notice provisions of sections 401 through 403 of title 17 as amended by the first section of this Act [sections 401 through 403 of this title] apply to all copies or phonorecords publicly distributed on or after January 1, 1978. However, in the case of a work published before January 1, 1978, compliance with the notice provisions of title 17 either as it existed on December 31, 1977, or as amended by the first section of this Act, is adequate with respect to copies publicly distributed after December 31, 1977.''

§ 402. Notice of copyright: Phonorecords of sound recordings

(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).

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2577; Pub. L. 100–568, § 7(b), Oct. 31, 1988, 102 Stat. 2857.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

A special notice requirement, applicable only to the subject matter of sound recordings, is established by section 402. Since the bill protects sound recordings as separate works, independent of protection for any literary or musical works embodied in them, there would be a likelihood of confusion if the same notice requirements applied to sound recordings and to the works they incorporate. Like the present law, therefore, section 402 thus sets forth requirements for a notice to appear on the ''phonorecords'' of ''sound recordings'' that are different from the notice requirements established by section 401 for the ''copies'' of all other types of copyrightable works. Since ''phonorecords'' are not ''copies,'' there is no need to place a section 401 notice on ''phonorecords'' to protect the literary or musical works embodied in the records.

In general, the form of the notice specified by section 402(b) consists of the symbol ''℗''; the year of first publication of the sound recording; and the name of the copyright owner or an admissible variant. Where the record producer's name appears on the record label, album, sleeve, jacket, or other container, it will be considered a part of the notice if no other name appears in conjunction with it. Under subsection (c), the notice for a copyrighted sound recording may be affixed to the surface, label, or container of the phonorecord ''in such manner and location as to give reasonable notice of the claim of copyright.''

There are at least three reasons for prescribing use of the symbol ''℗'' rather than ''©'' in the notice to appear on phonorecords of sound recordings. Aside from the need to avoid confusion between claims to copyright in the sound recording and in the musical or literary work embodied in it, there is also a necessity for distinguishing between copyright claims in the sound recording and in the printed text or art work appearing on the record label, album cover, liner notes, et cetera. The symbol ''©'' has also been adopted as the international symbol for the protection of sound recordings by the ''Phonograms Convention'' (the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, done at Geneva October 29, 1971), to which the United States is a party.

Editorial Notes

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–568, §7(b)(1), (2), substituted ''General provisions'' for ''General requirement'' in heading, and ''may be placed on'' for ''shall be placed on all'' in text.

Subsec. (b). Pub. L. 100–568, §7(b)(3), substituted ''If a notice appears on the phonorecords, it'' for ''The notice appearing on the phonorecords''.

Subsec. (d). Pub. L. 100–568, §7(b)(4), added subsec. (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

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

§ 403. Notice of copyright: Publications incorporating United States Government works

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.

(Pub. L. 94–553, title I, §101, Oct. 19, 1976, 90 Stat. 2577; Pub. L. 100–568, §7(c), Oct. 31, 1988, 102 Stat. 2858.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

Section 403 is aimed at a publishing practice that, while technically justified under the present law, has been the object of considerable criticism. In cases where a Government work is published or republished commercially, it has frequently been the practice to add some ''new matter'' in the form of an introduction, editing, illustrations, etc., and to include a general copyright notice in the name of the commercial publisher. This in no way suggests to the public that the bulk of the work is uncopyrightable and therefore free for use.

To make the notice meaningful rather than misleading, section 403 requires that, when the copies or phonorecords consist ''preponderantly of one or more works of the United States Government,'' the copyright notice (if any) identify those parts of the work in which copyright is claimed. A failure to meet this requirement would be treated as an omission of the notice, subject to the provisions of section 405.

Editorial Notes

AMENDMENTS

1988—Pub. L. 100–568 amended section generally. Prior to amendment, section read as follows: ''Whenever a work is published in copies or phonorecords consisting preponderantly of one or more works of the United States Government, the notice of copyright provided by sections 401 or 402 shall also include a statement identifying, either affirmatively or negatively, those portions of the copies or phonorecords embodying any work or works protected under this title.''

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

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

§ 404. Notice of copyright: Contributions to collective works

(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).

(Pub. L. 94–553, title I, §101, Oct. 19, 1976, 90 Stat. 2577; Pub. L. 100–568, §7(d), Oct. 31, 1988, 102 Stat. 2858.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

In conjunction with the provisions of section 201(c), section 404 deals with a troublesome problem under the present law: the notice requirements applicable to contributions published in periodicals and other collective works. The basic approach of the section is threefold:

(1) To permit but not require a separate contribution to bear its own notice;

(2) To make a single notice, covering the collective work as a whole, sufficient to satisfy the notice requirement for the separate contributions it contains, even if they have been previously published or their ownership is different; and

(3) To protect the interests of an innocent infringer of copyright in a contribution that does not bear its own notice, who has dealt in good faith with the person named in the notice covering the collective work as a whole.

As a general rule, under this section, the rights in an individual contribution to a collective work would not be affected by the lack of a separate copyright notice, as long as the collective work as a whole bears a notice. One exception to this rule would apply to ''advertisements inserted on behalf of persons other than the owner of copyright in the collective work.'' Collective works, notably newspapers and magazines, are major advertising media, and it is common for the same advertisement to be published in a number of different periodicals. The general copyright notice in a particular issue would not ordinarily protect the advertisements inserted in it, and relatively little advertising matter today is published with a separate copyright notice. The exception in section 404(a), under which separate notices would be required for most advertisements published in collective works, would impose no undue burdens on copyright owners and is justified by the special circumstances.

Under section 404(b) a separate contribution that does not bear its own notice, and that is published in a collective work with a general notice containing the name of someone other than the copyright owner of the contribution, is treated as if it has been published with the wrong name in the notice. The case is governed by section 406(a), which means that an innocent infringer who in good faith took a license from the person named in the general notice would be shielded from liability to some extent.

Editorial Notes

REFERENCES IN TEXT

The effective date of the Berne Convention Implementation Act of 1988, referred to in subsec. (b), is Mar. 1, 1989, see section 13 of Pub. L. 100–568, set out as an Effective Date of 1988 Amendment note under section 101 of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–568, § 7(d)(1), substituted ''to invoke the provisions of section 401(d) or 402(d), as applicable'' for ''to satisfy the requirements of sections 401 through 403''.

Subsec. (b). Pub. L. 100–568, § 7(d)(2), substituted ''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'' for ''Where''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

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

§ 405. Notice of copyright: Omission of notice on certain copies and phonorecords

(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.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2578; Pub. L. 100–568, § 7(e), Oct. 31, 1988, 102 Stat. 2858; Pub. L. 105–80, § 12(a)(10), Nov. 13, 1997, 111 Stat. 1535.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

Effect of Omission on Copyright Protection. The provisions of section 405(a) make clear that the notice requirements of sections 401, 402, and 403 are not absolute and that, unlike the law now in effect, the outright omission of a copyright notice does not automatically forfeit protection and throw the work into the public domain. This not only represents a major change in the theoretical framework of American copyright law, but it also seems certain to have immediate practical consequences in a great many individual cases. Under the proposed law a work published without any copyright notice will still be subject to statutory protection for at least 5 years, whether the omission was partial or total, unintentional or deliberate.

Under the general scheme of the bill, statutory copyright protection is secured automatically when a work is created, and is not lost when the work is published, even if the copyright notice is omitted entirely. Subsection (a) of section 405 provides that omission of notice, whether intentional or unintentional, does not invalidate the copyright if either of two conditions is met:

(1) if ''no more than a relatively small number'' of copies or phonorecords have been publicly distributed without notice; or

(2) if registration for the work has already been made, or is made within 5 years after the publication without notice, and a reasonable effort is made to add notice to copies or phonorecords publicly distributed in the United States after the omission is discovered.

Thus, if notice is omitted from more than a ''relatively small number'' of copies or phonorecords, copyright is not lost immediately, but the work will go into the public domain if no effort is made to correct the error or if the work is not registered within 5 years.

Section 405(a) takes a middle-ground approach in an effort to encourage use of a copyright notice without causing unfair and unjustifiable forfeitures on technical grounds. Clause (1) provides that, as long as the omission is from ''no more than a relatively small number of copies or phonorecords,'' there is no effect upon the copyright owner's rights except in the case of an innocent infringement covered by section 405(b); there is no need for registration or for efforts to correct the error if this clause is applicable. The phrase ''relatively small number'' is intended to be less restrictive

than the phrase ''a particular copy or copies'' now in section 21 of the present law [section 21 of former title 21].

Under clause (2) of subsection (a), the first condition for curing an omission from a larger number of copies is that registration be made before the end of 5 years from the defective publication. This registration may have been made before the omission took place or before the work had been published in any form and, since the reasons for the omission have no bearing on the validity of copyright, there would be no need for the application to refer to them. Some time limit for registration is essential and the 5-year period is reasonable and consistent with the period provided in section 410(c).

The second condition established by clause (2) is that the copyright owner make a ''reasonable effort,'' after discovering his error, to add the notice to copies or phonorecords distributed thereafter. This condition is specifically limited to copies or phonorecords publicly distributed in the United States, since it would be burdensome and impractical to require an American copyright owner to police the activities of foreign licensees in this situation.

The basic notice requirements set forth in sections 401(a) and 402(a) are limited to cases where a work is published ''by authority of the copyright owner'' and, in prescribing the effect of omission of notice, section 405(a) refers only to omission ''from copies or phonorecords publicly distributed by authority of the copyright owner.'' The intention behind this language is that, where the copyright owner authorized publication of the work, the notice requirements would not be met if copies or phonorecords are publicly distributed without a notice, even if he expected a notice to be used. However, if the copyright owner authorized publication only on the express condition that all copies or phonorecords bear a prescribed notice, the provisions of section 401 or 402 and of section 405 would not apply since the publication itself would not be authorized. This principle is stated directly in section 405(a)(3).

Effect of Omission on Innocent Infringers. In addition to the possibility that copyright protection will be forfeited under section 405(a)(2) if the notice is omitted, a second major inducement to use of the notice is found in subsection (b) of section 405. That provision, which limits the rights of a copyright owner against innocent infringers under certain circumstances, would be applicable whether the notice has been omitted from a large number or from a ''relatively small number'' of copies. The general postulates underlying the provision are that a person acting in good faith and with no reason to think otherwise should ordinarily be able to assume that a work is in the public domain if there is no notice on an authorized copy or phonorecord and that, if he relies on this assumption, he should be shielded from unreasonable liability.

Under section 405(b) an innocent infringer who acts ''in reliance upon an authorized copy or phonorecord from which the copyright notice has been omitted'', and who proves that he was misled by the omission, is shielded from liability for actual or statutory damages with respect to ''any infringing acts committed before receiving actual notice'' of registration. Thus, where the infringement is completed before actual notice has been served—as would be the usual case with respect to relatively minor infringements by teachers, librarians, journalists, and the like—liability, if any, would be limited to the profits the infringer realized from the act of infringement. On the other hand, where the infringing enterprise is one running over a period of time, the copyright owner would be able to seek an injunction against continuation of the infringement, and to obtain full monetary recovery for all infringing acts committed after he had served notice of registration. Persons who undertake major enterprises of this sort should check the Copyright Office registration records before starting, even where copies have been published without notice.

The purpose of the second sentence of subsection (b) is to give the courts broad discretion to balance the equities within the framework of section 405 [this section]. Where an infringer made profits from infringing acts committed innocently before receiving notice from the copyright owner, the court may allow or withhold their recovery in light of the circumstances. The court may enjoin an infringement or may permit its continuation on condition that the copyright owner be paid a reasonable license fee.

Removal of Notice by Others. Subsection (c) of section 405 involves the situation arising when, following an authorized publication with notice, someone further down the chain of commerce removes, destroys, or obliterates the notice. The courts dealing with this problem under the present law, especially in connection with copyright notices on the selvage of textile fabrics, have generally upheld the validity of a notice that was securely attached to the copies when they left the control of the copyright owner, even though removal of the notice at some later stage was likely. This conclusion is incorporated in subsection (c).

Editorial Notes

References in Text

The effective date of the Berne Convention Implementation Act of 1988, referred to in subsecs. (a) and (b), is Mar. 1, 1989, see section 13 of Pub. L. 100–568, set out as an Effective Date of 1988 Amendment note under section 101 of this title.

Amendments

1997—Subsec. (b). Pub. L. 105–80 substituted ''condition for permitting the continuation'' for ''condition or permitting the continuation''.

1988—Pub. L. 100–568, §7(e)(3), substituted ''notice on certain copies and phonorecords'' for ''notice'' in section catchline.

Subsec. (a). Pub. L. 100–568, §7(e)(1), substituted ''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'' for ''The omission of the copyright notice prescribed by''.

Subsec. (b). Pub. L. 100–568, §7(e)(2), substituted ''omitted and which was publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988,'' for ''omitted,''.

Statutory Notes and Related Subsidiaries

Effective Date of 1988 Amendment

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

§ 406. Notice of copyright: Error in name or date on certain copies and phonorecords

(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.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2578; Pub. L. 100–568, § 7(f), Oct. 31, 1988, 102 Stat. 2858.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

In addition to cases where notice has been omitted entirely, it is common under the present law for a copyright notice to be fatally defective because the name or date has been omitted or wrongly stated. Section 406 is intended to avoid technical forfeitures in these cases, while at the same time inducing use of the correct name and date and protecting users who rely on erroneous information.

Error in Name. Section 406(a) begins with a statement that the use of the wrong name in the notice will not affect the validity or ownership of the copyright, and then deals with situations where someone acting innocently and in good faith infringes a copyright by relying on a purported transfer or license from the person erroneously named in the notice. In such a case the innocent infringer is given a complete defense unless a search of the Copyright Office records would have shown that the owner was someone other than the person named in the notice. Use of the wrong name in the notice is no defense if, at the time infringement was begun, registration had been made in the name of the true owner, or if ''a document executed by the person named in the notice and showing the ownership of the copyright had been recorded.''

The situation dealt with in section 406(a) presupposes a contractual relation between the copyright owner and the person named in the notice. The copies or phonorecords bearing the defective notice have been ''distributed by authority of the copyright owner'' and, unless the publication can be considered unauthorized because of breach of an express condition in the contract or other reasons, the owner must be presumed to have acquiesced in the use of the wrong name. If the person named in the notice grants a license for use of the work in good faith or under a misapprehension, that person should not be liable as a copyright infringer, but the last sentence of section 406(a) would make the person named in the notice liable to account to the copyright owner for ''all receipts, from transfers or licenses purportedly made under the copyright'' by that person.

Error in Date. The familiar problems of antedated and postdated notices are dealt with in subsection (b) of section 406. In the case of an antedated notice, where the year in the notice is earlier than the year of first publication, the bill adopts the established judicial principle that any statutory term measured from the year of publication will be computed from the year given in the notice. This provision would apply not only to the copyright terms of anonymous works, pseudonymous works, and works made for hire under section 302(c), but also to the presumptive periods set forth in section 302(e).

As for postdated notices, subsection (b) provides that, where the year in the notice is more than one year later than the year of first publication the case is treated as if the notice had been omitted and is governed by section 405. Notices postdated by one year are quite common on works published near the end of a year, and it would be unnecessarily strict to equate cases of that sort with works published without notice of any sort.

Omission of Name or Date. Section 406(c) provides that, if the copies or phonorecords ''contain no name or no date that could reasonably be considered a part of the notice,'' the result is the same as if the notice had been omitted entirely, and section 405 controls. Unlike the present law, the bill contains no provision requiring the elements of the copyright notice to ''accompany'' each other, and under section 406(c) a name or date that could reasonably be read with the other elements may satisfy the requirements even if somewhat separated from them. Direct contiguity or juxtaposition of the elements is no longer necessary; but if the elements are too widely separated for their relation to be apparent, or if uncertainty is created by the presence of other names or dates, the case would have to be treated as if the name or date, and hence the notice itself had been omitted altogether.

Editorial Notes

REFERENCES IN TEXT

The effective date of the Berne Convention Implementation Act of 1988, referred to in text, is Mar. 1, 1989, see section 13 of Pub. L. 100–568, set out as an Effective Date of 1988 Amendment note under section 101 of this title.

AMENDMENTS

1988—Pub. L. 100–568, § 7(f)(4), substituted ''date on certain copies and phonorecords'' for ''date'' in section catchline.

Subsec. (a). Pub. L. 100–568, § 7(f)(1), substituted ''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'' for ''Where''.

Subsec. (b). Pub. L. 100–568, § 7(f)(2), inserted ''before the effective date of the Berne Convention Implementation Act of 1988'' after ''distributed''.

Subsec. (c). Pub. L. 100–568, § 7(f)(3), inserted ''before the effective date of the Berne Convention Implementation Act of 1988'' after ''publicly distributed'' and ''as in effect on the day before the effective date of the Berne Convention Implementation Act of 1988'' after ''section 405''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

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

§ 407. Deposit of copies or phonorecords for Library of Congress

(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) or (2) of this subsection shall result in liability if intended solely to assist in the acquisition of copies or phonorecords under this subsection.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2579; Pub. L. 100–568, § 8, Oct. 31, 1988, 102 Stat. 2859; Pub. L. 105–80, § 12(a)(11), Nov. 13, 1997, 111 Stat. 1535.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

The provisions of sections 407 through 411 of the bill mark another departure from the present law. Under the 1909 statute, deposit of copies for the collections of the Library of Congress and deposit of copies for pur-

poses of copyright registration have been treated as the same thing. The bill's basic approach is to regard deposit and registration as separate though closely related: deposit of copies or phonorecords for the Library of Congress is mandatory, but exceptions can be made for material the Library neither needs nor wants; copyright registration is not generally mandatory, but is a condition of certain remedies for copyright infringement. Deposit for the Library of Congress can be, and in the bulk of cases undoubtedly will be, combined with copyright registration.

The basic requirement of the deposit provision, section 407, is that within 3 months after a work has been published with notice of copyright in the United States, the ''owner of copyright or of the exclusive right of publication'' must deposit two copies or phonorecords of the work in the Copyright Office. The Register of Copyrights is authorized to exempt any category of material from the deposit requirements. Where the category is not exempted and deposit is not made, the Register may demand it; failure to comply would be penalized by a fine.

Under the present law deposits for the Library of Congress must be combined with copyright registration, and failure to comply with a formal demand for deposit and registration results in complete loss of copyright. Under section 407 of the bill, the deposit requirements can be satisfied without ever making registration, and subsection (a) makes clear that deposit ''is not a condition of copyright protection.'' A realistic fine, coupled with the increased inducements for voluntary registration and deposit under other sections of the bill, seems likely to produce a more effective deposit system than the present one. The bill's approach will also avoid the danger that, under a divisible copyright, one copyright owner's rights could be destroyed by another owner's failure to deposit.

Although the basic deposit requirements are limited to works ''published with notice of copyright in the United States,'' they would become applicable as soon as a work first published abroad is published in this country through the distribution of copies or phonorecords that are either imported or are part of an American edition. With respect to all types or works other than sound recordings, the basic obligation is to deposit ''two complete copies of the best edition''; the term ''best edition,'' as defined in section 101, makes clear that the Library of Congress is entitled to receive copies of phonorecords from the edition it believes best suits its needs regardless of the quantity or quality of other U.S. editions that may also have been published before the time of deposit. Once the deposit requirements for a particular work have been satisfied under section 407, however, the Library cannot claim deposit of future editions unless they represent newly copyrightable works under section 103.

The deposit requirement for sound recordings includes ''two complete phonorecords of the best edition'' and any other visually-perceptible material published with the phonorecords. The reference here is to the text or pictorial matter appearing on record sleeves and album covers or embodied in separate leaflets or booklets included in a sleeve, album, or other container. The required deposit in the case of a sound recording would extend to the entire ''package'' and not just to the disk, tape, or other phonorecord included as part of it.

Deposits under section 407, although made in the Copyright Office, are ''for the use or disposition of the Library of Congress.'' Thus, the fundamental criteria governing regulations issued under section 407(c), which allows exemptions from the deposit requirements for certain categories of works, would be the needs and wants of the Library. The purpose of this provision is to make the deposit requirements as flexible as possible, so that there will be no obligation to make deposits where it serves no purpose, so that only one copy or phonorecord may be deposited where two are not needed, and so that reasonable adjustments can be made to meet practical needs in special cases. The regulations, in establishing special categories for these purposes, would necessarily balance the value of the copies or phonorecords to the collections of the Library of Congress against the burdens and costs to the copyright owner of providing them.

The Committee adopted an amendment to subsection (c) of section 407, aimed at meeting the concerns expressed by representatives of various artists' groups concerning the deposit of expensive art works and graphics published in limited editions. Under the present law, optional deposit of photographs is permitted for various classes of works, but not for fine prints, and this has resulted in many artists choosing to forfeit copyright protection rather than bear the expense of depositing ''two copies of the best edition.'' To avoid this unfair result, the last sentence of subsection (c) would require the Register to issue regulations under which such works would either be exempted entirely from the mandatory deposit or would be subject to an appropriate alternative form of deposit.

If, within three months after the Register of Copyrights has made a formal demand for deposit in accordance with section 407(d), the person on whom the demand was made has not complied, that person becomes liable to a fine up to $250 for each work, plus the ''total retail price of the copies or phonorecords demanded.'' If no retail price has been fixed, clause (2) of subsection (d) establishes the additional amount as ''the reasonable cost to the Library of Congress of acquiring them.'' Thus, where the copies or phonorecords are not available for sale through normal trade channels—as would be true of many motion picture films, video tapes, and computer tapes, for example—the item of cost to be included in the fine would be equal to the basic expense of duplicating the copies or phonorecords plus a reasonable amount representing what it would have cost the Library to obtain them under its normal acquisitions procedures, if they had been available.

There have been cases under the present law in which the mandatory deposit provisions have been deliberately and repeatedly ignored, presumably on the assumption that the Library is unlikely to enforce them. In addition to the penalties provided in the current bill, the last clause of subsection (d) would add a fine of $2,500 for willful or repeated failure or refusal to deposit upon demand.

The Committee also amended section 407 [this section] by adding a new subsection (e), with conforming amendments of sections 407(a) and 408(b). These amendments are intended to provide a basis for the Library of Congress to acquire, as a part of the copyright deposit system, copies or recordings of non-syndicated radio and television programs, without imposing any hardships on broadcasters. Under subsection (e) the Library is authorized to tape programs off the air in all cases and may ''demand'' that the broadcaster supply the Library with a copy or phonorecord of a particular program. However, this ''demand'' authority is extremely limited: (1) The broadcaster is not required to retain any recording of a program after it has been transmitted unless a demand has already been received; (2) the demand would cover only a particular program; ''blanket'' demands would not be permitted; (3) the broadcaster would have the option of supplying the demand by gift, by loan for purposes of reproduction, or by sale at cost; and (4) the penalty for willful failure or refusal to comply with a demand is limited to the cost of reproducing and supplying the copy or phonorecord in question.

Editorial Notes

AMENDMENTS

1997—Subsec. (d)(2). Pub. L. 105–80 substituted ''cost to the Library of Congress'' for ''cost of the Library of Congress''.

1988—Subsec. (a). Pub. L. 100–568 struck out ''with notice of copyright'' before ''in the United States''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

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

DEPOSITS AND REGISTRATIONS MADE AFTER DECEMBER 31, 1977, IN RESPONSE TO DEMAND UNDER PREDECESSOR DEMAND AND PENALTY PROVISIONS

Pub. L. 94–553, title I, § 110, Oct. 19, 1976, 90 Stat. 2600, provided that: ''The demand and penalty provisions of section 14 of title 17 as it existed on December 31, 1977, apply to any work in which copyright has been secured by publication with notice of copyright on or before that date, but any deposit and registration made after that date in response to a demand under that section shall be made in accordance with the provisions of title 17 as amended by the first section of this Act.''

§ 408. Copyright registration in general

(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.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2580; Pub. L. 100–568, § 9(a), Oct. 31, 1988, 102 Stat. 2859; Pub. L. 102–307, title I, § 102(e), June 26, 1992, 106 Stat. 266; Pub. L. 109–9, title I, § 104(a), Apr. 27, 2005, 119 Stat. 221.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

Permissive Registration. Under section 408(a), registration of a claim to copyright in any work whether published or unpublished, can be made voluntarily by ''the owner of copyright or of any exclusive right in the work'' at any time during the copyright term. The claim may be registered in the Copyright Office by depositing the copies, phonorecords, or other material specified by subsection (b) and (c), together with an application and fee. Except where, under section 405(a), registration is made to preserve a copyright that would otherwise be invalidated because of omission of the notice, registration is not a condition of copyright protection.

Deposit for Purpose of Copyright Registration. In general, and subject to various exceptions, the material to be deposited for copyright registration consists of one complete copy or phonorecord of an unpublished work, and two complete copies or phonorecords of the best edition in the case of a published work. Section 408(b) provides special deposit requirements in the case of a work first published abroad (''one complete copy or phonorecord as so published'') and in the case of a contribution to a collective work (''one complete copy or phonorecord of the best edition of the collective work''). As a general rule the deposit of more than a tear sheet or similar fraction of a collective work is needed to identify the contribution properly and to show the form in which it was published. Where appropriate as in the case of collective works such as multivolume encyclopedias, multipart newspaper editions, and works that are rare or out of print, the regulations issued by the Register under section 408(c) can be expected to make exceptions or special provisions.

With respect to works published in the United States, a single deposit could be used to satisfy the deposit requirements of section 407 and the registration requirements of section 408, if the application and fee for registration are submitted at the same time and are accompanied by ''any additional identifying material'' required by regulations. To serve this dual purpose the deposit and registration would have to be made simultaneously; if a deposit under section 407 had already been made, an additional deposit would be required under section 408. In addition, since deposit for the Library of Congress and registration of a claim to copyright serve essentially different functions, section 408(b) authorizes the Register of Copyrights to issue regulations under which deposit of additional material, needed for identification of the work in which copyright is claimed, could be required in certain cases.

Administrative Classification. It is important that the statutory provisions setting forth the subject matter of copyright be kept entirely separate from any classification of copyrightable works for practical administrative purposes. Section 408(c)(1) thus leaves it to the Register of Copyrights to specify ''the administrative classes into which works are to be placed for purposes of deposit and registration,'' and makes clear that this administrative classification ''has no significance with respect to the subject matter of copyright or the exclusive rights provided by this title.''

Optional Deposit. Consistent with the principle of administrative flexibility underlying all of the deposit and registration provisions, subsection (c) of section 408 also gives the Register latitude in adjusting the type of material deposited to the needs of the registration system. The Register is authorized to issue regulations specifying ''the nature of the copies of phonorecords to be deposited in the various classes'' and, for particular classes, to require or permit deposit of identifying material rather than copies or phonorecords, deposit of one copy or phonorecord rather than two, or, in the case of a group of related works, a single rather than a number of separate registrations. Under this provision the Register could, where appropriate, permit deposit of phonorecords rather than notated copies of musical compositions, allow or require deposit of printouts of computer programs under certain circumstances, or permit deposit of one volume of an encyclopedia for purposes of registration of a single contribution.

Where the copies or phonorecords are bulky, unwieldy, easily broken, or otherwise impractical to file and retain as records identifying the work registered, the Register would be able to require or permit the substitute deposit of material that would better serve the purpose of identification. Cases of this sort might include, for example, billboard posters, toys and dolls, ceramics and glassware, costume jewelry, and a wide range of three-dimensional objects embodying copyrighted material. The Register's authority would also extend to rare or extremely valuable copies which would be burdensome or impossible to deposit. Deposit of one copy or phonorecord rather than two would probably be justifiable in the case of most motion pictures, and in any case where the Library of Congress has no need for the deposit and its only purpose is identification.

The provision empowering the Register to allow a number of related works to be registered together as a group represents a needed and important liberalization of the law now in effect. At present the requirement for separate registrations where related works or parts of a work are published separately has created administrative problems and has resulted in unnecessary burdens and expenses on authors and other copyright owners. In a number of cases the technical necessity for separate applications and fees has caused copyright

owners to forego copyright altogether. Examples of cases where these undesirable and unnecessary results could be avoided by allowing a single registration include the various editions or issues of a daily newspaper, a work published in serial installments, a group of related jewelry designs, a group of photographs by one photographer, a series of greeting cards related to each other in some way, or a group of poems by a single author.

Single Registration. Section 408(c)(2) directs the Register of Copyrights to establish regulations permitting under certain conditions 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. It is required that each of the works as first published have a separate copyright notice, and that 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) is the same in each notice. It is further required that the deposit consist 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 is first published. Finally, the application shall identify each work separately, including the periodical containing it and its date of first publication.

Section 408(c)(3) provides under certain conditions an alternative to the separate renewal registrations of subsection (a). If the specified conditions are met, 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. It is required that the renewal claimant or claimants, and the basis of claim or claims under section 304(a), is the same for each of the works; that 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; that the renewal application and fee are received not more than twenty-eight or less than twenty-seven years after December 31 of the calendar year in which all of the works were first published; and that the renewal application identifies each work separately, including the periodical containing it and its date of first publication.

Corrections and Amplifications. Another unsatisfactory aspect of the present law is the lack of any provision for correcting or amplifying the information given in a completed registration. Subsection (d) of section 408 would remedy this by authorizing the Register to establish ''formal procedures for the filing of an application for supplementary registration,'' in order to correct an error or amplify the information in a copyright registration. The ''error'' to be corrected under subsection (d) is an error by the applicant that the Copyright Office could not have been expected to note during its examination of the claim; where the error in a registration is the result of the Copyright Office's own mistake or oversight, the Office can make the correction on its own initiative and without recourse to the ''supplementary registration'' procedure.

Under subsection (d), a supplementary registration is subject to payment of a separate fee and would be maintained as an independent record, separate and apart from the record of the earlier registration it is intended to supplement. However, it would be required to identify clearly ''the registration to be corrected or amplified'' so that the two registrations could be tied together by appropriate means in the Copyright Office records. The original registration would not be expunged or cancelled; as stated in the subsection: ''The information contained in a supplementary registration augments but does not supersede that contained in the earlier registration.''

Published Edition of Previously Registered Work. The present statute requires that, where a work is registered in unpublished form, it must be registered again when it is published, whether or not the published edition contains any new copyrightable material. Under the bill there would be no need to make a second registration for the published edition unless it contains sufficient added material to be considered a ''derivative work'' or ''compilation'' under section 103.

On the other hand, there will be a number of cases where the copyright owner, although not required to do so, would like to have registration made for the published edition of the work, especially since the owner will still be obliged to deposit copies or phonorecords of it in the Copyright Office under section 407. From the point of view of the public there are advantages in allowing the owner to do so, since registration for the published edition will put on record the facts about the work in the form in which it is actually distributed to the public. Accordingly, section 408(e), which is intended to accomplish this result, makes an exception to the general rule against allowing more than one registration for the same work.

Editorial Notes

References in Text

The date of enactment of this subsection, referred to in subsec. (f)(1), is the date of enactment of Pub. L. 109–9, which was approved Apr. 27, 2005.

Amendments

2005—Subsec. (f). Pub. L. 109–9 added subsec. (f).

1992—Subsec. (a). Pub. L. 102–307 substituted ''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,'' for ''At any time during the subsistence of copyright in any published or unpublished work,''.

1988—Subsec. (a). Pub. L. 100–568, § 9(a)(1), substituted ''Such'' for ''Subject to the provisions of section 405(a), such''.

Subsec. (c)(2). Pub. L. 100–568, § 9(a)(2), substituted ''the following conditions:'' for ''all of the following conditions—'', struck out subpar. (A) which read ''if each of the works as first published bore a separate copyright notice, and 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 was the same in each notice; and'', and redesignated subpars. (B) and (C) as (A) and (B), respectively.

Statutory Notes and Related Subsidiaries

Effective Date of 1992 Amendment

Amendment by Pub. L. 102–307 effective June 26, 1992, but applicable only to copyrights secured between January 1, 1964, and December 31, 1977, and not affecting court proceedings pending on June 26, 1992, with copyrights secured before January 1, 1964, governed by section 304(a) of this title as in effect on the day before June 26, 1992, except each reference to forty-seven years in such provisions deemed to be 67 years, see section 102(g) of Pub. L. 102–307, as amended, set out as a note under section 101 of this title.

Effective Date of 1988 Amendment

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

§ 409. Application for copyright registration

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; and

(10) 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.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2582; Pub. L. 102–307, title I, § 102(b)(1), June 26, 1992, 106 Stat. 266; Pub. L. 111–295, § 4(b)(2), Dec. 9, 2010, 124 Stat. 3180.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

The various clauses of section 409, which specify the information to be included in an application for copyright registration, are intended to give the Register of Copyrights authority to elicit all of the information needed to examine the application and to make a meaningful record of registration. The list of enumerated items was not exhaustive; under the last clause of the section the application may also include ''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.''

Among the enumerated items there are several that are not now included in the Copyright Office's application forms, but will become significant under the life-plus-50 term and other provisions of the bill. Clause (5), reflecting the increased importance of the interrelationship between registration of copyright claims and recordation of transfers of ownership, requires a statement of how a claimant who is not the author acquired ownership of the copyright. Clause (9) requires that, ''in the case of a compilation or derivative work'' the application include ''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.'' It is intended that, under this requirement, the application covering a collection such as a song-book or hymnal would clearly reveal any works in the collection that are in the public domain, and the copyright status of all other previously-published compositions. This information will be readily available in the Copyright Office.

The catch-all clause at the end of the section will enable the Register to obtain more specialized information, such as that bearing on whether the work contains material that is a ''work of the United States Government.'' In the case of works subject to the manufacturing requirement, the application must also include information about the manufacture of the copies.

Editorial Notes

AMENDMENTS

2010—Par. (9) to (11). Pub. L. 111–295 inserted ''and'' after semicolon at end of par. (9), redesignated par. (11) as (10), and struck out former par. (10) which read as follows: ''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''.

1992—Pub. L. 102–307 inserted at end ''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.''

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–307 effective June 26, 1992, but applicable only to copyrights secured between January 1, 1964, and December 31, 1977, and not affecting court proceedings pending on June 26, 1992, with copyrights secured before January 1, 1964, governed by section 304(a) of this title as in effect on the day before June 26, 1992, except each reference to forty-seven years in such provisions deemed to be 67 years, see section 102(g) of Pub. L. 102–307, as amended, set out as a note under section 101 of this title.

§ 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.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2582.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

The first two subsections of section 410 set forth the two basic duties of the Register of Copyrights with respect to copyright registration: (1) to register the claim and issue a certificate if the Register determines that ''the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements of this title have been met,'' and (2) to refuse registration and notify the applicant if the Register determines that ''the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason.''

Subsection (c) deals with the probative effect of a certificate of registration issued by the Register under subsection (a). Under its provisions, a certificate is required to be given prima facie weight in any judicial proceedings if the registration it covers was made ''before or within five years after first publication of the work''; thereafter the court is given discretion to decide what evidentiary weight the certificate should be accorded. This five-year period is based on a recognition that the longer the lapse of time between publication and registration the less likely to be reliable are the facts stated in the certificate.

Under section 410(c), a certificate is to ''constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate.'' The principle that a certificate represents prima facie evidence of copyright validity has been established in a long line of court decisions, and it is a sound one. It is true that, unlike a patent claim, a claim to copyright is not examined for basic validity before a certificate is issued. On the other hand, endowing a copyright claimant who has obtained a certificate with a rebuttable presumption of the validity of the copyright does not deprive the defendant in an infringement suit of any rights, it merely orders the burdens of proof. The plaintiff should not ordinarily be forced in the first instance to prove all of the multitude of facts that underline the validity of the copyright unless the defendant, by effectively challenging them, shifts the burden of doing so to the plaintiff.

Section 410(d), which is in accord with the present practice of the Copyright Office, makes the effective date of registration the day when 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. Where the three necessary elements are received at different times the date of receipt of the last of them is controlling, regardless of when the Copyright Office acts on the claim. The provision not only takes account of the inevitable timelag between receipt of the application and other material and the issuance of the certificate, but it also recognizes the possibility that a court might later find the Register wrong in refusing registration.

Statutory Notes and Related Subsidiaries

REGISTRATION OF CLAIMS TO COPYRIGHTS AND RECORDATION OF ASSIGNMENTS OF COPYRIGHTS AND OTHER INSTRUMENTS UNDER PREDECESSOR PROVISIONS

Pub. L. 94–553, title I, § 109, Oct. 19, 1976, 90 Stat. 2600, provided that: ''The registration of claims to copyright for which the required deposit, application, and fee were received in the Copyright Office before January 1, 1978, and the recordation of assignments of copyright or other instruments received in the Copyright Office before January 1, 1978, shall be made in accordance with title 17 as it existed on December 31, 1977.''

§ 411. Registration and civil infringement actions

(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),[1] no civil 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 a civil 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)(1) A certificate of registration satisfies the requirements of this section and section 412, regardless of whether the certificate contains any inaccurate information, unless—

(A) the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate; and

(B) the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration.

(2) In any case in which inaccurate information described under paragraph (1) is alleged, the court shall request the Register of Copyrights to advise the court whether the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration.

(3) Nothing in this subsection shall affect any rights, obligations, or requirements of a person related to information contained in a registration certificate, except for the institution of and remedies in infringement actions under this section and section 412.

(c) 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 505 and section 510, if, in accordance with requirements that the Register of Copyrights shall prescribe by regulation, the copyright owner—

[1] See References in Text note below.

(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.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2583; Pub. L. 100–568, § 9(b)(1), Oct. 31, 1988, 102 Stat. 2859; Pub. L. 101–650, title VI, § 606(c)(1), Dec. 1, 1990, 104 Stat. 5131; Pub. L. 105–80, § 6, Nov. 13, 1997, 111 Stat. 1532; Pub. L. 105–304, title I, § 102(d), Oct. 28, 1998, 112 Stat. 2863; Pub. L. 109–9, title I, § 104(b), Apr. 27, 2005, 119 Stat. 222; Pub. L. 110–403, title I, § 101(a), title II, § 209(a)(6), Oct. 13, 2008, 122 Stat. 4257, 4264.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

The first sentence of section 411(a) restates the present statutory requirement that registration must be made before a suit for copyright infringement is instituted. Under the bill, as under the law now in effect, a copyright owner who has not registered his claim can have a valid cause of action against someone who has infringed his copyright, but he cannot enforce his rights in the courts until he has made registration.

The second and third sentences of section 411(a) would alter the present law as interpreted in *Vacheron & Constantin-Le Coultre Watches, Inc. v. Benrus Watch Co.*, 260 F.2d 637 (2d Cir. 1958). That case requires an applicant, who has sought registration and has been refused, to bring an action against the Register of Copyrights to compel the issuance of a certificate, before suit can be brought against an infringer. Under section 411, a rejected claimant who has properly applied for registration may maintain an infringement suit if notice of it is served on the Register of Copyrights. The Register is authorized, though not required, to enter the suit within 60 days; the Register would be a party on the issue of registrability only, and a failure by the Register to join the action would ''not deprive the court of jurisdiction to determine that issue.''

Section 411(b) is intended to deal with the special situation presented by works that are being transmitted ''live'' at the same time they are being fixed in tangible form for the first time. Under certain circumstances, where the infringer has been given advance notice, an injunction could be obtained to prevent the unauthorized use of the material included in the ''live'' transmission.

Editorial Notes

REFERENCES IN TEXT

Subsection (b), referred to in subsec. (a), was redesignated subsec. (c) of this section by Pub. L. 110–403, title I, § 101(a)(3), Oct. 13, 2008, 122 Stat. 4257.

AMENDMENTS

2008—Pub. L. 110–403, § 101(a)(1), inserted ''civil'' before ''infringement'' in section catchline.

Subsec. (a). Pub. L. 110–403, § 101(a)(2), substituted ''no civil action'' for ''no action'' in first sentence and ''a civil action'' for ''an action'' in second sentence.

Subsec. (b). Pub. L. 110–403, § 209(a)(6), which directed amendment of subsec. (b) by substituting ''section 510'' for ''sections 509 and 510'', could not be executed because of prior amendment by Pub. L. 110–403, § 101(a)(3), (4). See below.

Pub. L. 110–403, § 101(a)(5), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 110–403, § 101(a)(4), substituted ''505 and section'' for ''506 and sections 509 and'' in introductory provisions.

Pub. L. 110–403, § 101(a)(3), redesignated subsec. (b) as (c).

2005—Subsec. (a). Pub. L. 109–9 inserted ''preregistration or'' after ''shall be instituted until''.

1998—Subsec. (a). Pub. L. 105–304, in first sentence, struck out ''actions for infringement of copyright in Berne Convention works whose country of origin is not the United States and'' after ''Except for'' and inserted ''United States'' after ''copyright in any''.

1997—Subsec. (b)(1). Pub. L. 105–80 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''serves notice upon the infringer, not less than ten or more than thirty days 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''.

1990—Subsec. (a). Pub. L. 101–650 inserted ''and an action brought for a violation of the rights of the author under section 106A(a)'' after ''United States''.

1988—Pub. L. 100–568, § 9(b)(1)(A), substituted ''Registration and infringement actions'' for ''Registration as prerequisite to infringement suit'' in section catchline.

Subsec. (a). Pub. L. 100–568, § 9(b)(1)(B), substituted ''Except for actions for infringement of copyright in Berne Convention works whose country of origin is not the United States, and subject'' for ''Subject''.

Subsec. (b)(2). Pub. L. 100–568, § 9(b)(1)(C), substituted ''work, if required by subsection (a),'' for ''work''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1990 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

§ 412. Registration as prerequisite to certain remedies for infringement

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(c), 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.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2583; Pub. L. 101–650, title VI, § 606(c)(2), Dec. 1, 1990, 104 Stat. 5131; Pub. L. 109–9, title I, § 104(c), Apr. 27, 2005, 119 Stat. 222; Pub. L. 110–403, title I, § 101(b)(1), Oct. 13, 2008, 122 Stat. 4258.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

The need for section 412 arises from two basic changes the bill will make in the present law.

(1) Copyright registration for published works, which is useful and important to users and the public at large, would no longer be compulsory, and should therefore be induced in some practical way.

(2) The great body of unpublished works now protected at common law would automatically be brought under copyright and given statutory protection. The remedies for infringement presently available at common law should continue to apply to these works under the statute, but they should not be given special statutory remedies unless the owner has, by registration, made a public record of his copyright claim.

Under the general scheme of the bill, a copyright owner whose work has been infringed before registration would be entitled to the remedies ordinarily available in infringement cases: an injunction on terms the court considers fair, and his actual damages plus any applicable profits not used as a measure of damages. However, section 412 would deny any award of the special or ''extraordinary'' remedies of statutory damages or attorney's fees where infringement of copyright in an unpublished work began before registration or where, in the case of a published work, infringement commenced after publication and before registration (unless registration has been made within a grace period of three months after publication). These provisions would be applicable to works of foreign and domestic origin alike.

In providing that statutory damages and attorney's fees are not recoverable for infringement of unpublished, unregistered works, clause (1) of section 412 in no way narrows the remedies available under the present law. With respect to published works, clause (2) would generally deny an award of those two special remedies where infringement takes place before registration. As an exception, however, the clause provides a grace period of three months after publication during which registration can be made without loss of remedies; full remedies could be recovered for any infringement begun during the three months after publication if registration is made before that period has ended. This exception is needed to take care of newsworthy or suddenly popular works which may be infringed almost as soon as they are published, before the copyright owner has had a reasonable opportunity to register his claim.

Editorial Notes

AMENDMENTS

2008—Pub. L. 110–403 substituted ''section 411(c)'' for ''section 411(b)'' in introductory provisions.

2005—Pub. L. 109–9 inserted '', 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,'' after ''section 106A(a)'' in introductory provisions.

1990—Pub. L. 101–650 inserted ''an action brought for a violation of the rights of the author under section 106A(a) or'' after ''other than'' in introductory provisions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1990 AMENDMENT

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

CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

Editorial Notes

AMENDMENTS

2008—Pub. L. 110–403, title II, §201(b)(2), Oct. 13, 2008, 122 Stat. 4260, struck out item 509 ''Seizure and forfeiture.''

1999—Pub. L. 106–113, div. B, §1000(a)(9) [title I, §1011(a)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–543, substituted ''programming'' for ''programing'' in item 510.

Pub. L. 106–44, §1(c)(2), Aug. 5, 1999, 113 Stat. 222, renumbered item 512 ''Determination of reasonable license fees for individual proprietors'' as 513.

1998—Pub. L. 105–304, title II, §202(b), Oct. 28, 1998, 112 Stat. 2886, added item 512 ''Limitations on liability relating to material online''.

Pub. L. 105–298, title II, §203(b), Oct. 27, 1998, 112 Stat. 2833, added item 512 ''Determination of reasonable license fees for individual proprietors''.

1997—Pub. L. 105–80, §12(a)(12), Nov. 13, 1997, 105 Stat. 1535, substituted ''Damages'' for ''Damage'' in item 504.

1990—Pub. L. 101–553, §2(a)(3), Nov. 15, 1990, 104 Stat. 2750, added item 511.

§ 501. Infringement of copyright

(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