

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(2) The great body of unpublished works now protected at common law would automatically be brought under copyright and given statutory protection.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the special or “extraordinary” remedies of statutory damages or attorney’s fees where infringement of copyright in an unpublished work began before registration or where, in the case of a published work, infringement commenced after publication and before registration (unless registration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In providing that statutory damages and attorney’s fees are not recoverable for infringement of unpublished, unregistered works, clause (1) of section 412 in no way narrows the remedies available under the present law.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

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| Sec. | Infringement of copyright. |
| 501. | Remedies for infringement: Injunctions. |
| 502. | Remedies for infringement: Impounding and disposition of infringing articles. |
| 503. | Remedies for infringement: Damages and profits. |
| 504. | Remedies for infringement: Costs and attorney’s fees. |
| 505. | Criminal offenses. |
| 506. | Limitations on actions. |
| 507. | Notification of filing and determination of actions. |
| 508. | Repealed.] |
| [509. | Remedies for alteration of programming by cable systems. |
| 510. | Liability of States, instrumentalities of States, and State officials for infringement of copyright. |
| 511. | Limitations on liability relating to material online. |
| 512. | Determination of reasonable license fees for individual proprietors. |
| 513. | |

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