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.)

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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

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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