

Use in conjunction with computers and similar information systems” in item 117.

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

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

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

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

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

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

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

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 912 of this title.

§ 101. Definitions

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

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

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

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

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

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

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

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

A “compilation” is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated,

or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term “compilation” includes collective works.

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

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

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

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

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

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

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

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

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

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

A work is “fixed” in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the

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

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

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

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

An “international agreement” is—

- (1) the Universal Copyright Convention;
- (2) the Geneva Phonograms Convention;
- (3) the Berne Convention;
- (4) the WTO Agreement;
- (5) the WIPO Copyright Treaty;
- (6) the WIPO Performances and Phonograms Treaty; and
- (7) any other copyright treaty to which the United States is a party.

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

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

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

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

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

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

“Pictorial, graphic, and sculptural works” include two-dimensional and three-dimen-

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

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

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

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

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

To perform or display a work “publicly” means—

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

“Sound recordings” are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the na-

ture of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

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

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

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

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

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

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

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

(1) in the case of a published work, the work is first published—

- (A) in the United States;
- (B) simultaneously in the United States and another treaty party or parties, whose law grants a term of copyright protection that is the same as or longer than the term provided in the United States;
- (C) simultaneously in the United States and a foreign nation that is not a treaty party; or
- (D) in a foreign nation that is not a treaty party, and all of the authors of the work are nationals, domiciliaries, or habitual residents of, or in the case of an audiovisual work legal entities with headquarters in, the United States;

(2) in the case of an unpublished work, all the authors of the work are nationals, domiciliaries, or habitual residents of the United States, or, in the case of an unpublished audiovisual work, all the authors are legal entities with headquarters in the United States; or

(3) in the case of a pictorial, graphic, or sculptural work incorporated in a building or structure, the building or structure is located in the United States.

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

The author’s “widow” or “widower” is the author’s surviving spouse under the law of the

author’s domicile at the time of his or her death, whether or not the spouse has later remarried.

A “work of visual art” is—

(1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or

(2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

A work of visual art does not include—

(A)(i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;

(ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;

(iii) any portion or part of any item described in clause (i) or (ii);

(B) any work made for hire; or

(C) any work not subject to copyright protection under this title.

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

A “work made for hire” is—

(1) a work prepared by an employee within the scope of his or her employment; or

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

In determining whether any work is eligible to be considered a work made for hire under paragraph (2), neither the amendment contained in section 1011(d) of the Intellectual

Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106-113, nor the deletion of the words added by that amendment—

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

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

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

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

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

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2541; Pub. L. 96-517, § 10(a), Dec. 12, 1980, 94 Stat. 3028; Pub. L. 100-568, § 4(a)(1), Oct. 31, 1988, 102 Stat. 2854; Pub. L. 101-650, title VI, § 602, title VII, § 702, Dec. 1, 1990, 104 Stat. 5128, 5133; Pub. L. 102-307, title I, § 102(b)(2), June 26, 1992, 106 Stat. 266; Pub. L. 102-563, § 3(b), Oct. 28, 1992, 106 Stat. 4248; Pub. L. 104-39, § 5(a), Nov. 1, 1995, 109 Stat. 348; Pub. L. 105-80, § 12(a)(3), Nov. 13, 1997, 111 Stat. 1534; Pub. L. 105-147, § 2(a), Dec. 16, 1997, 111 Stat. 2678; Pub. L. 105-298, title II, § 205, Oct. 27, 1998, 112 Stat. 2833; Pub. L. 105-304, title I, § 102(a), Oct. 28, 1998, 112 Stat. 2861; Pub. L. 106-44, § 1(g)(1), Aug. 5, 1999, 113 Stat. 222; Pub. L. 106-113, div. B, § 1000(a)(9) [title I, § 1011(d)], Nov. 29, 1999, 113 Stat. 1536, 1501A-544; Pub. L. 106-379, § 2(a), Oct. 27, 2000, 114 Stat. 1444.)

AMENDMENT OF SECTION

Pub. L. 105-304, title I, §§ 102(a)(6), 105(b)(1)(B), Oct. 28, 1998, 112 Stat. 2861, 2877, provided that, effective upon the entry into force of the WIPO Copyright Treaty with respect to the United States, this section is amended by inserting after the definition of “widow” the following:

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

Pub. L. 105-304, title I, §§ 102(a)(7), 105(b)(2)(B), Oct. 28, 1998, 112 Stat. 2862, 2877, provided that, effective upon the entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States, this section is amended by inserting after the definition of “The ‘WIPO Copyright Treaty’” the following:

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

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

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

REFERENCES IN TEXT

The Universal Copyright Convention, referred to in definition of “international agreement”, is set out under section 104 of this title.

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

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

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

Pub. L. 105-304, § 102(a)(5), (8), inserted definitions of “treaty party”, “WTO Agreement”, and “WTO member country”.

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 2000 AMENDMENT

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

EFFECTIVE DATE OF 1999 AMENDMENT

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

EFFECTIVE DATE OF 1998 AMENDMENTS

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

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

“(b) AMENDMENTS RELATING TO CERTAIN INTERNATIONAL AGREEMENTS.—(1) The following shall take effect upon the entry into force of the WIPO Copyright Treaty with respect to the United States:

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1995 AMENDMENT

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

EFFECTIVE DATE OF 1992 AMENDMENT

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

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

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

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

EFFECTIVE DATE OF 1990 AMENDMENT

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

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

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

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

“(a) EFFECTIVE DATE.—This Act and the amendments made by this Act [enacting section 116A of this title, amending this section and sections 104, 116, 205, 301, 401 to 408, 411, 501, 504, 801, and 804 of this title, and enacting provisions set out as notes under this section] take

effect on the date on which the Berne Convention (as defined in section 101 of title 17, United States Code) enters into force with respect to the United States [Mar. 1, 1989]. [The Berne Convention entered into force with respect to the United States on Mar. 1, 1989.]

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

SHORT TITLE OF 2000 AMENDMENT

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

SHORT TITLE OF 1999 AMENDMENTS

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

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

SHORT TITLE OF 1998 AMENDMENTS

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

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

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

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

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

Pub. L. 105-298, title I, §101, Oct. 27, 1998, 112 Stat. 2827, provided that: “This title [amending sections 108, 203, and 301 to 304 of this title, enacting provisions set out as a note under section 108 of this title, and amend-

ing provisions set out as notes under this section and section 304 of this title] may be referred to as the ‘Sonny Bono Copyright Term Extension Act.’”

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

SHORT TITLE OF 1995 AMENDMENT

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

SHORT TITLE OF 1994 AMENDMENT

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

SHORT TITLE OF 1993 AMENDMENT

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

SHORT TITLE OF 1992 AMENDMENTS

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

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

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

SHORT TITLE OF 1991 AMENDMENT

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

SHORT TITLE OF 1990 AMENDMENTS

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

Section 701 of title VII of Pub. L. 101-650 provided that: “This title [enacting section 120 of this title, amending this section and sections 102, 106, and 301 of

this title, and enacting provisions set out as a note above] may be cited as the ‘Architectural Works Copyright Protection Act.’”

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

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

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

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

SHORT TITLE OF 1988 AMENDMENTS

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

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

SHORT TITLE OF 1984 AMENDMENTS

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

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

SEVERABILITY

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

CONSTRUCTION OF 1998 AMENDMENT

Pub. L. 105-298, title II, §206, Oct. 27, 1998, 112 Stat. 2834, provided that: “Except as otherwise provided in this title [enacting section 512 of this title, amending this section and sections 110 and 504 of this title, and enacting provisions set out as notes under this section], nothing in this title shall be construed to relieve any performing rights society of any obligation under any State or local statute, ordinance, or law, or consent de-

creed or other court order governing its operation, as such statute, ordinance, law, decree, or order is in effect on the date of the enactment of this Act [Oct. 27, 1998], as it may be amended after such date, or as it may be issued or agreed to after such date.”

FIRST AMENDMENT APPLICATION

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

BERNE CONVENTION; CONGRESSIONAL DECLARATIONS

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

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

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

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

BERNE CONVENTION; CONSTRUCTION

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

“(a) RELATIONSHIP WITH DOMESTIC LAW.—The provisions of the Berne Convention—

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

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

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

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

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

WORKS IN PUBLIC DOMAIN WITHOUT COPYRIGHT PROTECTION

DEFINITIONS

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

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

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106A, 114 of this title; title 2 sections 179u, 1741; title 15 section 1129; title 18 sections 2318, 2319; title 28 section 4001.

§ 102. Subject matter of copyright: In general

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

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

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

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

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Original Works of Authorship. The two fundamental criteria of copyright protection—originality and fixation in tangible form are restated in the first sentence of this cornerstone provision. The phrase “original works or authorship,” which is purposely left undefined, is intended to incorporate without change the standard of originality established by the courts under the present copyright statute. This standard does not include requirements of novelty, ingenuity, or esthetic merit, and there is no intention to enlarge the standard of copyright protection to require them.

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

The history of copyright law has been one of gradual expansion in the types of works accorded protection,

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

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

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

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

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

The bill seeks to resolve, through the definition of “fixation” in section 101, the status of live broadcasts—sports, news coverage, live performances of music, etc.—that are reaching the public in unfixed form but that are simultaneously being recorded. When a football game is being covered by four television cameras, with a director guiding the activities of the four cam-