

DEPARTMENT OF COMMERCE  
 LIBRARY  
 COPYRIGHT LAW REVISION  
 LAW BRANCH

JULY 29, 1974.—Ordered to be printed

Mr. PASTORE, from the Committee on Commerce, submitted the following

## REPORT

[To accompany S. 1361]

together with

## MINORITY AND ADDITIONAL VIEWS

The Committee on Commerce, to which was referred the bill (S. 1361) for the general revision of the copyright law, title 17 of the United States Code, and for other purposes, having considered the same, reports thereon with amendments and without further recommendation.

The text of S. 1361, as reported by the Committee on Commerce with amendments is as follows (omit the part in linetype italic and insert the part in boldface type) :

A BILL For the general revision of the Copyright Law, title 17 of the United States Code, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### TITLE I—GENERAL REVISION OF COPYRIGHT LAW

*Sec. 101. Title 17 of the United States Code, entitled "Copyrights," is hereby amended in its entirety to read as follows:*

#### TITLE 17—COPYRIGHTS

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Sec.

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### § 101. *Definitions*

*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.*

*"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 "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 his immediate offspring, whether legitimate or not, and any children legally adopted by him.*

*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 pre-existing 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 pre-existing 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.*

*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.*

*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 terms "including" and "such as" are illustrative and not limitative.*

*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, or film, in which they are embodied.*

*"Motion pictures" are audiovisual works consisting of a series of related images which, when shown in succession, impact 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, and, in the case of a sound recording, to make audible the sounds fixed in it.*

*"Phonorecords" are material objects in which sounds other than those accompanying a motion picture or other audiovisual work,*

are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "phonorecords" includes the material object in which the sounds are first fixed.

"Pictorial, graphic, and sculptural works" include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, plans, diagrams, and models.

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

To perform or display a work "publicly" means:

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered;

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

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

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

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

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

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.

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

A "work of the United States Government" is a work prepared by an officer or employee of the United States Government as part of his official duties.

A "work made for hire" is:

(1) a work prepared by an employee within the scope of his 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, as a photographic or other portrait of one or more persons, 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.

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. An "instructional text" is a literary, pictorial, or graphic work prepared for publication with the purpose of use in systematic instructional activities.

#### § 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.

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

#### § 103. Subject matter of copyright: Compilations and derivative works

(a) *The subject matter of copyright as specified by section 102 includes compilations and derivative works, but protection for a work employing pre-existing material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.*

(b) *The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the pre-existing material employed in the work, and does not imply any exclusive right in the pre-existing material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the pre-existing material.*

§ 104. *Subject matter of copyright: National origin*

(a) *Unpublished Works.*—*The works specified by sections 102 and 103, while unpublished, are subject to protection under this title without regard to the nationality or domicile of the author.*

(b) *Published Works.*—*The works specified by the sections 102 and 103, when published, are subject to protection under this title if—*

(1) *on the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a foreign nation that is a party to a copyright treaty to which the United States is also a party; or*

(2) *the work is first published in the United States or in a foreign nation that, on the date of first publication, is a party to the Universal Copyright Convention of 1952; or*

(3) *the work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States; or*

(4) *the work comes within the scope of a Presidential proclamation. Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States or to works that are first published in the United States, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, he may by proclamation extend protection under this title to works of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation, or which was first published in that nation. The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under a proclamation.*

(c) *The expropriation, by a governmental organization of a foreign country, of a copyright, or the right to secure a copyright, or any right comprised in a copyright, or any right in a work for which copyright may be secured, or the transfer of a copyright or of any such right, or the power to authorize any use of the work thereunder, from the author or copyright owner to a governmental agency of a foreign country pursuant to any law, decree, regulation, order or other action of the government effecting or requiring such transfer, shall not be given effect for the purposes of this title.*

§ 105. *Subject matter of copyright: United States Government works*  
 Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.

106. *Exclusive rights in copyrighted works*

Subject to sections 107 through 117, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, motion pictures and other audiovisual works, and sound recordings, to perform the copyrighted work publicly;

(5) in the case of literary, musical, dramatic and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

§ 107. *Limitations on exclusive rights: Fair use*

Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching, scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

(1) the purpose and character of the use;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

§ 108. *Limitations on exclusive rights: Reproduction by libraries and archives*

(a) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, or distribute such copy or phonorecord, under the conditions specified by this section, if:

(1) The reproduction or distribution is made without any purpose of direct or indirect commercial advantages; and

(2) The collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which is a part, but also to other persons doing research in a specialized field,

(3) *The reproduction or distribution of the work includes a notice of copyright.*

(b) *The rights of reproduction and distribution under this section apply to a copy or phonorecord of an unpublished work duplicated in facsimile form solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if the copy or phonorecord reproduced is currently in the collections of the library or archives.*

(c) *The right of reproduction under this section applies to a copy or phonorecord of a published work duplicated in facsimile form solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price.*

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

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

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

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

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

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

(f) *Nothing in this section—*

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

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

(3) *if any way affects the right of fair use as provided by section 107, or any contractual obligations assumed at any time by*

*the library or archives when it obtained a copy or phonorecord of a work in its collections.*

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

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

*(2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d).*

*(h) The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audio-visual work, except that no such limitation shall apply with respect to rights granted by subsections (b) and (c).*

**§ 109. Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord**

*(a) Notwithstanding the provisions of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by him, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord.*

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

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

**§ 110. Limitations on exclusive rights: Exemption of certain performances and displays**

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

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

(2) performance of a nondramatic literary or musical work or of a sound recording, or display of a work, by or in the course of a transmission, if:

(A) the performance or display is a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution; and

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

(C) the transmission is made primarily for:

(i) reception in classrooms or similar places normally devoted to instruction, or

(ii) reception by persons to whom the transmission is directed because their disabilities or other special circumstances prevent their attendance in classrooms or similar places normally devoted to instruction, or

(iii) reception by officers or employees of governmental bodies as a part of their official duties or employment;

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

(4) performance of a nondramatic literary or musical work or of a sound recording, otherwise than in a transmission to the public without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if:

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

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

(i) The notice shall be in writing and signed by the copyright owner or his duly authorized agent; and

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

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

(5) communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes; unless:

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

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

(6) performance of a nondramatic musical work or of a sound recording in the course of an annual agricultural or horticultural fair or exhibition conducted by a governmental body or a non-profit agricultural or horticultural organization;

(7) performance of a nondramatic musical work or of a sound recording by a vending establishment open to the public at large without any direct or indirect admission charge, where the sole purpose of the performance is to promote the retail sale of copies or phonorecords of the work and the performance is not transmitted beyond the place where the establishment is located;

**(8) the public performance by a radio or television broadcasting station licensed by the Federal Communications Commission of a copyrighted sound recording by any means including a phonorecord.**

§ 111. *Limitations on exclusive rights; Secondary transmissions*

(a) *Certain Secondary Transmissions Exempted.*—The secondary transmission of a primary transmission embodying a performance or display of a work is not an infringement of copyright if:

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

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

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

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

**(5) the secondary transmission is made by a cable system serving a local community prior to March 31, 1972, and such local community is so situated as to be principally dependent upon such system for access to broadcast signals.**

(b) *Secondary Transmission of Primary Transmission to Controlled Group.*—Notwithstanding the provisions of subsections (a)

and (c), the secondary transmission to the public of a primary transmission embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if the primary transmission is not made for reception by the public at large but is controlled and limited to reception by particular members of the public.

(c) *Secondary Transmissions by Cable Systems.*—

(1) Subject to the provisions of clause (2) of this subsection, secondary transmissions to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission and embodying a performance or display of a work shall be subject to compulsory licensing upon compliance with the requirements of subsection (d) in the following cases:

(A) Where the signals comprising the primary transmission are exclusively aural and the secondary transmission is permissible under the rules, regulations or authorizations of the Federal Communications Commission; or

(B) Where the community of the cable system is in whole or in part within the local service area of the primary transmitter; or

(C) Where the carriage of the signals comprising the secondary transmission is permissible under the rules, regulations or authorizations of the Federal Communications Commission.

(2) Notwithstanding the provisions of clause (1) of this subsection, the secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, in the following cases:

(A) Where the carriage of the signals comprising the secondary transmission is not permissible under the rules, regulations or authorizations of the Federal Communications Commission;

(B) Where the cable system, at least one month before the date of the secondary transmission, has not recorded the notice specified by subsection (d); or

(C) Where the carriage of signals comprising the secondary transmission of sports events is not permissible under rules which the Federal Communications Commission shall promulgate: **Provided That, in adopting such rules the Commission may consider the effect upon broadcasting, cable television, and sports of the policy objectives contained in Public Law 87-331, and any other factors the Commission deems appropriate.**

(d) *Compulsory License for Secondary Transmissions by Cable Systems.*—

(1) For any secondary transmission to be subject to compulsory licensing under subsection (c), the cable system shall at least one month before the date of the secondary transmission or within 30 days after the enactment of this Act, whichever date is later, record in the Copyright Office, a notice including a statement of the identity and address of the person who owns or operates the secondary transmission service or has power to exercise primary control over it together with the name and location of the primary transmitter, or primary transmitters, and

thereafter, from time to time, such further information as the Register of Copyrights shall prescribe by regulation to carry out the purposes of this clause.

(2) A cable system whose secondary transmissions have been subject to compulsory licensing under subsection (c) shall, during the months of January, April, July, and October, deposit with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation—

(A) A statement of account, covering the three months next preceding, specifying the number of channels on which the cable system made secondary transmissions to its subscribers, the names and locations of all primary transmitters whose transmissions were further transmitted by the cable system, the total number of subscribers to the cable system, and the gross amounts paid to the cable system irrespective of source and separate statements of the gross revenues paid to the cable system for advertising, leased channels, and cable-casting for which a per-program or per-channel charge is made and by subscribers for the basic service of providing secondary transmissions of primary broadcast transmitters; and

(B) A total royalty fee for the period covered by the statement, computed on the basis of specified percentages of the gross receipts from subscribers to the cable service during said period for the basic service of providing secondary transmissions of primary broadcast transmitters, as follows:

- (i)  $\frac{1}{2}$  percent of any gross receipts up to \$40,000;
- (ii) 1 percent of any gross receipts totalling more than \$40,000 but not more than \$80,000;
- (iii)  $1\frac{1}{2}$  percent of any gross receipts totalling more than \$80,000, but not more than \$120,000;
- (iv) 2 percent of any gross receipts totalling more than \$120,000, but not more than \$160,000; and
- (v)  $2\frac{1}{2}$  percent of any gross receipts totalling more than \$160,000.

(3) The royalty fees thus deposited shall be distributed in accordance with the following procedures:

(A) During the month of July in each year, every person claiming to be entitled to compulsory license fees for secondary transmissions made during the preceding twelve-month period shall file a claim with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation. Notwithstanding any provisions of the antitrust laws (as designated in section 1 of the Act of October 15, 1914, 38 Stat. 730, Title 15 U.S.C. section 12, and any amendments of such laws), for purposes of this clause any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) After the first day of August of each year, the Register of Copyrights shall determine whether there exists a controversy concerning the statement of account or the distribution of royalty fees. If he determines that no such controversy exists, he shall, after deducting

his reasonable administrative costs under this section, distribute such fees to the copyright owners entitled, or to their designated agents. If he finds the existence of a controversy he shall certify to that fact and proceed to constitute a panel of the Copyright Royalty Tribunal in accordance with section 803. In such cases the reasonable administrative costs of the Register under this section shall be deducted prior to distribution of the royalty fee by the tribunal.

(C) During the pendency of any proceeding under this subsection, the Register of Copyrights or the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

(e) Definitions.—

A “primary transmission” is a transmission made to the public by the transmitting facility whose signals are being received and further transmitted by the secondary transmission service, regardless of where or when the performance or display was first transmitted.

A “secondary transmission” is the further transmitting of a primary transmission simultaneously with the primary transmission or nonsimultaneously with the primary transmission if by a “cable system” not located in whole or in part within the boundary of the forty-eight contiguous States, **Hawaii, or Puerto Rico.**

A “cable system” is a facility, located in any State, Territory, Trust Territory or Possession that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the Federal Communications Commission and makes secondary transmission of such signals or programs by wires, cables, or other communications channels to subscribing members of the public who pay for such service. For purposes of determining the royalty fee under subsection (d) (2) (B), two or more cable systems in contiguous communities under common ownership or control or operating from one headend shall be considered as one system.

The “local service area of a primary transmitter” comprises the area in which a television broadcast station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules and regulations of the Federal Communications Commission.

#### § 112. Limitations on exclusive rights: Ephemeral recordings

(a) Notwithstanding the provisions of section 106, and except in the case of a motion picture or other audiovisual work, it is not an infringement of copyright for a transmitting organization entitled to transmit to the public a performance or display of a work, under a license or transfer of the copyright or under the limitations on exclusive rights in sound recordings specified by section 114(a), to make no more than one copy or phonorecord of a particular transmission program embodying the performance or display, if—

(1) the copy or phonorecord is retained and used solely by the transmitting organization that made it, and no further copies or phonorecords are reproduced from it; and

(2) *the copy or phonorecord is used solely for the transmitting organization's own transmissions within its local service area, or for purposes of archival preservation or security; and*

(3) *unless preserved exclusively for archival purposes, the copy or phonorecord is destroyed within six months from the date the transmission program was first transmitted to the public.*

(b) *Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization entitled to transmit a performance or display of a work, under section 110(2) or under the limitations on exclusive rights in sound recordings specified by section 114(a), to make no more than thirty copies or phonorecords of a particular transmission program embodying the performance or display, if—*

(1) *no further copies or phonorecords are reproduced from the copies or phonorecords made under this clause; and*

(2) *except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are destroyed within seven years from the date the transmission program was first transmitted to the public.*

(c) *Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization to make for distribution no more than one copy or phonorecord for each transmitting organization specified in clause (2) of this subsection of a particular transmission program embodying a performance of a nondramatic musical work of a religious nature, or of a sound recording of such a musical work, if—*

(1) *there is no direct or indirect charge for making or distributing any such copies or phonorecords; and*

(2) *none of such copies or phonorecords is used for any performance other than a single transmission to the public by a transmitting organization entitled to transmit to the public a performance of the work under a license or transfer of the copyright; and*

(3) *except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies of phonorecords are all destroyed within one year from the date the transmission program was first transmitted to the public.*

(d) *The transmission program embodied in a copy or phonorecord made under this section is not subject to protection as a derivative work under this title except with the express consent of the owners of copyright in the pre-existing works employed in the program.*

### § 113. *Scope of exclusive rights in pictorial, graphic, and sculptural works*

(a) *Subject to the provisions of clauses (1) and (2) of this subsection, the exclusive right to reproduce a copyrighted pictorial, graphic, or sculptural work in copies under section 106 includes the right to reproduce the work in or on any kind of article, whether useful or otherwise.*

(1) *This title does not afford, to the owner of copyright in a work that portrays a useful article as such, any greater or lesser rights with respect to the making, distribution, or display of the*

useful article so portrayed than those afforded to such works under the law, whether title 17 of the common law or statutes of a State, in effect on December 31, 1974, as held applicable and construed by a court in an action brought under this title.

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

(b) When a pictorial, graphic, or sculptural work in which copyright subsists under this title is utilized in an original ornamental design of a useful article, by the copyright proprietor or under an express license from him, the design shall be eligible for protection under the provisions of title III of this Act.

(c) Protection under this title of a work in which copyright subsists shall terminate with respect to its utilization in useful articles whenever the copyright proprietor has obtained registration of an ornamental design of a useful article embodying said work under the provisions of title III of this Act. Unless and until the copyright proprietor has obtained such registration, the copyright pictorial, graphic, or sculptural work shall continue in all respects to be covered by and subject to the protection afforded by the copyright subsisting under this title. Nothing in this section shall be deemed to create any additional rights or protection under this title.

(d) Nothing in this section shall affect any right or remedy held by any person under this title in a work in which copyright was subsisting on the effective date of title III of this Act, or with respect to any utilization of a copyrighted work other than in the design of a useful article.

#### § 114. Scope of exclusive rights in sound recordings

(a) *Limitations on Exclusive Rights.*—The exclusive rights of the owner of copyright in a sound recording are limited to the rights specified by clauses (1), (3), and (4) of section 106. The exclusive rights of the owner of copyright in a sound recording to reproduce and perform it are limited to the rights to duplicate the sound recording in the form of phonorecords or copies of audiovisual works that directly or indirectly recapture the actual sounds fixed in the recording, and to perform those actual sounds. These rights do not extend to the making or duplication of another sound recording that is an independent fixation of other sounds, or to the performance of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording.

(b) *Performance Rights Distinct.*—The exclusive right to perform publicly, by means of a phonorecord, a copyrighted literary, musical, or dramatic work, and the exclusive right to perform publicly a copyrighted sound recording, are separate and independent rights under this title.

(c) *Compulsory License for Public Performance of Sound Recordings.*—

(1) Subject to the provisions of sections 111 and 116, the public performance of a sound recording is subject to compulsory licensing under the conditions specified by this subsection, if phonorecords of it have been distributed to the public under the authority of the copyright owner.

(2) Any person who wishes to obtain a compulsory license under this subsection shall fulfill the following requirements:

(A) He shall at least one month before the public performance and thereafter at intervals and in accordance with requirements that the Register of Copyrights shall prescribe by regulation, record in the Copyright Office a notice stating his identity and address and declaring his intention to obtain a compulsory license under this subsection;

(B) Deposit with the Register of Copyrights, at annual intervals in accordance with requirements that the Register of Copyrights shall prescribe by regulation, a statement of account and a total royalty fee for the period covered by the statement, based on the royalty rates specified by clause (4).

(3) In the absence of a negotiated license, failure to record the notice, file the statement, or deposit the royalty fee prescribed by clause (2) renders the public performance of a sound recording actionable as an act of infringement under section 501 and fully subject to the remedies provided by sections 502 through 505, but not including the criminal remedies provided by section 506.

(4) The annual royalty fees under this subsection may, at the user's option, be computed on either a blanket or a prorated basis. Although a negotiated license may be substituted for the compulsory license prescribed by this subsection, in no case shall the negotiated rate amount to less than the applicable rate provided by this clause. The following rates shall be applicable:

(A) Subject to section 111, for background music services and other transmitters of performances of sound recordings the blanket rate is 2 percent of the gross receipts from subscribers or others who pay to receive the transmission during the applicable period. The alternative prorated rate is a fraction of 2 percent of such gross receipts, based on a calculation made in accordance with a standard formula that the Register of Copyrights shall prescribe by regulation, taking into account the proportion of time devoted to musical performances by the transmitter during the applicable period, and the extent to which the transmitter is also the owner of copyright in the sound recordings performed during said period.

(B) For an operator of coin-operated phonorecord players, as that term is defined by section 116, and for a cable system, as that term is defined by section 111, the compulsory licensing rates shall be governed exclusively by those respective sections, and not by this subsection.

(C) For all other users not otherwise exempted, the blanket rate is \$25 per year for each location at which copyrighted sound recordings are performed. The alternative prorated rate shall be based on the number of sepa-

**rate performances of such works during the year and, in accordance with a standard formula that the Register of Copyrights shall prescribe by regulation, shall not exceed \$5 per day of use.**

(d) *Exemptions.*—In addition to users exempted from liability by section 110 or subject to the provisions of section 111 or 116, any person who publicly performs a copyrighted sound recording and who would otherwise be subject to liability for such performance is exempted from liability for infringement and from the compulsory licensing requirements of this section, during the applicable annual period, if in the case of a background music service or other transmitter of performances of sound recordings, its gross receipts from subscribers or others who pay to receive the transmission were less than \$10,000.

(e) *Distribution of Royalties.*—

(1) During the month of September in each year, every person claiming to be entitled to compulsory license fees under this section for performance during the preceding twelve-month period shall file a claim with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation. Such claim shall include an agreement to accept as final, except as provided in section 809 of this title, the determination of the Copyright Royalty Tribunal in any controversy concerning the distribution of royalty fees deposited under subclause (B) of subsection (c) (2) of this section to which the claimant is a party. Notwithstanding any provisions of the antitrust laws (the Act of October 15, 1914, 38 Stat. 730, and any amendments of any such laws), for purposes of this subsection any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(2) After the first day of October of each year, the Register of Copyrights shall determine whether there exists a controversy concerning the distribution of royalty fees deposited under subclause (B) of subsection (c) (2). If he determines that no such controversy exists, he shall, after deducting his reasonable administrative costs under this section, distribute such fees to the copyright owners and performers entitled, or to their designated agents. If he finds that such a controversy exists he shall certify to that fact and proceed to constitute a panel of the Copyright Royalty Tribunal in accordance with section 803. In such cases the reasonable administrative costs of the Register under this section shall be deducted prior to distribution of the royalty fee by the tribunal.

(3) For the purposes of this section—

(A) One half of all royalties to be distributed shall be paid to the copyright owners, and the other half shall be paid to the performers, of the sound recordings for which claims have been made under clause (1); and

(B) During the pendency of any proceeding under this section, the Register of Copyrights or the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy

exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

(f) *Relation to Other Sections.*—The public performance of sound recordings by means of secondary transmissions and coin-operated phonorecord players is governed by sections 111 and 116, respectively, and not by this section, except that **in the case of sound recordings by means of secondary transmissions** there shall be an equal distribution of royalty fees for such public performances between copyright owners and performers as provided by subsection (e) (3) (A) of this section.

(g) *Definitions.*—As used in this section, the following terms and their variant forms mean the following:

(1) “Commercial time” is any transmission program, the time for which is paid for by a commercial sponsor, or any transmission program that is interrupted by a spot commercial announcement at intervals of less than fourteen and one-half minutes.

(2) “Performers” are musicians, singers, conductors, actors, narrators, and others whose performance of a literary, musical, or dramatic work is embodied in a sound recording.

§ 115. *Scope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords*

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

(a) *Availability and Scope of Compulsory License.*—

(1) When phonorecords of a nondramatic musical work have been distributed to the public under the authority of the copyright owner, any other person may, by complying with the provisions of this section, obtain a compulsory license to make and distribute phonorecords of the work. A person may obtain a compulsory license only if his primary purpose in making phonorecords is to distribute them to the public for private use. A person may not obtain a compulsory license for use of the work in the duplication of a sound recording made by another.

(2) A compulsory license includes the privilege of making a musical arrangement of the work to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the arrangement shall not change the basic melody or fundamental character of the work, and shall not be subject to protection as a derivative work under this title, except with the express consent of the copyright owner.

(b) *Notice of Intention To Obtain Compulsory License; Designation of Owner of Performance Right.*—

(1) Any person who wishes to obtain a compulsory license under this section shall, before or within thirty days after making, and before distributing any phonorecords of the work, serve notice of his intention to do so on the copyright owner. If the registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which notice can be served on him, it shall be sufficient to file the notice of intention

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

(2) If the copyright owner so requests in writing not later than ten days after service or filing of the notice required by clause (1), the person exercising the compulsory license shall designate, on a label or container accompanying each phonorecord of the work distributed by him, and in the form and manner that the Register of copyrights shall prescribe by regulation, the name of the copyright owner or his agent to whom royalties for public performance of the work are to be paid.

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

(c) *Royalty Payable Under Compulsory License.*—

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

(2) Except as provided by clause (1), the royalty under a compulsory license shall be payable for every phonorecord manufactured and distributed in accordance with the license. With respect to each work embodied in the phonorecord, the royalty shall be either three cents, or three quarter cent per minute of playing time or fraction thereof, whichever amount is larger.

(3) Royalty payments shall be made on or before the twentieth day of each month and shall include all royalties for the month next preceding. Each monthly payment shall be accompanied by a detailed statement of account, which shall be certified by a Certified Public Accountant and comply in form, content, and manner of certification with requirements that the Register of Copyrights shall prescribe by regulation.

(4) If the copyright owner does not receive the monthly payment and statement of account when due, he may give written notice to the licensee that, unless the default is remedied within thirty days from the date of the notice, the compulsory license will be automatically terminated. Such termination renders the making and distribution of all phonorecords, for which the royalty had not been paid, actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506.

§ 116. *Scope of exclusive rights in nondramatic musical works and sound recordings: Public performances by means of coin-operated phonorecord players*

(a) *Limitation on Exclusive Right.*—In the case of a nondramatic musical work embodied in a phonorecord, and in the case of a sound recording, the exclusive right under clause (4) of section 106 to

perform the work publicly by means of a coin-operated phonorecord player is limited as follows:

(1) The proprietor of the establishment in which the public performance takes place is not liable for infringement with respect to such public performance unless:

(A) he is the operator of the phonorecord player; and

(B) he refuses or fails, within one month after receipt by registered or certified mail of a request, at a time during which the certificate required by subclause (1) (C) of subsection (b) is not affixed to the phonorecord player, by the copyright owner, to make full disclosure, by registered or certified mail, of the identity of the operator of the phonorecord player.

(2) The operator of the coin-operated phonorecord player may obtain a compulsory license to perform the work publicly on that phonorecord player by filing the application, affixing the certificate, and paying the royalties provided by subsection (b).

(b) Recordation of Coin-Operated Phonorecord Player, affixation of Certificate, and Royalty Payable Under Compulsory License.—

(1) Any operator who wishes to obtain a compulsory license for the public performance of works on a coin-operated phonorecord player shall fulfill the following requirements:

(A) Before or within one month after such performances are made available on a particular phonorecord player, and during the month of January in each succeeding year that such performances are made available in that particular phonorecord player, he shall file in the Copyright Office, in accordance with requirements that the Register of Copyrights shall prescribe by regulation, an application containing the name and address of the operator of the phonorecord player and the manufacturer and serial number or other explicit identification of the phonorecord and in addition to the fee prescribed by clause (9) of section 708(a), he shall deposit with the Register of Copyrights a royalty fee for the current calendar year of \$8 for that particular phonorecord player. If such performances are made available on a particular phonorecord player for the first time after July 1 of any year, the royalty fee to be deposited for the remainder of that year shall be \$4.00.

(B) Within twenty days of receipt of an application and a royalty fee pursuant to subclause (A), the Register of Copyrights shall issue to the applicant a certificate for the phonorecord player.

(C) On or before March 1 of the year in which the certificate prescribed by subclause (B) of this clause is issued, or within ten days after the date of issue of the certificate, the operator shall affix to the particular phonorecord player, in a position where it can be readily examined by the public, the certificate, issued by the Register of Copyrights under subclause (B), of the latest application made by him under subclause (A) of this clause with respect to that phonorecord player.

(2) Failure to file the application, to affix the certificate or to pay the royalty required by clause (1) of this subsection renders the public performance actionable as an act of infringement under section 501 and fully subject to the remedies provided by section 502 through 506.

(c) *Distribution of Royalties.*—

(1) During the month of January in each year, every person claiming to be entitled to compulsory license fees under this section for performances during the preceding twelve-month period shall file a claim with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation. Such claim shall include an agreement to accept as final, except as provided in section 809 of this title, the determination of the Copyright Royalty Tribunal in any controversy concerning the distribution of royalty fees deposited under subclause (a) of subsection (b) (1) of this section to which the claimant is a party. Notwithstanding any provisions of the antitrust laws (the Act of October 15, 1914, 38 Stat. 730, and any amendments of any such laws), for purposes of this subsection any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(2) After the first day of October of each year, the Register of Copyrights shall determine whether there exists a controversy concerning the distribution of royalty fees deposited under subclause (A) of subsection (b) (1). If he determines that no such controversy exists, he shall, after deducting his reasonable administrative costs under this section, distribute such fees to the copyright owners and performers entitled, or to their designated agents. If he finds that such a controversy exists he shall certify to that fact and proceed to constitute a panel of the Copyright Royalty Tribunal in accordance with section 803. In such cases the reasonable administrative costs of the Register under this section shall be deducted prior to distribution of the royalty fee by the tribunal.

(3) **The fees to be distributed shall be divided as follows:**

**“(A) To every copyright owner not affiliated with a performing rights society the pro rata share of the fees to be distributed to which such copyright owner proves his entitlement; and**

**“(B) To the performing rights societies the remainder of the fees to be distributed in such pro rata shares as they shall by agreement stipulate among themselves, or, if they fail to agree, the pro rata share to which such performing rights societies prove their entitlement.**

**“(C) During the pendency of any proceeding under this section, the Register of Copyrights or the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.**

(4) *The Register of Copyrights shall promulgate regulations under which persons who can reasonably be expected to have claims may, during the year in which performances take place, without expense to or harassment of operators or proprietors of establishments in which phonorecord players are located, have such access to such establishments and to the phonorecord players located therein and such opportunity to obtain information with respect thereto as may be reasonably necessary to determine, by sampling procedures or otherwise, the proportion of contribution of the musical works of each such person to the earnings of the phonorecord players for which fees shall have been deposited. Any person who alleges that he has been denied the access permitted under the regulations prescribed by the Register of Copyrights may bring on an action in the United States District Court for the District of Columbia for the cancellation of the compulsory license of the phonorecord player to which such access has been denied, and the court shall have the power to declare the compulsory license thereof invalid from the date of issue thereof.*

(d) *Criminal penalties.—Any person who knowingly makes a false representation of a material fact in an application filed under clause (1)(A) of subsection (b), or who knowingly alters a certificate issued under clause (1)(B) of subsection (b) knowingly affixes such a certificate to a phonorecord player other than the one it covers, shall be fined not more than \$2,500.*

(e) *Definitions.—As used in this section, the following terms and their variant forms mean the following:*

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

(A) *is employed solely for the performance of non-dramatic musical works by means of phonorecords upon being activated by insertion of a coin;*

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

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

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

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

(A) *owns a coin-operated phonorecord player; or*

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

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

(3) *A “performing rights society” is an association or corporation that licenses the public performance of nondramatic musical works on behalf of the copyright owners, such as the American*

*Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.*

§ 117. *Scope of exclusive rights: Use in conjunction with computers and similar information systems*

*Notwithstanding the provisions of section 106 through 116, this title does not afford to the owner of copyright in a work any greater or lesser rights with respect to the use of the work in conjunction with automatic systems capable of storing, processing, retrieving, or transferring information, or in conjunction with any similar device, machine, or process, than those afforded to works under the law, whether title 17 or the common law or statutes of a State, in effect on December 31, 1974, as held applicable and construed by a court in an action brought under this title.*

*Chapter 2.—COPYRIGHT OWNERSHIP AND TRANSFER*

*Sec.*

201. *Ownership of copyright.*

202. *Ownership of copyright as distinct from ownership of material object.*

203. *Termination of transfers and licenses granted by the author.*

204. *Execution of transfers of copyright ownership.*

205. *Recordation of transfers and other documents.*

§ 201. *Ownership of copyright*

(a) *Initial Ownership.*—*Copyright in work protected under this title vests initially in the author or authors of the work. The authors of a joint work are co-owners of copyright in the work.*

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

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

(d) *Transfer of Ownership.*—

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

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

§ 202. *Ownership of copyright as distinct from ownership of material object*

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

§ 203. *Termination of transfers and licenses granted by the author*

(a) *Conditions for Termination.*—*In the case of any work other than a work made for hire, the exclusive or nonexclusive grant of a transfer or license of copyright or of any right under a copyright, executed by the author on or after January 1, 1975, otherwise than by will, is subject to termination under the following conditions:*

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

(2) *Where an author is dead, his or her termination interest is owned, and may be exercised, by his widow (or her widower) and children or grandchildren as follows:*

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

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

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

(3) *Termination of the grant may be effected at any time during a period of five years beginning at the end of thirty-five years from the date of execution of the grant; or, if the grant covers the right of publication of the work, the period begins at the end of thirty-five years from the date of publication of the work under the grant*

or at the end of forty years from the date of execution of the grant, whichever term ends earlier.

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

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

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

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

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

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

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

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

(4) A further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is made after the effective date of the termination. As an exception, how-

ever, an agreement for such a further grant may be made between the persons provided by clause (3) of this subsection and the original grantee or his successor in title, after the notice of termination has been served as provided by clause (4) of subsection (a).

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

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

#### § 204. Execution of transfers of copyright ownership

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

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

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

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

#### § 205. Recordation of transfers and other documents

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

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

(c) *Recordation as Constructive Notice.*—Recordation of a document in the Copyright Office gives all persons constructive notice of the facts stated in the recorded document, but only if:

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

(2) registration has been made for the work.

(d) *Recordation as Prerequisite to Infringement Suit.*—No person claiming by virtue of a transfer to the owner of copyright or of any exclusive right under a copyright is entitled to institute an infringement action under this title until the instrument of transfer under which he claims has been recorded in the Copyright Office, but

*suit may be instituted after such recordation on a cause of action that arose before recordation.*

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

(f) *Priority Between Conflicting Transfer of Ownership and Nonexclusive License.*—A nonexclusive license, whether recorded or not, prevails over a conflicting transfer of copyright ownership if the license is evidenced by a written instrument signed by the owner of the rights licensed or his duly authorized agent, and if:

- (1) the license was taken before execution of the transfer; or
- (2) the license was taken in good faith before recordation of the transfer and without notice of it.

### CHAPTER 3.—DURATION OF COPYRIGHT

Sec.

301. Pre-emption with respect to other laws.

302. Duration of copyright: Works created on or after January 1, 1975.

303. Duration of copyright: Works created but not published or copyrighted before January 1, 1975.

304. Duration of copyright: Subsidizing copyrights.

305. Duration of copyright: Terminal date.

§ 301. Pre-emption with respect to other laws

(a) *On and after January 1, 1975, all rights in the nature of copyright in works that come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to copyright, literary property rights, or any equivalent legal or equitable right in any such work under the common law or statutes of any State.*

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

(1) *unpublished material that does not come within the subject matter of copyright as specified by sections 103 and 104, including works of authorship not fixed in any tangible medium of expression;*

(2) *any cause of action arising from undertakings commenced before January 1, 1975;*

(3) *activities violating rights that are not equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106, including breaches of contract, breaches of trust, invasion of privacy, defamation, and deceptive trade practices such as passing off and false representation.*

§ 302. Duration of copyright: Works created on or after January 1, 1975

(a) *In General.*—Copyright in a work created on or after January 1, 1975, subsists from its creation and, except as provided by the fol-

lowing subsections, endures for a term consisting of the life of the author and fifty years after his death.

(b) *Joint Works*.—In the case of a joint work prepared by two or more authors who did not work for hire, the copyright endures for a term consisting of the life of the last surviving author and fifty years after his death.

(c) *Anonymous Works, Pseudonymous Works, and Works Made for Hire*.—In the case of an anonymous work, a pseudonymous work or a work made for hire, the copyright endures for a term of seventy-five years from the year of its first publication, or a term of one hundred years from the year of its creation, whichever expires first. If, before the end of such term, the identity of one or more of the authors of an anonymous or pseudonymous work is revealed in the records of a registration made for that work under subsection (a) or (d) of section 407, or in the records provided by this subsection, the copyright in the work endures for the term specified by subsections (a) or (b), based on the life of the author or authors whose identity has been revealed. Any person having an interest in the copyright in an anonymous or pseudonymous work may at any time record, in records to be maintained by the Copyright Office for that purpose, a statement identifying one or more authors of the work; the statement shall also identify the person filing it, the nature of his interest, the source of his information, and the particular work affected, and shall comply in form and content with requirements that the Register of Copyrights shall prescribe by regulation.

(d) *Records Relating to Death of Authors*.—Any person having an interest in a copyright may at any time record in the Copyright Office a statement of the date of death of the author of the copyrighted work, or a statement that the author is still living on a particular date. The statement shall identify the person filing it, the nature of his interest, and the source of his information, and shall comply in form and content with requirements that the Register of Copyrights shall prescribe by regulation. The Register shall maintain current records of information relating to the death of authors of copyrighted works, based on such recorded statements and, to the extent he considers practicable, on data contained in any of the records of the Copyright Office or in other reference sources.

(e) *Presumption as to Author's Death*.—After a period of seventy-five years from the year of first publication of a work, or a period of one hundred years from the year of its creation, whichever expires first, any person who obtains from the Copyright Office a certified report that the records provided by subsection (d) disclose nothing to indicate that the author of the work is living, or died less than fifty years before, is entitled to the benefit of a presumption that the author has been dead for at least fifty years. Reliance in good faith upon this presumption shall be complete defense to any action for infringement under this title.

§ 303. *Duration of copyright: Works created but not published or copyrighted before January 1, 1975*

*Copyright in a work created before January 1, 1975, but not theretofore in the public domain or copyrighted, subsists from January 1, 1975, and endures for the term provided by section 302. In no case,*

however, shall the term of copyright in such a work expire before December 31, 1999; and, if the work is published on or before December 31, 1999, the term of copyright shall not expire before December 31, 2024.

§ 304. *Duration of copyright: Subsisting copyrights*

(a) *Copyrights in Their First Term on January 1, 1975.*—Any copyright, the first term of which is subsisting on January 1, 1975, shall endure for twenty-eight years from the date it was originally secured: Provided, That in the case of any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of forty-seven years when application for such renewal and extension shall have been made to the Copyright Office and duly registered therein within one year prior to the expiration of the original term of copyright: And provided further, That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of forty-seven years when application for such renewal and extension shall have been made to the Copyright Office and duly registered therein within one year prior to the expiration of the original term of copyright: And provided further, That in default of the registration of such application for renewal and extension, the copyright in any work shall terminate at the expiration of twenty-eight years from the date copyright was originally secured.

(b) *Copyrights in Their Renewal Term or Registered for Renewal Before January 1, 1975.*—The duration of any copyright, the renewal term of which is subsisting at any time between December 31, 1973, and December 31, 1974, inclusive, or for which renewal registration is made between December 31, 1973, and December 31, 1974, inclusive, is extended to endure for a term of 75 years from the date copyright was originally secured.

(c) *Termination of Transfers and Licenses Covering Extended Renewal Term.*—In the case of any copyright subsisting in either its first or renewal term on January 1, 1975, other than a copyright in a work made for hire, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or of any right under it, executed before January 1, 1975, by any of the persons designated by the second proviso of subsection (a) of this section, otherwise than by will, is subject to termination under the following condition:

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

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

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

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

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

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

(3) Termination of the grant may be effected at any time during a period of five years beginning at the end of fifty-six years from the date copyright was originally secured, or beginning on January 1, 1975, whichever is later.

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

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

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

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

(6) In the case of a grant executed by a person or persons other than the author, all rights under this title that were covered by

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

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

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

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

*(D) A further grant, or agreement to make a further grant, of any right covered by a terminated grant is valid only if it is made after the effective date of the termination. As an exception, however, an agreement for such a further grant may be made between the author or any of the persons provided by the first sentence of clause (6) of this [subsection, or between the persons provided by subclause (C)] of this clause, and the original grantee or his successor in title, after the notice of termination has been served as provided by clause (4) of this subsection.*

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

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

§ 305. *Duration of copyright: Terminal date*

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

CHAPTER 4.—COPYRIGHT NOTICE, DEPOSIT, AND REGISTRATION

Sec.

401. *Notice of copyright: Visually perceptible copies.*

402. *Notice of copyright: Phonorecords of sound recordings.*

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

404. *Notice of copyright: Contributions to collective works.*

405. *Notice of copyright: Omission of notice.*

406. *Notice of copyright: Error in name or date.*

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

408. *Copyright registration in general.*

409. *Application for registration.*

410. *Registration of claim and issuance of certificate.*

411. *Registration as prerequisite to infringement suit.*

412. *Registration as prerequisite to certain remedies for infringement.*

§ 401. *Notice of copyright: Visually perceptible copies*

(a) *General Requirement.*—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 shall be placed on all 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.*—The notice appearing on the copies shall consist of the following three elements:

(1) the symbol © (the letter C in a circle), the word "Copyright," or the abbreviation "Copy.,";

(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;

(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 a 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.

§ 402. *Notice of copyright: Phonorecords of sound recordings*

(a) *General Requirement.*—Whenever a sound recording protected under this title is published in the United States or elsewhere by au-

thority of the copyright owner, a notice of copyright as provided by this section shall be placed on all publicly distributed phonorecords of the sound recording.

(b) *Form of Notice.*—The notice appearing on the phonorecords shall consist of the following three elements:

- (1) the symbol © (the letter P in a circle);
- (2) the year of first publication of the sound recording;
- (3) the name of the owner of copyrights 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, his 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.

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

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 section 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.

§ 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 satisfy the requirements of sections 401 through 403 with respect to the separate contributions it contains (not including advertisements inserted on behalf of persons other than the owners 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) Where the person named in a single notice applicable to a collective work as a whole is not the owner of copyright in a separate contribution that does not bear its own notice, the case is governed by the provisions of section 406 (a).

§ 405. *Notice of copyright: Omission of notice*

(a) *Effect of Omission of Copyright.*—The omission of the copyright notice described by section 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 photorecords 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 photorecord from which the copyright notice has been omitted, 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 had been made under section 408, if he proves that he 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 infringer to continue his undertaking, that he 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 of phonorecords.

#### § 406. Notice of copyright: Error in name or date

(a) *Error in Name.*—Where the person named in the copyright notice 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 he proves that he 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 has 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 purported transfers or licenses made by him under the copyright.

(b) *Error in Date.*—When the year date in the notice on copies or phonorecords distributed 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 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.

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

(a) *Except as provided by subsection (c), the owner of copyright or of the exclusive right of publication in a work published with notice of copyright 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-perceptive material published with such phonorecords.*

*This deposit is not a condition 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 of phonorecord with respect to any categories.*

(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 to 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.*

§ 408. *Copyright registration in general*

(a) *Registration Permissive.—At any time during the subsistence of copyright in any published or unpublished work, 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. Subject to the provisions of section 405 (a), 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 abroad, 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.

(c) *Administrative Classification and Optional Deposit.*—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.

(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.

#### § 409. Application for 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 pre-existing work or works that it is based on or incorporates, and a brief, general statement of the additional material covered by the copyright claim being registered;
- (10) in the case of a published work containing material of which copies are required by section 601 to be manufactured in the United States, the names of the persons or organizations who performed the processes specified by subsection (c) of section

601 with respect to that material, and the places where those processes were performed; and

(11) any other information regarded by the Register of Copyrights as bearing upon the preparation or identification of the work or the existence, ownership, or duration of the copyright.

§ 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, he 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, he shall refuse registration and shall notify the applicant in writing of the reasons for his action.

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

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

§ 411. *Registration as prerequisite to infringement suit*

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

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

(1) serves notice upon the infringer, not less than 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*

*(2) makes registration for the work within three months after its first transmission.*

§ 412. *Registration as prerequisite to certain remedies for infringement*

*In any action under this title, other than an action instituted under section 411 (b), no award of statutory damages or of attorney's fees, as provided by sections 504 and 505, shall be made for:*

*(1) any infringement of copyright in an unpublished work commenced before the effective date of its registration; or*

*(2) any infringement of copyright commenced after first publication of the work and before the effective date of its registration, unless such registration is made within three months after its first publication.*

**Chapter 5.—COPYRIGHT INFRINGEMENT AND REMEDIES**

*Sec.*

501. *Infringement of copyright.*

502. *Remedies for infringement: Injunctions.*

503. *Remedies for infringement: Impounding and disposition of infringing articles.*

504. *Remedies for infringement: Damages and profits.*

505. *Remedies for infringement: Costs and attorney's fees.*

506. *Criminal offenses.*

507. *Limitations on actions.*

508. *Notification of filing and determination of actions.*

§ 501. *Infringement of copyright*

*(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 117, or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright.*

*(b) The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of sections 205 (d) and 411, to institute an action for any infringement of that particular right committed while he is the owner of it. The court may require him to serve written notice of the action with a copy of the complaint upon any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the case. The court may require the joinder, and shall permit the intervention, of any person having or claiming an interest in the copyright.*

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

§ 502. *Remedies for infringement: Injunctions*

*(a) Any court having jurisdiction of a civil action arising under this title may, subject to the provisions of section 1498 of title 28,*

grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.

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

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

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

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

**§ 504. Remedies for infringement: Damages and profits**

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

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

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

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

(c) *Statutory Damages.*—

(1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly or severally, in a sum of not less than \$250 or more than \$10,000 as the court considers just. For the purpose of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed

*willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$50,000. In a case where the infringer sustains the burden of proving, and the court finds, that he was not aware and had no reason to believe that his acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$100. In a case where an instructor, librarian or archivist in a nonprofit educational institution, library, or archives, who is infringed by reproducing a copyright work in copies or phonorecords, sustains the burden of proving that he believed and had reasonable grounds for believing that the reproduction was a fair use under section 107, the court in its discretion may remit statutory damages in whole or in part.*

§ 505. Remedies for infringement: Costs and attorney's fees

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

§ 506. Criminal offenses

(a) *Criminal Infringement.*—Any person who infringes a copyright willfully and for purposes of commercial advantage or private financial gain shall be fined not more than \$2,500 or imprisoned not more than one year, or both, for the first such offense, and shall be fined not more than \$10,000 or imprisoned not more than three years, or both, for any subsequent offense, provided however, that any person who infringes willfully and for purposes of commercial advantage or private financial gain the copyright in a sound recording afforded by subsections (1) and (3) in Section 106 shall be fined not more than \$25,000 or imprisoned for not more than three years, or both, for the first such offense and shall be fined not more than \$50,000 or imprisoned not more than seven years, or both, for any subsequent offense.

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

(c) *Fraudulent Removal of Copyright Notice.*—Any person who, with fraudulent intent, removes or alters any notice of copyright appearing on a copy of a copyrighted work shall be fined not more than \$2,500.

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

§ 507. Limitations on actions

(a) *Criminal Proceedings.*—No criminal proceeding shall be maintained under the provisions of this title unless it is commenced within three years after the cause of action arose.

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

§ 508. *Notification of filing and determination of actions*

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

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

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

## Chapter 6.—MANUFACTURING REQUIREMENT AND IMPORTATION

Sec.

601. *Manufacture, importation, and public distribution of certain copies.*

602. *Infringing importation of copies or phonorecords.*

603. *Importation prohibitions: Enforcement and disposition of excluded articles.*

§ 601. *Manufacture, importation, and public distribution of articles' copies*

(a) *Except as provided by subsection (b), the importation into or public distribution in the United States of copies of a work consisting preponderantly of nondramatic literary material that is in the English language and is protected under this title is prohibited unless the portions consisting of such material have been manufactured in the United States or Canada.*

(b) *The provisions of subsection (a) do not apply:*

(1) *where, on the date when importation is sought or public distribution in the United States is made, the author of any substantial part of such material is neither a national nor a domiciliary of the United States or, if he is a national of the United States, has been domiciled outside of the United States for a continuous period of a least one year immediately preceding that date; in the case of work made for hire, the exemption provided by this clause does not apply unless a substantial part of the work was prepared for an employer or other person who is not a national or domiciliary of the United States or a domestic corporation or enterprise;*

(2) *where the Bureau of Customs is presented with an import statement issued under the seal of the Copyright Office, in which case a total of no more than two thousand copies of any one such work shall be allowed entry; the import statement shall be issued upon request to the copyright owner or to a person designated by*

him at the time of registration for the work under section 408 or at any time thereafter;

(3) where importation is sought under the authority or for the use, other than in schools, of the government of the United States or of any State or political subdivision of a State;

(4) where importation, for use and not for sale, is sought:

(A) by any person with respect to no more than one copy of any one work at any one time;

(B) by any person arriving from abroad, with respect to copies forming part of his personal baggage; or

(C) by an organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to copies intended to form a part of its library;

(5) where the copies are reproduced in raised characters for the use of the blind;

(6) where, in addition to copies imported under clauses (3) and (4) of this subsection, no more than two thousand copies of any one such work, which have not been manufactured in the United States or Canada, are publicly distributed in the United States.

(c) The requirement of this section that copies be manufactured in the United States or Canada is satisfied if:

(1) in the case where the copies are printed directly from type that has been set, or directly from plates made from such type, the setting of the type and the making of the plates have been performed in the United States or Canada; or

(2) in the case where the making of plates by a lithographic or photoengraving process is a final or intermediate step preceding the printing of the copies, the making of the plates has been performed in the United States or Canada; and

(3) in any case, the printing or other final process of producing multiple copies and any binding of the copies have been performed in the United States or Canada.

(d) Importation or public distribution of copies in violation of this section does not invalidate protection for a work under this title. However, in any civil action or criminal proceeding for infringement of the exclusive rights to reproduce and distribute copies of the work, the infringer has a complete defense with respect to all of the nondramatic literary material comprised in the work and any other parts of the work in which the exclusive rights to reproduce and distribute copies are owned by the same person who owns such exclusive rights in the nondramatic literary material, if he proves:

(1) that copies of the work have been imported into or publicly distributed in the United States in violation of this section by or with the authority of the owner of such exclusive rights; and

(2) that the infringing copies were manufactured in the United States or Canada in accordance with the provisions of subsection (c); and

(3) that the infringement was commenced before the effective date of registration for an authorized edition of the work, the copies of which have been manufactured in the United States or Canada in accordance with the provisions of subsection (c).

(e) *In any action for infringement of the exclusive rights to reproduce and distribute copies of a work containing material required by this section to be manufactured in the United States or Canada, the copyright owner shall set forth in the complaint the names of the persons or organizations who performed the processes specified by subsection (c) with respect to that material, and the places where those processes were performed.*

§ 602. *Infringing importation of copies or phonorecords*

(a) *Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired abroad is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501. This subsection does not apply to:*

(1) *importation of copies or phonorecords under the authority or for the use of the government of the United States or of any State or political subdivision of a State but not including copies or phonorecords for use in schools, or copies of any audiovisual work imported for purposes other than archival use;*

(2) *importation, for the private use of the importer and not for distribution, by any person with respect to no more than one copy or phonorecord of any one work at any one time, or by any person arriving from abroad with respect to copies or phonorecords forming part of his personal baggage; or*

(3) *importation by or for an organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to no more than one copy of an audiovisual work solely for its archival purposes, and no more than five copies or phonorecords of any other work for its library lending or archival purposes.*

(b) *In a case where the making of the copies or phonorecords would have constituted an infringement of copyright if this title had been applicable, their importation is prohibited. In a case where the copies or phonorecords were lawfully made, the Bureau of Customs has no authority to prevent their importation unless the provisions of section 601 are applicable. In either case, the Secretary of the Treasury is authorized to prescribe, by regulation, a procedure under which any person claiming an interest in the copyright in a particular work may, upon payment of a specified fee, be entitled to notification by the Bureau of the importation of articles that appear to be copies or phonorecords of the work.*

§ 603. *Importation prohibitions: Enforcement and disposition of excluded articles*

(a) *The Secretary of the Treasury and the Postmaster General shall separately or jointly make regulations for the enforcement of the provisions of this title prohibiting importation.*

(b) *These regulations may require, as a condition for the exclusion of articles under section 602:*

(1) *that the person seeking exclusion obtain a court order enjoining importation of the articles; or*

(2) *that he furnish proof, of a specified nature and in accordance with prescribed procedures, that the copyright in which he claims an interest is valid and that the importation would violate*

*the prohibition in section 602; he may also be required to post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.*

*(c) Articles imported in violation of the importation prohibitions of this title are subject to seizure and forfeiture in the same manner as property imported in violation of the customs revenue laws. Forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be; however, the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his acts constituted a violation of law.*

### Chapter 7.—COPYRIGHT OFFICE

*Sec.*

*701. The Copyright Office: General responsibilities and organization.*

*702. Copyright Office regulations.*

*703. Effective date of actions in Copyright Office.*

*704. Retention and disposition of articles deposited in Copyright Office.*

*705. Copyright Office records: Preparation, maintenance, public inspection, and searching.*

*706. Copies of Copyright Office records.*

*707. Copyright Office forms and publications.*

*708. Copyright Office fees.*

*709. Delay in delivery caused by disruption of postal or other services.*

*§ 701. The Copyright Office: General responsibilities and organization*

*(a) All administrative functions and duties under this title, except as otherwise specified, are the responsibility of the Register of Copyrights as director of the Copyright Office in the Library of Congress. The Register of Copyrights, together with the subordinate officers and employees of the Copyright Office, shall be appointed by the Librarian of Congress, and shall act under his general direction and supervision.*

*(b) The Register of Copyrights shall adopt a seal to be used on and after January 1, 1975, to authenticate all certified documents issued by the Copyright Office.*

*(c) The Register of Copyrights shall make an annual report to the Librarian of Congress of the work and accomplishments of the Copyright Office during the previous fiscal year. The annual report of the Register of Copyrights shall be published separately and as a part of the annual report of the Librarian of Congress.*

*§ 702. Copyright Office regulations*

*The Register of Copyrights is authorized to establish regulations not inconsistent with law for the administration of the functions and duties made his responsibility under this title. All regulations established by the Register under this title are subject to the approval of the Librarian of Congress.*

*§ 703. Effective date of actions in Copyright Office*

*In any case in which time limits are prescribed under this title for the performance of an action in the Copyright Office, and in which the last day of the prescribed period falls on a Saturday, Sunday, holiday or other non-business day within the District of Columbia or the Federal Government, the action may be taken on the next succeeding business day, and is effective as of the date when the period expired.*

§ 704. *Retention and disposition of articles deposited in Copyright Office*

(a) *Upon their deposit in the Copyright Office under sections 407 and 408, all copies, phonorecords, and identifying material, including those deposited in connection with claims that have been refused registration, are the property of the United States Government.*

(b) *In the case of published works, all copies, phonorecords, and identifying material deposited are available to the Library of Congress for its collections, or for exchange or transfer to any other library. In the case of unpublished works, the Library is entitled to select any deposits for its collections.*

(c) *Deposits not selected by the Library under subsection (b), or identifying portions or reproductions of them, shall be retained under the control of the Copyright Office, including retention in Government storage facilities, for the longest period considered practicable and desirable by the Register of Copyrights and the Librarian of Congress. After that period it is within the joint discretion of the Register and the Librarian to order their destruction or other disposition; but, in the case of unpublished works, no deposit shall be destroyed or otherwise disposed of during its term of copyright.*

(d) *The depositor of copies, phonorecords, or identifying material under section 408, or the copyright owner of record, may request retention, under the control of the Copyright Office, of one or more of such articles for the full term of copyright in the work. The Register of Copyrights shall prescribe, by regulation, the conditions under which such requests are to be made and granted, and shall fix the fee to be charged under section 708(a)(12) if the request is granted.*

§ 705. *Copyright Office records: Preparation, maintenance, public inspection, and searching*

(a) *The Register of Copyrights shall provide and keep in the Copyright Office records of all deposits, registrations, recordations, and other actions taken under this title, and shall prepare indexes of all such records.*

(b) *Such records and indexes, as well as the articles deposited in connection with completed copyright registrations and retained under the control of the Copyright Office, shall be open to public inspection.*

(c) *Upon request and payment of the fee specified by section 708, the Copyright Office shall make a search of its public records, indexes, and deposits, and shall furnish a report of the information they disclose with respect to any particular deposits, registrations, or recorded documents.*

§ 706. *Copies of Copyright Office records*

(a) *Copies may be made of any public records or indexes of the Copyright Office; additional certificates of copyright registration and copies of any public records or indexes may be furnished upon request and payment of the fees specified by section 708.*

(b) *Copies or reproductions of deposited articles retained under the control of the Copyright Office shall be authorized or furnished only under the conditions specified by the Copyright Office regulations.*

§ 707. *Copyright Office forms and publications*

(a) *Catalog of Copyright Entries.—The Register of Copyrights shall compile and publish at periodic intervals catalogs of all copy-*

right registrations. These catalogs shall be divided into parts in accordance with the various classes of works, and the Register has discretion to determine on the basis of practicability and usefulness, the form and frequency of publication of each particular part.

(b) *Other Publications.*—The Register shall furnish, free of charge upon request, application forms for copyright registration and general informational material in connection with the functions of the Copyright Office. He also has authority to publish compilations of information, bibliographies, and other material he considers to be of value to the public.

(c) *Distribution of Publications.*—All publications of the Copyright Office shall be furnished to depository libraries as specified under section 1905 of title 44, United States Code, and, aside from those furnished free of charge, shall be offered for sale to the public at prices based on the cost of reproduction and distribution.

#### § 708. Copyright Office fees

(a) *The following fees shall be paid to the Register of Copyrights:*

(1) *for the registration of a copyright claim or a supplementary registration under section 408, including the issuance of a certificate of registration, \$6;*

(2) *for the registration of a claim to renewal of a subsisting copyright in its first term under section 304(a), including the issuance of a certificate of registration, \$4;*

(3) *for the issuance of a receipt for a deposit under section 407, \$2;*

(4) *for the recordation, as provided by section 205, of a transfer of copyright ownership or other document of six pages or less, covering no more than one title, \$5; for each page over six and for each title over one, 50 cents additional;*

(5) *for the filing, under section 115(b), of a notice of intention to make phonorecords, \$3;*

(6) *for the recordation, under section 302(c), of a statement revealing the identity of an author of an anonymous or pseudonymous work, or for the recordation, under section 302(d), of a statement relating to the death of an author, \$5 for a document of six pages or less, covering no more than one title; for each page over six and for each title over one, 50 cents additional;*

(7) *for the issuance, under section 601, of an import statement, \$3;*

(8) *for the issuance, under section 706, of an additional certificate of registration, \$2;*

(9) *for the issuance of any other certification, \$3; the Register of Copyrights has discretion, on the basis of their cost, to fix the fees for preparing copies of Copyright Office records, whether they are to be certified or not;*

(10) *for the making and reporting of a search as provided by section 705, and for any related services, \$5 for each hour or fraction of an hour consumed;*

(11) *for any other special services requiring a substantial amount of time or expense, such fees as the Register of Copyrights may fix on the basis of the cost of providing the service.*

(b) *The fees prescribed by or under this section are applicable to the United States Government and any of its agencies, employees, or*

officers, but the Register of Copyrights has discretion to waive the requirement of this subsection in occasional or violated cases involving relatively small amounts.

§ 709. *Delay in delivery caused by disruption of postal or other services*

*In any case in which the Register of Copyrights determines, on the basis of such evidence as he may by regulation require, that a deposit, application, fee, or any other material to be delivered to the Copyright Office by a particular date, would have been received in the Copyright Office in due time except for a general disruption or suspension of postal or other transportation or communications services, the actual receipt of such material in the Copyright Office within one month after the date on which the Register determines that the disruption or suspension of such services has terminated, shall be considered timely.*

Chapter 8.—COPYRIGHT ROYALTY TRIBUNAL

Sec.

801. *Copyright Royalty Tribunal; Establishment and purpose.*

802. *Petitions for the adjustment of royalty rates.*

803. *Membership of the Tribunal.*

804. *Procedures of the Tribunal.*

805. *Compensation of members of the Tribunal; expenses of the Tribunal.*

806. *Reports to the Congress.*

807. *Effective date of royalty adjustment.*

808. *Effective date of royalty distribution.*

809. *Judicial review.*

§ 801. *Copyright Royalty Tribunal: Establishment and purpose*

(a) *There is hereby created in the Library of Congress a Copyright Royalty Tribunal.*

(b) *Subject to the provisions of this chapter, the purpose of the Tribunal shall be: (1) to make determinations concerning the adjustment of the copyright royalty rates specified by sections 111, 114, and 115 so as to assure that such rates are reasonable and in the event that the Tribunal shall determine that the statutory royalty rate, or a rate previously established by the Tribunal, or the revenue basis in respect to section 111, does not provide a reasonable royalty fee for the basic service of providing secondary transmissions of the primary broadcast transmitter or is otherwise unreasonable, the Tribunal may change the royalty rate or the revenue bases on which the royalty fee shall be assessed or both so as to assure a reasonable royalty fee; and (2) to determine in certain circumstances the distribution of the royalty fees deposited with the Register of Copyrights under sections 111, 114, and 116.*

§ 802. *Petitions for the adjustment of royalty rates*

(a) *On July 1, 1975, the Register of Copyrights shall cause to be published in the Federal Register notice of the commencement of proceedings for the review of the royalty rates specified by sections 111, 114, and 115. (b) During the calendar year 1982, and in each subsequent fifth calendar year, any owner or user of a copyrighted work whose royalty rates are specified by this title, or by a rate established by the Tribunal, may file a petition with the Register of Copyrights declaring that the petitioner requests an adjustment of the rate. The Register shall make a determination as to whether the applicant has*

a significant interest in the royalty rate in which an adjustment is requested. If the Register determines that the petitioner has a significant interest, he shall cause notice of his decision to be published in the Federal Register.

#### § 803. Membership of the Tribunal

(a) In accordance with Section 802, or upon certifying the existence of a controversy concerning the distribution of royalty fees deposited pursuant to sections 111 and 114, the Register shall request the American Arbitration Association or any similar successor organization to furnish a list of three members of said Association. The Register shall communicate the name together with such information as may be appropriate to all parties of interest. Any such party within twenty days from the date said communication is sent may submit to the Register written objections to any or all of the proposed names. If no such objections are received, or if the Register determines that said objections are not well founded, he shall certify the appointment of the three designated individuals to constitute a panel of the Tribunal for the consideration of the specified rate or royalty distribution. Such panel shall function as the Tribunal established in section 801. If the Register determines the objections to the designation of one or more of the proposed individuals are well founded, the Register shall request the American Arbitration Association or any similar successor organization to propose the necessary number of substitute individuals. Upon receiving such additional names the Register shall constitute the panel. The Register shall designate one member of the panel as Chairman.

(b) If any member of a panel becomes unable to perform his duties, the Register, after consultation with the parties, may provide for the selection of a successor in the manner prescribed in subsection (a).

#### § 804. Procedures of the Tribunal

(a) The Tribunal shall fix a time and place for its proceedings and shall cause notice to be given to the parties.

(b) Any organization or person entitled to participate in the proceedings may appear directly or be represented by counsel.

(c) Except as otherwise provided by law, the Tribunal shall determine its own procedure. For the purpose of carrying out the provisions of this chapter, the Tribunal may hold hearings, administer oaths, and require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of documents.

(d) Every final decision of the Tribunal shall be in writing and shall state the reasons therefor.

(e) The Tribunal shall render a final decision in each proceeding within one year from the certification of the panel. Upon a showing of good cause, the Senate Committee on the Judiciary and the House of Representatives Committee on the Judiciary may waive this requirement in a particular proceeding.

#### § 805. Compensation of members of the Tribunal; expenses of the Tribunal

(a) In proceedings for the distribution of royalty fees, the compensation of members of the Tribunal and other expenses of the Tribunal shall be deducted prior to the distribution of the funds.

(b) *In proceedings for the adjustment of royalty rates, there is hereby authorized to be appropriated such sums as may be necessary.*

(c) *The Library of Congress is authorized to furnish facilities and incidental service to the Tribunal.*

(d) *The Tribunal is authorized to procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.*

#### § 806. *Reports to the Congress*

*The Tribunal immediately upon making a final determination in any proceeding for adjustment of a statutory royalty shall transmit its decision, together with the reasons therefor, to the Secretary of the Senate and the Clerk of the House of Representatives for reference to the Judiciary Committees of the Senate and the House of Representatives.*

#### § 807. *Effective date of royalty adjustment*

(a) *Prior to the expiration of the first period of ninety calendar days of continuous session of the Congress, following the transmittal of the report specified in section 806, either House of the Congress may adopt a resolution stating in substance that the House does not favor the recommended royalty adjustment, and such adjustment, therefore, shall not become effective.*

(b) *For the purposes of subsection (a) of this section—*

(1) *Continuity of session shall be considered as broken only by an adjournment of the Congress sine die, and*

(2) *In the computation of the ninety-day period there shall be excluded the days on which either House is not in session because of an adjournment of more than three days to a day certain.*

(c) *In the absence of such a resolution by either House during said ninety-day period, the final determination by the Tribunal of a petition for adjustment, shall take effect on the first day following ninety calendar days after the expiration of the period specified by subsection (a).*

(d) *The Register of Copyright shall give notice of such effective date by publication in the Federal Register not less than sixty days before said date.*

#### § 808. *Effective date of royalty distribution*

*A final determination of the Tribunal concerning the distribution of royalty fees deposited with the Register of Copyrights pursuant to sections 111, 114, and 116 shall become effective thirty days following such determination unless prior to that time an application has been filed pursuant to section 809 to vacate, modify or correct the determination, and notice of such application has been served upon the Register of Copyrights. The Register upon the expiration of thirty days shall distribute such royalty fees not subject to any application filed pursuant to section 809.*

#### § 809. *Judicial review*

*In any of the following cases the United States District Court for the District of Columbia may make an order vacating, modifying or correcting a final determination of the Tribunal concerning the distribution of royalty fees—*

(a) *Where the determination was procured by corruption, fraud, or undue means.*

(b) *Where there was evident partiality or corruption in any member of the panel.*

(c) *Where any member of the panel was guilty of any misconduct by which the rights of any party have been prejudiced.*

#### TRANSITIONAL AND SUPPLEMENTARY PROVISIONS

*SEC. 102. This title becomes effective on January 3, 1975, except as otherwise provided by section 304(b) of title 17 as amended by this title.*

*SEC. 103. This title does not provide copyright protection for any work that goes into the public domain before January 1, 1975. The exclusive rights, as provided by section 106 of title 17 as amended by this title, to reproduce a work in phonorecords and to distribute phonorecords of the work, do not extend to any nondramatic musical work copyrighted before July 1, 1909.*

*SEC. 104. All proclamations issued by the President under sections 1(e) or 9(b) of title 17 as it existed on December 31, 1974, or under previous copyright statutes of the United States shall continue in force until terminated, suspended, or revised by the President.*

*SEC. 105. (a) (1) Section 505 of title 44, United States Code, Supplement IV, is amended to read as follows:*

*“§ 505. Sale of duplicate plates*

*“The Public Printer shall sell, under regulations of the Joint Committee on Printing to persons who may apply, additional or duplicate stereotype or electrotype plates from which a Government publication is printed, at a price not to exceed the cost of composition, the metal, and making to the Government, plus 10 per centum, and the full amount of the price shall be paid when the order is filed.”*

*(2) The item relating to section 505 in the sectional analysis at the beginning of chapter 5 of title 44, United States Code, is amended to read as follows:*

*“505. Sale of duplicate plates.”*

*(b) Section 2113 of title 44, United States Code, is amended to read as follows:*

*“§ 2113. Limitation on liability*

*“When letters and other intellectual productions (exclusive of patented material, published works under copyright protection, and unpublished works for which copyright registration has been made) come into the custody or possession of the Administrator of General Services, the United States or its agents are not liable for infringement of copyright or analogous rights arising out of use of the materials for display, inspection, research, reproduction, or other purposes.”*

*(c) In section 1498(b) of title 28 of the United States Code, the phrase “section 101(b) of title 17” is amended to read “section 504(c) of title 17”.*

*(d) Section 543(a)(4) of the Internal Revenue Code of 1954, as amended, is amended by striking out “(other than by reason of section 2 or 6 thereof)”.*

*(e) Section 3202(a) of title 39 of the United States Code is amended by striking out clause (5). Section 3206(c) of title 39 of the*

*United States Code is amended by striking out clause (c). Section 3206(d) is renumbered (c).*

*(f) In section 6 of the Standard Reference Data Act (section 290(e) of title 15 of the United States Code, Supplement IV), subsection (a) is amended to delete the reference to "section 8" and to substitute therefor the phrase "section 105".*

*SEC. 106. In any case where, before January 1, 1975, a person has lawfully made parts of instruments serving to reproduce mechanically a copyrighter work under the compulsory license provisions of section 1(e) of title 17, as it existed on December 31, 1974, he may continue to make and distribute such parts embodying the same mechanical reproduction without obtaining a new compulsory license under the terms of section 115 of title 17 as amended by this title. However, such parts made on or after January 1, 1975, constitute phonorecords and are otherwise subject to the provisions of said section 115.*

*SEC. 107. In the case of any work in which an ad interim copyright is subsisting or is capable of being secured on December 31, 1974, under section 22 of title 17 as it existed on that date, copyright protection is hereby extended to endure for the term or terms provided by section 304 of title 17 as amended by this title.*

*SEC. 108. The notice provisions of sections 401 through 403 of title 17 as amended by this title apply to all copies or phonorecords publicly distributed on or after January 1, 1975. However, in the case of a work published before January 1, 1975, compliance with the notice provisions of title 17 either as it existed on December 31, 1974, or as amended by this title, is adequate with respect to copies publicly distributed after December 31, 1974.*

*SEC. 109. The registration of claims to copyright for which the required deposit, application, and fee were received in the Copyright Office before January 1, 1975, and the recordation of assignments of copyright or other instruments received in the Copyright Office before January 1, 1975, shall be made in accordance with title 17 as it existed on December 31, 1974.*

*SEC. 110. The demand and penalty provisions of section 14 of title 17 as it existed on December 31, 1974, apply to any work in which copyright has been secured by publication with notice of copyright on or before that date, but any deposits 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 this title.*

*SEC. 111. Section 2318 of title 18 of the United States Code is amended to read as follows:*

*"§ 2318. Transportation, sale or receipt of phonograph records bearing forged or counterfeit labels*

*"Whoever knowingly and with fraudulent intent transports, causes to be transported, receives, sells, or offers for sale in interstate or foreign commerce any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, to which or upon which is stamped, pasted, or affixed any forged or counterfeited label, knowing the label to have been falsely made, forged, or counterfeited shall be fined not more than \$25,000 or imprisoned for not more than three years, or both, for the first such offense and shall be fined not more than*

*\$50,000 or imprisoned not more than seven years or both, for any subsequent offense."*

*SEC. 112. All causes of action that arose under title 17 before January 1, 1975, shall be governed by title 17 as it existed when the cause of action arose.*

*SEC. 113. If any provision of title 17, as amended by this title, is declared unconstitutional, the validity of the remainder of the title is not affected.*

## **TITLE II—NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS**

### **ESTABLISHMENT AND PURPOSE OF COMMISSION**

*SEC. 201. (a) There is hereby created in the Library of Congress a National Commission on New Technological Uses of Copyrighted Works (hereafter called the Commission).*

*(b) The purpose of the Commission is to study and compile data on:*

*(1) the reproduction and use of copyrighted works of authorship—*

*(A) in conjunction with automatic systems capable of storing, processing, retrieving, and transferring information, and*

*(B) by various forms of machine reproduction, not including reproduction by or at the request of instructors for use in face-to-face teaching activities; and*

*(2) the creation of new works by the application or intervention of such automatic systems or machine reproduction.*

*(c) The Commission shall make recommendations as to such changes in copyright law or procedures that may be necessary to assure for such purposes access to copyrighted works, and to provide recognition of the rights of copyright owners.*

### **MEMBERSHIP OF THE COMMISSION**

*SEC. 202. (a) The Commission shall be composed of thirteen voting members, appointed as follows:*

*(1) Four members, to be appointed by the President, selected from authors and other copyright owners;*

*(2) Four members, to be appointed by the President, selected from users of copyright works;*

*(3) Four nongovernmental members to be appointed by the President, selected from the public generally;*

*(4) The Librarian of Congress.*

*(b) The President shall appoint a Chairman, and a Vice Chairman who shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office, from among the four members selected from the public generally, as provided by clause (3) of subsection (a). The Register of Copyrights shall serve ex officio as a nonvoting member of the Commission.*

*(c) Seven voting members of the Commission shall constitute a quorum.*

*(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner as the original appointment was made.*

## COMPENSATION OF MEMBERS OF COMMISSION

*SEC. 203. (a) Members of the Commission, other than officers or employees of the Federal Government, shall receive compensation at the rate of \$100 per day while engaged in the actual performance of Commission duties, plus reimbursement for travel, subsistence, and other necessary expenses in connection with such duties.*

*(b) Any members of the Commission who are officers or employees of the Federal Government shall serve on the Commission without compensation, but such members shall be reimbursed for travel, subsistence, and other necessary expenses in connection with the performance of their duties.*

## STAFF

*SEC. 204. (a) To assist in its studies, the Commission may appoint a staff which shall be an administrative part of the Library of Congress. The staff shall be headed by an Executive Director, who shall be responsible to the Commission for the administration of the duties entrusted to the staff.*

*(b) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed \$100 per day.*

## EXPENSES OF THE COMMISSION

*SEC. 205. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.*

## REPORTS

*SEC. 206. (a) Within one year after the first meeting of the Commission it shall submit to the President and the Congress a preliminary report on its activities.*

*(b) Within three years after the enactment of this Act the Commission shall submit to the President and the Congress a final report on its study and investigation which shall include its recommendations and such proposals for legislation and administrative action as may be necessary to carry out its recommendations.*

*(c) In addition to the preliminary report and final report required by this section, the Commission may publish such interim reports as it may determine, including but not limited to consultant's reports, transcripts of testimony, seminar reports, and other Commission findings.*

## POWERS OF THE COMMISSION

*SEC. 207. (a) The Commission or, with the authorization of the Commission, any three or more of its members, may, for the purpose of carrying out the provisions of this title, hold hearings, administer oaths, and require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of documentary material.*

*(b) With the consent of the Commission, any of its members may hold any meetings, seminars, or conferences considered appropriate to provide a forum for discussion of the problems with which it is dealing.*

## TERMINATION

*SEC. 208. On the sixtieth day after the date of the submission of its final report, the Commission shall terminate and all offices and employment under it shall expire.*

### TITLE III—PROTECTION OF ORNAMENTAL DESIGNS OF USEFUL ARTICLES

#### DESIGNS PROTECTED

SEC. 301. (a) *The author or other proprietor of an original ornamental design of a useful article may secure the protection provided by this title upon complying with and subject to the provisions hereof.*

(b) *For the purposes of this title—*

(1) *A “useful article” is an article which in normal use has an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article which normally is a part of a useful article shall be deemed to be a useful article.*

(2) *The “design of a useful article”, hereinafter referred to as a “design”, consists of those aspects or elements of the article, including its two-dimensional or three-dimensional features of shape and surface, which make up the appearance of the article.*

(3) *A design is “ornamental” if it is intended to make the article attractive who did not copy it from another source.*

#### DESIGNS NOT SUBJECT TO PROTECTION

SEC. 302. *Protection under this title shall not be available for a design that is—*

(a) *not original;*

(b) *staple or commonplace, such as a standard geometric figure, familiar symbol, emblem, or motif, or other shape, pattern, or configuration which has become common, prevalent, or ordinary;*

(c) *different from a design excluded by subparagraph (b) above only in insignificant details or in elements which are variants commonly used in the relevant trades; or*

(d) *dictated solely by a utilitarian function of the article that embodies it;*

(e) *composed of three-dimensional features of shape and surface with respect to men’s, women’s and children’s apparel, including undergarments and outerwear.*

#### REVISIONS, ADAPTATIONS, AND REARRANGEMENTS

SEC. 303. *Protection for a design under this title shall be available notwithstanding the employment in the design of subject matter excluded from protection under section 302, if the design is a substantial revision, adaptation, or rearrangement of said subject matter: Provided, That such protection shall be available to a design employing subject matter protected under title I of this Act, or title 35 of the United States Code or this title, only if such protected subject matter is employed with the consent of the proprietor thereof. Such protection shall be independent of any subsisting protection in subject matter employed in the design, and shall not be construed as securing any right to subject matter excluded from protection or as extending any subsisting protection.*

#### COMMENCEMENT OF PROTECTION

SEC. 304. (a) *The protection provided for a design under this title shall commence upon the date when the design is first made public.*

(b) *A design is made public when, by the proprietor of the design or with his consent, an existing useful article embodying the design is anywhere publicly exhibited, publicly distributed, or offered for sale or sold to the public.*

#### TERMS OF PROTECTION

*SEC. 305. (a) Subject to the provisions of this title, the protection herein provided for a design shall continue for a term of five years from the date of the commencement of protection as provided in section 304(a), but if a proper application for renewal is received by the Administrator during the year prior to the expiration of the five-year term, the protection herein provided shall be extended for an additional period of five years from the date of expiration of the first five years.*

*(b) If a design notice actually applied shows a date earlier than the date of the commencement of protection as provided in section 304(a), protection shall terminate as though the term had commenced at the earlier date.*

*(c) Where the distinguishing elements of a design are in substantially the same form in a number of different useful articles, the design shall be protected as to all such articles when protected as to one of them, but not more than one registration shall be required. Upon expiration or termination of protection in a particular design as provided in this title all rights under this title in said design shall terminate, regardless of the number of different articles in which the design may have been utilized during the term of its protection.*

#### THE DESIGN NOTICE

*SEC. 306. (a) Whenever any design for which protection is sought under this title is made public as provided in section 304(b), the proprietor shall, subject to the provisions of section 307, mark it or have it marked legibly with a design notice consisting of the following three elements:*

*(1) the words "Protected Design", the abbreviation "Pot'd Des." or the letter "D" within a circle thus ⓓ;*

*(2) the year of the date on which the design was first made public; and*

*(3) the name of the proprietor, an abbreviation by which the name can be recognized, or a generally accepted alternative designation of the proprietor; and distinctive identification of the proprietor may be used if it has been approved and recorded by the Administrator before the design marked with such identification is made public.*

*After registration the registration number may be used instead of the elements specified in (2) and (3) hereof.*

*(b) The notice shall be so located and applied as to give reasonable notice of design protection while the useful article embodying the design is passing through its normal channels of commerce. This requirement may be fulfilled, in the case of sheetlike or strip materials bearing repetitive or continuous designs, by application of the notice to each repetition, or to the margin, selvage, or reverse side of the material at reasonably frequent intervals, or to tags or labels affixed to the material at such intervals.*

(c) *When the proprietor of a design has complied with the provisions of this section, protection under this title shall not be affected by the renewal, destruction, or obliteration by others of the design notice on an article.*

EFFECT OF OMISSION OF NOTICE

*SEC. 307. The omission of the notice prescribed in section 306 shall not cause loss of the protection or prevent recovery for infringement against any person who, after written notice of the design protection, begins an undertaking leading to infringement: Provided, That such omission shall prevent any recovery under section 322 against a person who began an undertaking leading to infringement before receiving written notice of the design protection, and no injunction shall be had unless the proprietor of the design shall reimburse said person for any reasonable expenditure or contractual obligation in connection with such undertaking incurred before written notice of design protection, as the court in its discretion shall direct. The burden of proving written notice shall be on the proprietor.*

INFRINGEMENT

*SEC. 308. (a) It shall be infringement of a design protected under this title for any person, without the consent of the proprietor of the design, within the United States or its territories or possessions and during the term of such protection, to—*

*(1) make, have made, or import, for sale or for use in trade, any infringing article as defined in subsection (d) hereof; or*

*(2) sell or distribute for sale or for use in trade any such infringing article: Provided, however, That a seller or distributor of any such article who did not make or import the same shall be deemed to be an infringer only if—*

*(i) he induced or acted in collusion with a manufacturer to make, or an importer to import such article (merely purchasing or giving an order to purchase in the ordinary course of business shall not of itself constitute such inducement or collusion); or*

*(ii) he refuses or fails upon the request of the proprietor of the design to make a prompt and full disclosure of his source of such article, and he orders or reorders such article after having received notice by registered or certified mail of the protection subsisting in the design.*

*(b) It shall be not infringement to make, have made, import, sell, or distribute, any article embodying a design created without knowledge of, and copying from, a protected design.*

*(c) A person who incorporates into his own product of manufacture an infringing article acquired from others in the ordinary course of business, or who, without knowledge of the protected design, makes or processes an infringing article for the account of another person in the ordinary course of business, shall not be deemed an infringer except under the conditions of clauses (i) and (ii) of paragraph (a) (2) of this section. Accepting an order or reorder from the source of the infringing article shall be deemed ordering or reordering within the meaning of clause (ii) of paragraph (a) (2) of this section.*

(d) An "infringing article" as used herein is any article, the design of which has been copied from the protected design, without the consent of the proprietor: Provided however, That an illustration or picture of a protected design in an advertisement, book, periodical, newspaper, photograph, broadcast, motion picture, or similar medium shall not be deemed to be an infringing article. An article is not an infringing article if it embodies, in common with the protected design, only elements described in subsections (a) through (d) of section 302.

(e) The party alleging rights in a design in any action or proceeding shall have the burden of affirmatively establishing its originality whenever the opposing party introduces an earlier work which is identical to such design, or so similar as to make a prima facie showing that such design was copied from such work.

#### APPLICATION FOR REGISTRATION

SEC. 309. (a) Protection under this title shall be lost if application for registration of the design is not made within six months after the date on which the design was first made public as provided in section 304(b).

(b) Application for registration or renewal may be made by the proprietor of the design.

(c) The application for registration shall be made to the Administrator and shall state (1) the name and address of the author or authors of the design; (2) the name and address of the proprietor if different from the author; (3) the specific name of the article, indicating its utility; (4) the date when the design was first made public as provided in section 304(b); and (5) such other information as may be required by the Administrator. The application for registration may include a description setting forth the salient features of the design, but the absence of such a description shall not prevent registration under this title.

(d) The application for registration shall be accompanied by a statement under oath by the applicant or his duly authorized agent or representative, setting forth that, to the best of his knowledge and belief (1) the design is original and was created by the author or authors named in the application; (2) the design has not previously been registered on behalf of the applicant or his predecessor in title; (3) the design has been made public as provided in section 304(b); and (4) the applicant is the person entitled to protection and to registration under this title. If the design has been made public with the design notice prescribed in section 306, the statement shall also describe the exact form and position of the design notice.

(e) Error in any statement or assertion as to the utility of the article named in the application, the design of which is sought to be registered, shall not affect the protection secured under this title.

(f) Errors in omitting a joint author or in naming an alleged joint author shall not affect the validity of the registration, or the actual ownership or the protection of the design: Provided, That the name of one individual who was in fact an author is stated in the application. Where the design was made within the regular scope of the author's employment and individual authorship of the design is difficult or impossible to ascribe and the application so states, the name and address

of the employer for whom the design was made may be stated instead of that of the individual author.

(g) The application for registration shall be accompanied by two copies of a drawing or other pictorial representation of the useful article having one or more views, adequate to show the design, in a form and style suitable for reproduction, which shall be deemed a part of the application.

(h) Related useful articles having common design features may be included in the same application under such conditions as may be prescribed by the Administrator.

#### BENEFIT OF EARLIER FILING DATE IN FOREIGN COUNTRY

SEC. 310. An application for registration of a design filed in this country by any person who has, or whose legal representative or predecessor or successor in title has previously regularly filed an application for registration of the same design in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States shall have the same effect as if filed in this country on the date on which the application was first filed in any such foreign country, if the application in this country is filed within six months from the earliest date on which any such foreign application was filed.

#### OATHS AND ACKNOWLEDGMENTS

SEC. 311. Oaths and acknowledgements required by this title may be made before any person in the United States authorized by law to administer oaths, or, when made in a foreign country, before any diplomatic or consular officer of the United States authorized to administer oaths, or before any official authorized to administer oaths in the foreign country concerned, whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States, and shall be valid if they comply with the laws of the state or country where made.

#### EXAMINATION OF APPLICATION AND ISSUE OR REFUSAL OF REGISTRATION

SEC. 312. (a) Upon the filing of an application for registration in proper form as provided in section 309, and upon payment of the fee provided in section 315, the Administrator shall determine whether or not the application relates to a design which on its face appears to be subject to protection under this title, and if so, he shall register the design. Registration under this subsection shall be announced by publication.

(b) If, in his judgment, the application for registration relates to a design which on its face is not subject to protection under this title, the Administrator shall send the applicant a notice of his refusal to register and the grounds therefor. Within three months from the date the notice of refusal is sent, the applicant may request, in writing, reconsideration of his application. After consideration of such a request, the Administrator shall either register the design or send the applicant a notice of his final refusal to register.

(c) Any person who believes he is or will be damaged by a registration under this title may, upon payment of the prescribed fee, apply to the Administrator at any time to cancel the registration on the ground that the design is not subject to protection under the provisions of this title, stating the reasons therefor. Upon receipt of an application for cancellation, the Administrator shall send the proprietor of the design, as shown in the records of the Office of the Administrator, a notice of said application, and the proprietor shall have a period of three months from the date such notice was mailed in which to present arguments in support of the validity of the registration. It shall also be within the authority of the Administrator to establish, by regulation, conditions under which the opposing parties may appear and be heard in support of their arguments. If, after the periods provided for the presentation of arguments have expired, the Administrator determines that the applicant for cancellation has established that the design is not subject to protection under the provisions of this title, he shall order the registration stricken from the record. Cancellation under this subsection shall be announced by publication, and notice of the Administrator's final determination with respect to any application for cancellation shall be sent to the applicant and to the proprietor of record.

(d) Remedy against a final adverse determination under subparagraphs (b) and (c) above may be had by means of a civil action against the Administrator pursuant to the provision of section 1361 of title 82, United States Code, if commenced within such time after such decision, not less than 60 days, as the Administrator appoints.

(e) When a design has been registered under this section, the lack of utility of any article in which it has been embodied shall be no defense to an infringement action under section 320, and no ground for cancellation under subsection (c) of this section or under section 323.

#### CERTIFICATION OF REGISTRATION

SEC. 313. Certificates of registration shall be issued in the name of the United States under the seal of the Office of the Administrator and shall be recorded in the official records of that Office. The certificate shall state the name of the useful article, the date of filing of the application, the date on which the design was first made public as provided in section 304(b) or any earlier date as set forth in section 305(b), and shall contain a reproduction of the drawing or other pictorial representation showing the design. Where a description of the salient features of the design appears in the application, this description shall also appear in the certificate. A renewal certificate shall contain the date of renewal registration in addition to the foregoing. A certificate of initial or renewal registration shall be admitted in any court as prima facie evidence of the facts stated therein.

#### PUBLICATION OF ANNOUNCEMENTS AND INDEXES

SEC. 314. (a) The Administrator shall publish lists and indexes of registered designs and cancellations thereof and may also publish the drawing or other pictorial representations of registered designs for sale or other distribution.

(b) *The Administrator shall establish and maintain a file of the drawings or other pictorial representations of registered designs, which file shall be available for use by the public under such conditions as the Administrator may prescribe.*

#### FEEES

*SEC. 315. (a) There shall be paid to the Administrator the following fees:*

(1) *On filing each application for registration or for renewal of registration of a design, \$15.*

(2) *For each additional related article included in one application, \$10.*

(3) *For recording assignment, \$3 for the first six pages, and each additional two pages or less, \$1.*

(4) *For a certificate of correction of an error not the fault of the Office, \$10.*

(5) *For certification of copies of records, \$1.*

(6) *On filing each application for cancellation of a registration, \$15.*

(b) *The Administrator may establish charges for materials or services furnished by the Office, not specified above, reasonably related to the cost thereof.*

#### REGULATIONS

*SEC. 316. The Administrator may establish regulations not inconsistent with law for the administration of this title.*

#### COPIES OF RECORDS

*SEC. 317. Upon payment of the prescribed fee, any person may obtain a certified copy of any official record of the Office of the Administrator, which copy shall be admissible in evidence with the same effect as the original.*

#### CORRECTION OF ERRORS IN CERTIFICATES

*SEC. 318. The Administrator may correct any error in a registration incurred through the fault of the Office, or, upon payment of the required fee, any error of a clerical or typographical nature not the fault of the Office occurring in good faith, by a certificate of correction under seal. Such registration, together with the certificate, shall thereafter have the same effect as if the same had been originally issued in such corrected form.*

#### OWNERSHIP AND TRANSFER

*SEC. 319. (a) The property right in a design subject to protection under this title shall vest in the author, the legal representatives of a deceased author or of one under legal incapacity, the employer for whom the author created the design in the case of a design made within the regular scope of the author's employment, or a person to whom the rights of the author or of such employer have been transferred. The person or persons in whom the property right is vested shall be considered the proprietor of the design.*

(b) *The property right in a registered design, or a design for which an application for registration has been or may be filed, may be as-*

signed, granted, conveyed, or mortgaged by an instrument in writing, signed by the proprietor, or may be bequeathed by will.

(c) An acknowledgement as provided in section 311 shall be prima facie evidence of the execution of an assignment, grant, conveyance, or mortgage.

(d) An assignment, grant, conveyance, or mortgage shall be void as against any subsequent purchaser or mortgage for a valuable consideration, without notice, unless it is recorded in the Office of the Administrator within three months from its date of execution or prior to the date of such subsequent purchase or mortgage.

#### REMEDY FOR INFRINGEMENT

SEC. 320. (a) The proprietor of a design shall have remedy for infringement by civil action instituted after issuance of a certificate of registration of the design.

(b) The proprietor of a design may have judicial review of a final refusal of the Administrator to register the design, by a civil action brought as for infringement if commenced within the time specified in section 312(d), and shall have remedy for infringement by the same action if the court adjudges the design subject to protection under this title: Provided, That (1) he has previously duly filed and duly prosecuted to such final refusal an application in proper form for registration of the designs, and (2) he causes a copy of the complaint in action to be delivered to the Administrator within ten days after the commencement of the action, and (3) the defendant has committed acts in respect to the design which would constitute infringement with respect to a design protected under this title.

#### INJUNCTION

SEC. 321. The several courts having jurisdiction of actions under this title may grant injunctions in accordance with the principles of equity to prevent infringement, including in their discretion, prompt relief by temporary restraining orders and preliminary injunctions,

#### RECOVERY FOR INFRINGEMENT, AND SO FORTH

SEC. 322. (a) Upon finding for the claimant the court shall award him damages adequate to compensate for the infringement, but in no event less than the reasonable value the court shall assess them. In either event the court may increase the damages to such amount, not exceeding \$5,000 or \$1 per copy, whichever is greater, as to the court shall appear to be just. The damages awarded in any of the above circumstances shall constitute compensation and not a penalty. The court may receive expert testimony as an aid to the determination of damages.

(b) No recovery under paragraph (a) shall be had for any infringement committed more than three years prior to the filing of the complaint.

(c) The court may award reasonable attorney's fees to the prevailing party. The court may also award other expenses of suit to a defendant prevailing in an action brought under section 320(b).

(d) The court may order that all infringing articles, and any plates, molds, patterns, models, or other means specifically adapted for mak-

ing the same be delivered up for destruction or other disposition as the court may direct.

#### POWER OF COURT OVER REGISTRATION

*Sec. 323.* In any action involving a design for which protection is sought under this title, the court when appropriate may order registration of a design or the cancellation of a registration. Any such order shall be certified by the court to the Administrator, who shall make appropriate entry upon the records of his Office.

#### LIABILITY FOR ACTION ON REGISTRATION FRAUDULENTLY OBTAINED

*Sec. 324.* Any person who shall bring an action for infringement knowing that registration of the design was obtained by a false or fraudulent representation materially affecting the rights under this title, shall be liable in the sum of \$1,000, or such part thereof as the court may determine, as compensation to the defendant, to be charged against the plaintiff and paid to the defendant, in addition to such costs and attorney's fees of the defendant as may be assessed by the court.

#### PENALTY FOR FALSE MARKING

*Sec. 325.* (a) Whoever, for the purpose of deceiving the public, marks upon, or applies to, or uses in advertising in connection with any article made, used, distributed, or sold by him, the design of which is not protected under this title, a design notice as specified in section 306 or any other words or symbols importing that the design is protected under this title, knowing that the design is not so protected, shall be fined not more than \$500 for every such offense.

(b) Any person may sue for the penalty, in which event, one-half shall go to the person suing and the other to the use of the United States.

#### PENALTY FOR FALSE REPRESENTATION

*Sec. 326.* Whoever knowingly makes a false representation materially affecting the rights obtainable under this title for the purpose of obtaining registration of a design under this title shall be fined not less than \$500 and not more than \$1,000, and any rights or privileges he may have in the design under this title shall be forfeited.

#### RELATION TO COPYRIGHT LAW

*Sec. 327.* (a) Nothing in this title shall affect any right or remedy now or hereafter held by any person under title I of this Act.

(b) When a pictorial, graphic, or sculptural work in which copyright subsists under title I of this Act is utilized in an original ornamental design of a useful article, by the copyright proprietor or under an express license from him, the design shall be eligible for protection under the provisions of this title.

#### RELATION TO PATENT LAW

*Sec. 328.* (a) Nothing in this title shall affect any right or remedy available to or held by any person under title 35 of the United States Code.

(b) *The issuance of a design patent for an ornamental design for an article of manufacture under said title 35 shall terminate any protection of the design under this title.*

COMMON LAW AND OTHER RIGHTS UNAFFECTED

*SEC. 329. Nothing in this title shall annul or limit (1) common law or other rights or remedies, if any, available to or held by any person with respect to a design which has not been made public as provided in section 304(b), or (2) any trademark right or right to be protected against unfair competition.*

ADMINISTRATOR

*SEC. 330. The Administrator and Office of the Administrator referred to in this title shall be such officer and office as the President may designate.*

SEVERABILITY CLAUSE

*SEC. 331. If any provision of this title or the application of such provision to any person or circumstance is held invalid, the remainder of the title or the application to other persons or circumstances shall not be affected thereby.*

AMENDMENT OF OTHER STATUTES

*SEC. 332. (a) Subdivision a(2) of section 70 of the Bankruptcy Act of July 1, 1898, as amended (11 U.S.C. 110(a)), is amended by inserting "designs," after "patent rights," and "design registration," after "application for patent,".*

*(b) Title 28 of the United States Code is amended—*

*(1) by inserting "designs," after "patents," in the first sentence of section 1338(a);*

*(2) by inserting " , design," after "patent" in the second sentence of section 1338(a);*

*(3) by inserting "design," after "copyright," in section 1338(b);*

*(4) by inserting "and register designs" after "copyrights" in section 1440; and*

*(5) by revising section 1498(a) to read as follows:*

*"(a) Whenever a registered design or invention is used or manufactured by or for the United States without license of the owner thereof or lawful right to use or manufacture the same, the owner's remedy shall be by action against the United States in the Court of Claims for the recovery of his reasonable and entire compensation for such use and manufacture.*

*"For the purposes of this section, the use or manufacture of a registered design or an invention described in and covered by a patent of the United States by a contractor, a subcontractor, or any person, firm, or corporation for the Government and with the authorization or consent of the Government, shall be construed as use or manufacture for the United States.*

*"The court shall not award compensation under this section if the claim is based on the use or manufacture by or for the United States of any article owned, leased, used by, or in the possession of the United*

States, prior to, in the case of an invention, July 1, 1918, and in the case of a registered design, July 1, 1976.

“A Government employee shall have the right to bring suit against the Government under this section except where he was in a position to order, influence, or induce use of the registered design or invention by the Government. This section shall not confer a right of action on any registrant or patentee or any assignee of such registrant or patentee with respect to any design created by or invention discovered or invented by a person while in the employment or service of the United States, where the design or invention was related to the official functions of the employee, in cases in which such functions included research and development, or in the making of which Government time, materials, or facilities were used.”

#### TIME OF TAKING EFFECT

SEC. 333. This title shall take effect one year after enactment of this Act.

#### NO RETROACTIVE EFFECT

SEC. 334. Protection under this title shall not be available for any design that has been made public as provided in section 304(b) prior to the effective date of this title.

#### SHORT TITLE

SEC. 335. This title may be cited as “The Design Protection Act of 1973.”

#### GENERAL STATEMENT

The Communications Act of 1934, as amended, created the Federal Communications Commission for the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available to all people of the United States a rapid, efficient, nation-wide communication service with adequate facilities. The Act gives the FCC regulatory authority over radio and television, and specifically directs the Commission to encourage their larger and more effective use in the public interest.

The Supreme Court has held that section 2 of the Act also gives the Commission regulatory authority over community antenna television systems. *United States et al. v. Southwestern Cable Co. et al.*, 392 U.S. 157 (1968).

The Standing Rules of the Senate provide that all proposed registration relating to radio and television be referred to the Committee on Commerce.

S. 1361 for the first time establishes copyright liability for carriage of broadcast signals by cable systems. It also would require for the first time the payment of a fee by broadcast stations to record companies and performing artists.

Section 111 of the bill provides for the issuance of compulsory licenses to cable systems for the carriage of certain of these signals subject to a schedule of prescribed fees.

The statutory scheme of compulsory licensing in section 111 involves such communication's issues as sports programming carriage, and the treatment of broadcast signals which are taped off-the-air in the Con-

tinental United States for use by cable systems in the States of Alaska and Hawaii, as well as Puerto Rico, Guam, and other non-contiguous territories.

As reported by the Judiciary Committee, S. 1361 would also for the first time require broadcasters to pay copyright royalties to record companies and performing artists for playing their records over-the-air (sections 106 and 114).

Payment of these fees would be in addition to the fees presently negotiated for, paid to, and distributed by the performing rights societies, i.e., ASCAP, BMI, and SEAC.

Clearly, the payment of copyright fees by cable systems as well as the additional payments which the bill would require of broadcasters will have an economic effect on these industries.

That effect in turn will bear on the quality and quantity of service broadcasters and cable systems will render to the people of the nation.

The Courts have recognized that under the Communications Act the FCC may regard the economic consequences of competition between two broadcast stations insofar as the question bears upon the ability of either to serve the public. *Carroll Broadcasting Co. v. Federal Communications Commission*, 258 F. 2d 440 (1958); see also, *Federal Communications Commission v. Sanders Brothers Radio Station*, 309 U.S. 470 (1939).

The Courts have also held that the FCC had the authority to refuse a grant to a common carrier by radio of facilities to be used by CATV systems because of the adverse effects which the grant would have on an existing television station. *Carter Mountain Transmission Corp. v. Federal Communications Commission*, 321 F. 2d 359 (1962), *cert. denied*, 375 U.S. 951 (1963).

Analogously, your Committee believes that in view of the potential impact of certain provisions in S. 1361 on our Nation-wide communications service, ample opportunity should have been afforded it to consider those provisions in-depth, and to have held hearings on the communications issues.

Such was not the case, however. Your Committee received S. 1361 on a fifteen day referral after the Judiciary Committee had reported an amendment in the nature of a substitute.

Such a short referral time made hearings impossible, and precluded in depth consideration of many of the complexities of the legislation as they relate to radio, television, CATV, and public broadcasting.

In the future, therefore, when copyright legislation involving broadcasting and CATV is before the Senate, your Committee urges that it be given joint jurisdiction insofar as the legislation would affect those media.

#### PROPOSED COMMITTEE AMENDMENTS TO S. 1361, AS AMENDED

Despite the brief time afforded for its consideration, your Committee proposes five amendments to S. 1361, as amended by the Judiciary Committee.

Our actions should, however, not be interpreted as a Committee endorsement of S. 1361 in its original form, or of the Judiciary's amendment in the nature of a substitute, or of the Judiciary's amendment with our perfecting amendments.

The definitions of "secondary transmission" and "cable system" in section 111 were amended by the Judiciary Committee.

That amendment only affects cable systems located outside the boundaries of the forty-eight contiguous states. It provides, in substance, that cable television systems in these areas may, consistent with the FCC's Rules, tape record broadcast signals for delivery to their subscribers.

The objective is to permit cable systems in these non-contiguous areas to obtain broadcast programming on as nearly as possible the same basis as systems in the contiguous states. The vast distances and ocean areas involved make it a practical impossibility for cable systems in non-contiguous areas to obtain signals off-the-air or by microwave on the same basis as systems within the contiguous states, and they must obtain broadcast signals on a tape delayed basis. Where these non-contiguous areas themselves are vast and isolated with little broadcast service, this objective is especially difficult to achieve.

In Hawaii and Puerto Rico, however, these conditions do not prevail, because these non-contiguous areas have ample broadcast service. Inclusion of those two areas within the scope of the Judiciary Committee's amendment is not therefore warranted.

Accordingly, your Committee proposes an amendment to that Judiciary Committee amendment so that cable systems in Hawaii and Puerto Rico would be covered by law and FCC regulations in the same manner as cable systems in the forty-eight contiguous States.

With regard to programming received by cable systems in non-contiguous areas (other than Hawaii and Puerto Rico) on a taped delayed basis, and then transmitted, the question remains whether they should be regarded as broadcast signals and therefore subject to the FCC's signal carriage limitation.

Your Committee wishes to make clear that the definitions of "secondary transmission" and "cable system" it is recommending is expressly intended to mean that the replaying of taped programs at any time by cable systems in the non-contiguous states, territories or possessions (other than Hawaii and Puerto Rico) shall be deemed to be simultaneous carriage of broadcast signals for purposes of applying the rules of the FCC.

As reported out of the Judiciary Subcommittee, Section 111 restricted the carriage of professional sporting events by cable systems under certain circumstances even though they would otherwise be entitled to a compulsory license to transmit them.

The rationale being that unrestricted cable transmissions of these events could (i) seriously injure the property rights of professional sporting leagues in televising their live sports broadcasts; or (ii) could have serious consequences on gate attendance, such as major and minor league baseball games.

Accordingly, when the following conditions pertained the carriage of an organized sporting event was excluded from the scope of the compulsory license granted to a cable system under section 111:

- (1) the content of a particular program consisted primarily of an organized professional team sporting event occurring simultaneously with the initial primary transmission of the program;

(2) the secondary transmission was made for reception wholly or partly outside the local service area of the primary transmitter; and

(3) the secondary transmission was made for reception wholly or partly within the local service area of one or more television broadcasting stations licensed by the Federal Communications Commission, none of which had received authorization to transmit the program within such area.

Thus, a cable system was barred in the absence of a negotiated copyright fee, from carrying a sporting event of an organized professional team in an area beyond the local service area of a licensed broadcaster, and within the local service area of another licensed broadcasting station which was not authorized to carry that event.

This provision was deleted in its entirety in the full Judiciary Committee, however.

The full Judiciary Committee also considered including legislative language extending to cable television the same restrictions as are contained in Public Law 87-331 for the protection of intercollegiate and scholastic sports from the competition of televised professional games. It did not do so, however.

In its Report accompanying S. 1361, as amended, the Judiciary Committee stated at page 132:

The committee has considered excluding from the scope of the compulsory license granted to cable systems the carriage in certain circumstances of organized professional sporting events. The committee has also considered the inclusion in this legislation of language extending to cable television the same restrictions as are contained in Public Law 87-331 for the protection of intercollegiate and scholastic sports from the competition of televised professional games. Without prejudice to the arguments advanced in behalf of these proposals, the committee has concluded that these issues should be left to the rule-making process of the Federal Communications Commission, or if a statutory resolution is deemed appropriate to legislation originating in the Committee on Commerce. In reaching this determination, the committee notes that the Federal Communications Commission has a pending rulemaking proceeding on this subject.

Accordingly, your Committee requested the expedited views and recommendations of the FCC on these issues in light of the Judiciary Committee's action.

By letter dated July 15, the Commission replied in pertinent part as follows:

The sports carriage question is clearly the most difficult problem the bill poses for the Commission. On the one hand the Commission has suggested to the Congress from time-to-time that regulatory details concerning signal carriage, program exclusivity, and sports carriage should be left to the administrative process. On the other hand, questions might well be raised as to the competence of the Commission and the scope of its authority to consider and reconcile the various interests that are concerned with this matter.

The Commission has nevertheless felt compelled to proceed in this area in an attempt to make our cable television distant signal carriage rules as consistent as possible with what we perceived to be existing congressional policy in the area. Thus, we have commenced a rulemaking proceeding inquiring into the manner in which cable television distant signal sports carriage should be regulated. *Notice of Proposed Rule Making in Docket 19417*, FCC 72-109, 36 FCC 2d 641. But, as we noted in commencing this proceeding, congressional guidance in this most difficult area of regulation would be welcomed.

In a subsequent letter to the Committee dated July 17, the FCC stated:

Should the Congress decide to include language in section 111(c)(2)(c) providing the Commission with additional guidance on the subject of sports carriage, the Commission would prefer that the statutory language give it maximum flexibility and that any additional details of Congressional intent be spelled out in the legislative history.

\*\*\* we feel that a permissive referral to the Commission, indicating that we may give consideration in our adoption of rules to certain factors which Congress may deem relevant and appropriate (for example, the effect on broadcasting, cable television, sports, the policy objectives of Public Law 87-311, etc.) would be preferable . . . Accordingly, something along the following lines might be more desirable:

(c) \*\*\*

\* \* \* \* \*

(2) Notwithstanding the [compulsory licensing] provisions of clause (1) of this subsection, the secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, in the following cases:

\* \* \* \* \*

(C) Where the carriage of signals comprising the secondary transmission of sports events is not permissible under rules which the Federal Communications Commission shall promulgate, *Provided That*, in adopting such rules the Commission may consider the effect upon broadcasting, cable television, sports, the policy objectives of Public Law 87-331, and any other factors it deems appropriate.

Your Committee therefore proposes the amendment suggested by the FCC.

Under it the FCC could by rule exclude carriage of certain sports events which a CATV system would otherwise be entitled to carry if it had received a compulsory license.

The rules which the FCC would be directed to adopt could take into account the effect upon broadcasting, cable television, sports, and any other factors the Commission may appropriately consider.

For example, some have urged that the FCC consider such factors as the development of the cable and broadcasting industries, the availability to the public of reasonable access to televised sporting events, the fostering of scholastic sporting events, attendance within the home territories of scholastic and organized professional teams, and the value of television contracts between scholastic and organized professional sports teams and broadcast stations.<sup>1</sup>

Public Law 87-331 granted professional football, baseball, basketball, and hockey sport leagues two exemptions from the sanctions of the antitrust laws (15 U.S.C. Sections 1291-95).

One exemption authorized agreements between professional sport leagues and television networks to pool and sell as a package the rights to televise league games. Such an agreement may not restrict telecasts of games in any area, "except within the home territory of a member club of the league on a day when such club is playing a game at home."

This "home territory" exception is the second antitrust exemption. It authorizes the restriction of game telecasts in the area surrounding the side of a game—the blackout. This was intended to protect the home teams' live gate.

The law also afforded protection to high schools and colleges from conflicting telecasts of professional football games.

Thus, this amendment to S. 1361 would permit the FCC to promulgate rules affecting compulsory licenses for sports events and carriage of such events by Cable Systems.

The third amendment regarding copyright liability by cable systems which your Committee proposes would "grandfather" in local community cable systems, and exempt them from any copyright liability for secondary transmissions authorized under the FCC's rules.

Specifically, a secondary transmission by a cable system would not be an infringement of copyright if the secondary transmission is made by a cable system serving a local community prior to March 31, 1972, and such local community is so situated as to be principally dependent upon such system for access to broadcast signals.

This amendment is intended to relieve "classic" cable systems from copyright liability for secondary transmissions.

The cable systems your Committee intends to exempt under this provision are those which for all practical purposes furnish an area with substantially all broadcast signals it receives.

In order to assure that such systems do not retain their exemption from copyright liability for secondary transmissions should their essential nature change, the proposed amendment requires the cable system to be serving a "local community" which is so situated as "to be principally dependent" on the cable system "for access to broadcast signals."

Your Committee would expect the FCC to promulgate rules to particularize these standards.

Your Committee did not believe it was desirable to retain the provisions added in the Judiciary Committee requiring broadcasters to pay royalties to record companies and performing artists for playing their records over the air. Accordingly, as a fourth amendment the Committee proposes to amend sections 110 and 114 to exempt them.

<sup>1</sup> See Appendix A, Letter from Senator Hart to Senator Pastore, dated July 12, 1974.

Payment of these royalties could put a financial burden on radio and television stations, especially the small radio broadcasters. This in turn could result in curtailed broadcast service to the nation.

Your Committee has never had ample opportunity to consider the possible consequences of such a provision.

More importantly, those who would be directly affected—the broadcasters, the performers, and the recording companies—have never had an opportunity to appear before the Committee charged with legislative jurisdiction over broadcasting to explain what they perceive to be the effect of this requirement on them.

There are differing views on the matter, but this Committee has never had the opportunity to hear them and weigh the pros and cons.

Your Committee would have been derelict if it ignored a provision which would have such a significant impact on the nation's broadcast service to remain in S. 1361, as amended, without thoroughly exploring its possible consequences.

Finally, your Committee proposes an amendment which would delete the recording arts as beneficiaries of the jukebox royalty, and to eliminate provisions for periodic review of the jukebox royalty in Section 801, 802 and 803.

This amendment would also make the jukebox royalty of \$8 per machine per year under Section 116 a fixed statutory rate. This amendment is a matter of vital concern to this industry of small businessmen because it would protect them against unreasonable demands.

#### CONCLUSION

Despite proposing amendments to the Judiciary Committee's amendment in the nature of a substitute for S. 1361, your Committee emphasizes it is reporting the bill out without recommendation.

Clearly, some of its subject matter substantially affects the broadcasting and cable industries, and is regulatory in nature.

Should it be enacted it will have a significant impact on our nationwide communications system, without the relevant issues having been analyzed in the forum designated the Senate for that purpose, i. e. your Committee on Commerce.

#### AGENCY COMMENTS

Letters received from the Federal Communications Commission dated July 15, 1974 and July 17, 1974 respectively.

FEDERAL COMMUNICATIONS COMMISSION,  
*Washington, D.C., July 15, 1974.*

HON. JOHN O. PASTORE,  
*Chairman, Subcommittee on Communications, Committee on Commerce, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for comments on the regulatory implications of the proposed general copyright law revision bill (S. 1361) as reported out by the Senate Committee on the Judiciary.

Two provisions of the bill appear to relate directly to areas under the Commission's jurisdiction—Section 111 which provides a compul-

sory licensing system for cable television broadcast signal carriage, and Section 114 which requires radio and television broadcasters and cable television systems to pay copyright fees on a compulsory license basis for performance rights in sound recordings.

As the Commission has indicated on a number of occasions in the past, it is essential that cable television operations be brought within the television programming distribution market and passage of copyright legislation doing so at the earliest possible date is highly desirable. In commenting on earlier copyright revision proposals, the Commission's principal concern and suggestion was that the legislation passed, to the extent feasible, eschew regulatory details which it was felt were best left to the administrative process, and concentrate on the broad general guidelines. See e.g., Letter of March 11, 1970, to the Honorable Warren G. Magnuson. The approach to the cable television-copyright issues contained in S. 1361 would appear to be consistent with this suggestion.

With respect to the interaction of the bill with other specific regulatory concerns, three matters warrant special comment. First, there has been considerable controversy concerning the manner in which cable television system carriage of distant signal broadcast sports events should be treated. See, for example, the additional views of Senator Hugh Scott attached to the Committee Report on the bill. The Committee Report indicates that, although consideration had been given to excluding certain organized professional sports events from the scope of the compulsory copyright provided cable systems, it was concluded that "these issues should be left to the rulemaking process of the Federal Communication Commission, or if a statutory resolution is deemed appropriate—to legislation originating in the Committee on Commerce." P. 132.

The sports carriage question is clearly the most difficult problem the bill poses for the Commission. On the one hand the Commission has suggested to the Congress from time-to-time that regulatory details concerning signal carriage, program exclusivity, and sports carriage should be left to the administrative process. On the other hand, questions might well be raised as to the competence of the Commission and the scope of its authority to consider and reconcile the various interests that are concerned with this matter.

The Commission has nevertheless felt compelled to proceed in this area in an attempt to make our cable television distant signal carriage rules as consistent as possible with what we perceived to be existing congressional policy in the area. Thus, we have commenced a rule-making proceeding inquiring into the manner in which cable television distant signal sports carriage should be regulated. *Notice of Proposed Rule Making in Docket 19417*, FCC 72-109, 36 FCC 2d 641. But, as we noted in commencing this proceeding, congressional guidance in this most difficult area of regulation would be welcomed. If it is the judgment of the Congress that this is a matter best left to the processes of the Commission for resolution, we are prepared, in the pending proceeding or through such other proceedings as may be necessary, to attempt to develop an appropriate regulatory framework to govern the carriage of distant signal sports programming. In the absence of further congressional guidance we would necessarily take our direction primarily from the Sport Broadcasting Act, P.L. 87-331,

which is the law setting the pattern for sports black-out policy in the over-the-air broadcast area.

The proposed rule under consideration by the Commission to deal with CATV carriage of sports would track Public Law 87-331. It should be noted that that law deals only with four major professional sports and also provides for the protection of intercollegiate and scholastic sports from the competition of televised professional games. While we have not made any determination as to what rule may be adopted, we believe we have authority to adopt the proposed rule. Should the Congress desire that we go beyond this, we would welcome specific guidance as to congressional intent.

The second area in which it has been indicated our views might be of particular interest concerns the so-called Stevens Amendment (§ 111(e) "secondary transmission", "cable system" definitions).

This portion of the bill has application only to cable systems located outside the boundary of the forty-eight contiguous states. It provides, in substance, that cable television systems in this area may, consistent with the Commission's Rules, tape record broadcast signals for delivery to their subscribers upon payment of the requisite compulsory license fee. It is my understanding that the objective of this amendment was to permit cable systems in these non-contiguous areas to obtain broadcast programming on as nearly as possible the same basis as systems in the contiguous states. Authorization to use signals obtained on a tape delayed basis was, apparently, thought necessary because the vast distances and ocean areas involved made it a practical impossibility for systems in these areas to obtain signals off-the-air or by microwave on the same basis as systems within the contiguous states.

As the Committee Report states "it is the intent of this legislation that such systems, for the purpose of this legislation, shall be regarded as conventional cable systems despite the necessary difference in technology and operating procedure. \* \* \* The treatment accorded such cable systems is not meant to relieve them of the same obligations and limitations as are imposed by the Federal Communications Commission on cable systems in comparable market situations in the contiguous states." P. 134.

This provision would obviously be beneficial to cable television system operators in these non-contiguous areas. Thus from a regulatory point of view our major concern must be with what impact, if any, its passage would have on television broadcast stations and service in the affected areas.

The Commission's cable television rules, as they pertain to the carriage of television broadcast programming, basically provide three protections to local broadcast stations which are intended to assure that the stations remain in good economic health so that continued local broadcast service is assured. The rules: (a) require that local stations are carried on the cable system, (b) limit the number of outside or distant signals that may be brought into the home market of a station, and (c) provide certain program exclusivity or non-duplication protections which are intended to give some measure of protection to the exclusive rights in programs which local stations have purchased.

Although these protections apply to all of the territory of the United States without discrimination, it was recognized that some areas of the country outside of the forty-eight contiguous states might be sufficiently unique in terms of demography, topography, market structure, etc., that the rules ought not be strictly applied there but rather ought to be specifically tailored to the particular situation involved. Accordingly, the Commission added to that section of the rules pertaining to special relief, a provision (§ 76.7(h)) which permits the Commission on its own motion or at the request of a broadcaster, cable television system operator, or other interested party, to relieve the cable system operator of certain burdens of the rules which circumstances indicate ought not be imposed or to impose additional regulations in the public interest. In each case the action requested would be measured "against the policies and standards contained in the new rules." *Reconsideration of the Cable Television Report and Order*, 37 Fed. Reg. 13848 at para. 123 (July 14, 1972). In each instance the burden would be on the moving party to request relief from the rules or the imposition of additional restrictions.

The question presented by the Stevens Amendment is whether these protections would apply to programming carried on a tape delayed basis and if not, what changes in the Commission's rules would be necessary to assure that local broadcast service is adequately protected. Because the programming is received on a tape delayed basis, rather than over-the-air or by microwave, the question arises as to whether the signal carriage limitations in the Commission's rules would be applicable at all. Although there is, of course, no specific Commission precedent on the issue, I am confident that the Commission, faced with the clear intention of the Congress that the programming be so regulated, would hold that it could only be carried subject to those restrictions designed to protect local broadcast service. If necessary to resolve any possible doubts on this score, the Commission would, I think, be prepared to adopt appropriate amendments to the rules. Assuming that this is the situation, I can see no reason why the existing rules, combined with that provision of the rules which permits Commission review of individual problems as they arise, should not assure that broadcasters in these non-contiguous areas receive the same types of protections as do broadcasters in the contiguous states and, in the absence of specific language to the contrary, the Commission would so interpret the language of § 111(e).

The final matter which may be thought to have regulatory implications in addition to copyright overtones in the bill, is that provision of the bill (§ 114) which requires broadcasters and cable television operators to pay copyright fees on a compulsory license basis for performance rights in sound recordings. Although this provision would result in the addition of a certain burden to industries subject to the Commission's jurisdiction, the primary question appears to us to be one of copyright philosophy without direct regulatory overtones.

The following breakdown of broadcast revenues by categories stated in the proposed Section 114 may be of interest. The figures are for 1972, the latest presently available, and do not include data for the 259 FM-only stations which could be obtained only through a search of individual station files.

Radio:	
Under \$25,000.....	42
\$25,000 to \$100,000.....	1, 084
\$100,000 to \$200,000.....	1, 462
Over \$200,000.....	1, 633
Total .....	4, 221
TV:	
Under \$100,000.....	14
\$100,000 to \$200,000.....	13
Over \$200,000.....	598
Total .....	625

As a matter of draftsmanship, it is noted that the categories of Section 114 are stated in a way that does not place in any category a broadcaster with gross revenues of precisely \$100,000 or \$200,000.

I trust that the foregoing expression of my personal views will be helpful to the Committee in its deliberations today. Should a formal vote of the full Commission be desired, I shall be pleased to secure it on Wednesday.

Sincerely yours,

RICHARD E. WILEY,  
*Chairman.*

FEDERAL COMMUNICATIONS COMMISSION,  
*Washington, D.C., July 17, 1974.*

HON. JOHN O. PASTORE,  
*Chairman, Subcommittee on Communications, Committee on Commerce, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: You inquired yesterday as to the Commission's views concerning the inclusion in section 111(c)(2)(c) of S. 1361, the copyright bill, of language along the lines suggested in a July 11 letter from the Commissioner of Baseball, Bowie Kuhn. In substance, the question is, assuming some such language may be adopted, how does the Commission feel about this language or some alternative language. Without repeating the text of the six criteria here, it is noted they also appear in footnote 1 at page 221 of the Senate Judiciary Committee Report on S. 1361.

At page 2 of Chairman Wiley's July 15 letter to you, we discussed why the sports carriage question is clearly the most difficult problem the bill poses for the Commission. We would again invite your attention to that discussion. Now let us turn directly to your present question.

Should the Congress decide to include language in section 111(c)(2)(c) providing the Commission with additional guidance on the subject of sports carriage, the Commission would prefer that the statutory language give it maximum flexibility and that any additional details of Congressional intent be spelled out in the legislative history.

The Commission has not had sufficient time to consider this matter in detail. However, we feel that a permissive referral to the Commission, indicating that we may give consideration in our adoption of rules to certain factors which Congress may deem relevant and appropriate (for example, the effect on broadcasting, cable television,



## MINORITY VIEWS OF MR. TUNNEY

Section 111, the section of the Copyright Bill dealing with the cable television industry, continues to be one of the most troublesome of this omnibus legislation. It was disagreement over what Section 111 should contain which largely resulted in the long delay in achieving a copyright reform bill over the last decade. The Commerce Committee has recommended two substantial changes to Section 111 with which I disagree.

The first amendment deals with the thorny issue of sports programming on CATV. As the Commerce Committee's report recites, there was a provision in the Judiciary Subcommittee draft of S. 1361 which would have effectively "blacked out" almost all distant signals of sports programs for CATV systems operating within the viewing area of a broadcast T.V. station, unless the CATV system could get special permission—at additional cost—from the sports team. This provision, it is fair to say, was one of the two most strongly debated questions in the Judiciary Committee. The Commerce Committee report reflects the argument in favor of the "blackout" clause; CATV on the other side strongly asserted that this clause would cut off substantial programming now available to millions of cable subscribers in the country, and severely undercut CATV's ability to attract new subscribers and keep present ones.

The Judiciary Committee decided that such special treatment of sports—since all other programming on CATV would be subject to a compulsory license—was not appropriate to copyright legislation, and the provision was struck out in its entirety.

An amendment was thereafter urged to direct the Federal Communications Commission to enact rules governing sports carriage on CATV, taking into account enumerated factors, most of which would tend to restrict carriage of sports programs. The Judiciary Committee also rejected this amendment.

The F.C.C. has, for some two years, been considering a Docket concerning limitations on carriage of sports programs on CATV. It is my understanding that this Docket was ready for Commission action last winter, but action was deferred pending appointment and confirmation of additional Commissioners. The Docket therefore is still near final action.

The question of sports carriage on CATV is so complex, that I believe no action should be taken without a much broader hearing record. The type of proposal recommended by the Commerce Committee was never thoroughly explored in hearings. The Congress should await the F.C.C.'s rule-making action. Then, if those rules appear to reflect an improper balance between the concerns of sports and CATV, the Congress could investigate and hold full hearings for remedial legislation.

The other major Commerce Committee amendment to Section 111 provides a "grandfather" exemption from any copyright fees to

CATV systems in existence on March 31, 1972, which serve "local communities" which are "primarily dependant" on such CATV system for reception of broadcast signals.

I believe this amendment will be impossible to fairly administer. There is no logical point at which to say that CATV systems should or should not be included within this exemption. To be sure, it is possible to identify the relatively small number of systems in the U.S. which are truly in the "classic" category: these are communities so isolated by distance or geography that no broadcast signal can be received, short perhaps of erecting a massive antenna. But from that "classic" situation upwards, there is a steady continuum of conditions in which any particular community may find itself. Factors such as the number of broadcast signals receivable, with what clarity, and requiring what kind of investment in an antenna are infinitely variable. Therefore, I believe any implementation of this provision by the F.C.C. or any other body will be of necessity quite arbitrary. I think it is unwise to enact such an ambiguous provision into law.

Secondly, this provision disrupts the basic policy of Section 111, which I believe to be valid, that all CATV systems should make some payment to copyright holders for the use of the product which is shown on the CATV—even if the payment is nominal. One of the very difficult problems in this bill was determining the proper level of fees for the various compulsory licenses established. In the case of cable television, the Judiciary Committee ultimately decided to establish a low schedule of fees, with the understanding that the Copyright Tribunal would very quickly examine and determine the fee schedule, without being affected by the Congress' initial decision. Implicit in this determination by the Judiciary Committee, and reflected in its report was approval for the overall scheme for the compulsory license system, including the principle that all cable systems should pay something.

This amendment, therefore, disrupts that principle. It is impossible to predict just how serious the disruption will be, since we do not know how many CATV systems ultimately could be brought within the ambit of this clause. I greatly fear that the number will be substantial, and that this will be yet a further erosion of the copyright compensation which Section 111 has so belatedly provided for the makers of television programs.

The low fee schedule established in Section 111, ranging from  $\frac{1}{2}\%$  to  $2\frac{1}{2}\%$  of gross subscriber revenues, was felt by the Judiciary Committee to assure that these new fees would not have too disruptive an economic impact on the CATV industry at the outset. For the most part, the "classic" CATV systems which are supposed to be the beneficiaries of this amendment are small, and would thereby have to pay no more than a nominal fee, amounting literally to only pennies per month for each subscriber. This is amply demonstrated by the chart on page 133 of the Judiciary Committee Report. In light of the minimal impact of the fee schedule on small CATV systems, the valid policy of universal liability for fees, and the virtual certitude that application of this provision would be arbitrary, I would urge the members of the Senate to disapprove the "grandfather" amendment.

JOHN V. TUNNEY.

### ADDITIONAL VIEWS OF MR. BAKER

While members of the Committee undoubtedly hold differing views on the principle of a performance royalty, a fair reading of the Committee Report, in my judgment, indicates that when it deleted Section 114 insofar as it pertained to broadcasting and amended related sections, the Committee did not pass on the merits of the matter. Rather, it was concerned that the short referral time made hearings impossible, and precluded an in-depth consideration of the possible consequences of such a provision on broadcasters' ability to serve the public.

Although I support the principle that users of copyrighted sound recordings for profit should pay a performance royalty to those who make a creative contribution to recorded music-performing artists, musicians and record companies, I can appreciate the Committee's desire to examine this matter at a later time.

HOWARD H. BAKER, JR.



APPENDIX A

JULY 12, 1974.

HON. JOHN O. PASTORE,  
*U.S. Senate,*  
*Washington, D.C.*

DEAR JOHN: At the Executive Session of the Communications Subcommittee on the Copyright Bill, S. 1361, I will offer an amendment that represents a compromise of a very thorny issue: the right of cable television to show sporting events.

The amendment would direct the Federal Communications Commission to establish rules on the issue and to consider specific criteria in doing so. As this bill moved through the Judiciary Committee, this amendment was offered by Senator McClellan, at the Copyright Subcommittee markup. It was unacceptable to those who felt sports needed their rights broadly established and specifically delineated in the bill. Senator McClellan did not offer the amendment in full Judiciary Committee markup explaining he felt the amendment might give jurisdiction to the Commerce Committee and thus delay action by the Senate on the bill. Now that the bill has been referred to the Commerce Committee that objection no longer applies.

The amendment is in accord with the recommendations made to the Congress by the Federal Communications Commission and the Director of the Office of Telecommunications Policy.

As the bill now stands, cable is given a compulsory license to show all sports programs. It can show them even in blacked-out areas where other television stations cannot broadcast them.

The report accompanying the bill from the Judiciary Committee states that the Federal Communications Commission may rule on the issue. However, it neither directs the FCC to do so nor establishes any relevant criteria to be considered. This should be done. There is a significant question concerning the scope of the Commission's jurisdiction under the Communications Act and, in addition, their ability fully to consider all relevant criteria in their sports-cable rulemaking proceedings. FCC Chairman Wiley and former Chairman Burch indicated both would welcome the expression by the Congress of general guidance.

The proposed amendment favors neither cable nor the sport leagues. It requires the FCC to consider the rights of both. It provides, in effect, that an arbitrator with time fully to study the complex issue make a decision.

Your support of this amendment would be welcome. Shirley Johnson is familiar with the issue if you would have your staff raise any questions (Ext. 5-5573).

Sincerely,

PHILIP A. HART.

## PROPOSED AMENDMENT TO S. 1361

Insert the following just after Section 111(c)(2)(B):

(C) Where the carriage of signals comprising the secondary transmission of a scholastic or professional team sporting event is not permissible under rules which the Federal Communications Commission shall promulgate, such rules taking into account the effect of such secondary transmission upon:

- (i) the orderly development of the cable industry;
- (ii) the orderly development of the broadcasting industry, including independent and UHF stations licensed by the Federal Communications Commission;
- (iii) the availability to the public of reasonable access to televised sporting events;
- (iv) the fostering of scholastic sporting events;
- (v) attendance and gate receipts within the home territories of scholastic and organized professional teams; and
- (vi) the value of television contracts between scholastic and organized professional sports teams and broadcast stations licensed by the Federal Communications Commission.

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