

Constitution

Article 1 § 8

1976 Act

101 – Definitions

102 – Subject Matter of Copyright: In General

- **Original** works of authorship **fixed** in a **tangible medium** of expression...from which they may be **perceived, reproduced, or otherwise communicated**, either directly or with the aid of a machine or device
- In no case does copyright protection extend to any **idea**

103 – Subject Matter of Copyright: Compilations and Derivative Works

- Copyrights include compilations and derivative work
- The copyright in a compilation or derivative work extends only to the material contributed by the author of such work

104(c) – Subject matter of Copyright: National Origin – Effect of Berne Convention

106 – Exclusive Rights in Copyrighted Works

- Reproduce
- Prepare derivative works
- Distribute copies or phonorecords
- Performance
- Display publicly
- Perform by digital audio transmission

106A – Rights of Certain Authors to Attribution and Integrity

- *Recognizes that two moral rights exist*
 - *Right of authorship or attribution 109(a)(1)(a-b)*
 - *Right of attribution includes the artist's right to claim authorship of the work*
 - *Prevent use of name as the author of any work of visual art that they didn't create.*
 - *Prevent use of name as author if the work in the event of a distortion, mutilation, or other modification of the work that would be prejudicial to reputation*
 - *Right of integrity*
- Last for the life of the author or last surviving author of a joint work
- May not be transferred

107 – Limitations on Exclusive Rights: Fair Use

- *A privilege in others to use copyrighted work in a reasonable manner without the copyright owner's consent*
- Factors
 - Purpose and character
 - Nature of the copyrighted work
 - Amount and substantiality of the portion used in relation to the copyrighted work as a whole
 - 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

- *Protects access for research purposes*

109 – Limitations on Exclusive Rights: Effect of Transfer of Particular Copy or Phonorecord

- *First sale doctrine*
- *Copies made for export and then reimported are also subject to the first sale doctrine*

110 – Limitations on Exclusive Rights: Exemption of Certain Performances and Displays

- *Face to face teaching activities*
- *Instructional broadcasting*
- *Religious services*
- *Live performances without commercial advantage to anyone*
- *Mere reception of broadcasts in a public place*

- *Annual agricultural and horticultural fairs*
- *Public performance in connection with the sale or records and sheet music*
- *Noncommercial broadcasts to the deaf and the blind*
- *Nonprofit performances of dramatic works transmitted to the blind by radio subcarrier*
- *Certain performances conducted by veterans' and fraternal groups, college fraternities and sororities for charitable purposes*

111 – Limitations on Exclusive Rights: Secondary Transmissions

- *Applies to retransmission by cable companies*

112 – Limitations on Exclusive Rights: Ephemeral Recordings

- *Recordings meant to last short, interim duration*
- *Not infringements when done for broadcast purposes.*
- *Have to be temporary, safety net just in case something that happens to the original*

113 – Scope of Exclusive Rights in Pictorial, Graphic, and Sculptural Works

- *Can create useful article but copyright can not copyright method of manufacture*
- *After copyrighted (pictorial and sculptural works) work has been published it is not an infringement to publish pictures in advertising, newspaper*

114 – Scope of Exclusive Rights in Sound Recordings

- *Rights in a sound recording are limited to duplication*

115 – Scope of Exclusive Rights in Nondramatic Musical Works: Compulsory License for Making and Distributing Phonorecords

- *Establishes a compulsory license that significantly limits the reproduction right for musical copyright owners (mechanical license)*
- *Individuals are allowed to make their own sound recording (cover tune) if they pay a compulsory license*
- *Compulsory rate is governed by the Copyright Arbitration Royalty Panel*
- *Serve notice on the copyright holder*
- *Applies to non-dramatic musical works*

116 – Negotiated Licenses for Public Performances by Means of Coin-Operated Phonorecord Players

117 – Limitations on Exclusive Rights: Computer Programs

- *Making extra copies for decompiling is fair use*

118 – Scope of Exclusive Rights: Use of Certain Works in Connection With Noncommercial Broadcasting

119 – Limitations on Exclusive Rights: Secondary Transmissions of Superstations and Network Stations for Private Home Viewing

120 – Scope of Exclusive Rights in Architectural Works

- *Once an architectural work has been constructed such that it is ordinarily visible from a public place, the copyright owner may not prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work*

122 – Limitations on Exclusive Rights: Reproduction for Blind or Other People with Disabilities

- *Exemptions are available for certain governmental and non-profit groups to reproduce works for the blind and people with other disabilities*

201 – Ownership of Copyright

- *Works made for hire doctrine*
- *Vests entire copyright in the employer when a work is made in the context of a work relationship*
- *Unless the parties have expressly agreed otherwise in a written instrument signed by them, the employer owns all the rights*
- *Even if the work is not in an employment context, if it is commissioned, and the parties agree in a written agreement that it shall be considered a work for hire, then it becomes one*
- *Factors to consider whether someone is an employee*
 - *Hired party's right to control the manner and the means by which the product is accomplished*
 - *Skill required*
 - *Source of the instrumentalities and tools*

- *Location of the work (not art)*
- *Duration of the relationship between the parties*
- *Whether the hiring party has a right to assign additional projects to the third party.*
- *Extent of the hired party's discretion over when and how long to work*
- *Method of payment*
- *Hired party's role in hiring and paying assistants*
- *Whether the work is part of the regular business of the hiring party*
- *Whether the hiring party is in business*
- *The provision of employee benefits*
- *Tax treatment of the hired party*
- *Authors of a joint work are coowners of copyright in the work*
 - *Work prepared by two or more authors with the intention that their works be combined into an inseparable unitary work*
 - *Contrasted from collective work where each work is distinct from each other*
 - *Requirements*
 - *Collaboration with intent*
 - *Intent has to be at time the contribution is created*
 - *The contributions have to be inseparable and interdependent*
 - *Each contribution has to independently copyrightable*

202 – Ownership of Copyright as Distinct From Ownership of Material Object

- *The ownership of any particular copy of a work and the ownership of copyright are entirely independent*

203 – Termination of Transfers and Licenses Granted by the Author

- *Creates a right to terminate transfers, including assignments and licenses, of a copyright or any right under a copyright executed by an author on or after January 1, 1978*
- *Does not cover works made for hire or disposition*
- *Termination can occur during the five-year period starting at the end of thirty-five years from the date of execution of the grant*
- *In the case of a joint work, termination needs to be effected by a majority of those who signed the grant*
- *Notice must be served and must be recorded with the Copyright Office*

204 – Execution of Transfers of Copyright Ownership

- *A transfer of copyright ownership must be in writing*

205 – Recordation of Transfers and Other Documents

- *A record of transfer of copyright ownership may be filed with the Copyright Office*
- *Registration gives notice and priority*

301 – Preemption With Respect to Other Laws

- *Federal copyright law preempts common law*

302 – Duration of Copyright: Works Created on or After January 1, 1978

- *In general – life plus 70 years of the author*
- *Joint works – 70 years after the death of the last surviving author*
- *Works for hire – 95 years from date of first publication or 120 years from creation, whichever expires first*

303 – Duration of Copyright: Works Created But Not Published or Copyrighted Before January 1, 1978

- *Endure for the term specified in § 302 and not expire before 12/1/2002 and if published on or before 12/1/2002 the copyright shall not expire before 12/31/2047*

304 – Duration of Copyright: Subsisting Copyrights

- *If the renewal term of copyright was subsisting during 1977 the total term of the copyright shall be calculated as 95 years from the date of first publication*
- *May claim right on a per stripes basis (wife 50% each of two children 25%, each of two grandchildren 17.5%...)*
- *Renewal term of 67 years*

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*

401 – Notice of Copyright: Visually Perceptible Copies

- *Copyright owner may provide notice with © or Copr., year of first publication, and the owner of the copyright where it may be visually perceived directly or with the aid of a machine of device*
- *Proper notice will invalidate a defense of innocent infringement*

402 – Notice of Copyright: Phonorecords of Sound Recordings

- *Copyright owner may provide notice with a “P” in a circle, the year of first publication, and the owner of the copyright where it may reasonably give notice*
- *Proper notice will invalidate a defense of innocent infringement*

403 – Notice of Copyright: Publication Incorporating United States Government Works**404 – Notice of Copyright: Contributions to Collective Works**

- *A separate contribution to a collective work may bear its own notice of copyright*
- *A single notice applicable to the collective work as a whole is sufficient to invoke the provisions of §§ 401(d) and 402(d)*

405 – Notice of Copyright: Omission of Notice on Certain Copies and Phonorecords

- *For works published after 3/1/1989, the absence of copyright notice will not affect the validity of the copyright if:*
 - *Notice was omitted on only a relatively small number of copies distributed to the public*
 - *Registration within 5 years of publication*
 - *Omission was not the fault of the copyright holder*

406 – Notice of Copyright: Error in Name or Date on Certain Copies and Phonorecords

- *Error in copyright notice of the name or date on certain copies will not invalidate the copyright*
- *Publishing without a name or date is considered no notice (governed under § 405)*

407 – Deposit of Copies or Phonorecords for Library of Congress

- *If the copyright owner registers, copies of the work must be deposited (failure to deposit does not effect the validity of the copyright and there is no liability until a deposit is requested by the Copyright Office)*

408 – Copyright Registration in General

- *Copyright owners have the option of registering works*

409 – Application for Copyright Registration

- *Application must include*
 - *Name and address of the claimant*
 - *A statement that the work was made for hire if that is the case*
 - *The title of the work*
 - *The year in which the work was completed*
 - *The date and nation of first publication*

410 – Registration of Claim and Issuance of Certificate

- *Registration will be granted if the material deposited constitutes copyrightable subject matter and the other legal and formal requirements have been met*

411 – Registration and Infringement Actions

- *US works must be registered before an infringement action*

412 – Registration as Prerequisite to Certain Remedies for Infringement

- *Registration is a prerequisite for statutory damages*

501 – Infringement of Copyright

- *Infringement is when someone violates any of the exclusive rights of the copyright owner as provided in §§ 106-122*

502 – Remedies for Infringement: Injunctions

- *Temporary or final injunctions may be ordered within the US*

503 – Remedies for Infringement: Impounding and Disposition of Infringing Articles

- *Infringing copies and phonorecords may be impounded along with materials used for their production*

504 – Remedies for Infringement: Damages and Profits

- A plaintiff may recover the **actual damages** suffered by him or her as the result of the infringement plus **any profits** of the infringer that are attributable to the infringement or the plaintiff may recover **statutory damages**
- Usually damages and lost profits will be the same thing, and the plaintiff will not be able to make a double recovery
- Under statutory damages, the award may increase for intentional infringement
- Statutory damages can be used when there were no profits or where the losses or profits would be difficult to prove
- Statutory damages require registration to have been made before the infringing conduct or three months after
- Statutory damages - \$750-30,000 and \$150,000 for willful infringement, the court can also reduce damages to \$200
- Statutory damages not available against nonprofits...

505 – Remedies for Infringement: Costs and Attorney’s Fees

- Courts have the discretion to award full costs and attorney’s fees

506 – Criminal Offenses

- Criminal infringement consists of willful copying for commercial advantage
- Violations subject to fines and imprisonment
- Infringing copies may be destroyed
- Fraudulent notice and removal of notice are also criminal offenses

507 – Limitations on Actions

- Criminal causes of action must be taken within 5 years of the alleged violation
- Civil actions must be taken within 3 years of the claim

508 – Notification of Filing and Determination of Actions

- Written notice shall be sent within one month of the filing of an action by the clerk of court
- The clerk of the court shall send notice of a judgment or final order within one month

509 – Seizure and Forfeiture

- Copies and phonorecords reproduced, intended for use or sale may be seized and forfeited along with means for reproduction

510 – Remedies for Alteration of Programming by Cable Systems

511 – Liability of States, Instrumentalities of States, and State Officials for

Infringement of Copyright

- The government, both *states and federal*, are **not immune** from copyright law

513 – Determination of Reasonable License Fees for Individual Proprietors

- Individuals have the ability to have a reasonable rate determined to be charged by a performing rights society

601 – Manufacture, Importation, and Public Distribution of Certain Copies

- Provides exceptions for nondramatic literary works in English

602 – Infringing Importation of Copies or Phonorecords

- Gives section 106(3) an extraterritorial reach by providing that the unauthorized importation into the United States of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501

603 – Importation Prohibitions: Enforcement and Disposition of Excluded Articles

- Excluded articles controlled by the Dept. of Treasury and USPS

902 – Subject Matter of Protection

- Semiconductor chip designs protected (a mask work fixed in a semiconductor chip) – mask must be original
- Does not apply to ideas, process, methods of operation...

1301(a) – Designs Protected

- Original designs and vessel hull designs protected
- Design must be original

1909 Act

1 – Exclusive rights as to copyrighted works

(a),(b),(c),(d),(e)

- Print, reprint, publish, copy and vend the copyrighted work
- Translate, dramatize, arrange or adapt
- Deliver, authorize for delivery of, read, present
- Perform or represent publicly a dramatic work
- Perform publicly for profit a musical composition
- Reproduce and distribute by sale or other transfer or by rental, lease, or lending if it be a sound recording

2 – Rights of author or proprietor of unpublished work

- *Unpublished works protected under common law (protection infinite as long as unpublished)*

4 – All writings of author included

- The works for which copyright may be secured under this title shall include all the writings of an author

5 – Classification of works for registration

- Books
- Periodicals
- Lectures, sermons, addresses
- Dramatic or dramatico-musical compositions
- Musical compositions
- Maps
- Works of art; models or designs for works of art
- Reproductions of a work of art
- Drawings or plastic works of a scientific or technical character
- Photographs
- Prints and pictorial illustrations
- Motion-picture photoplays
- Motion pictures other than photoplays
- Sound recordings

10 – Publication of work with notice

- *Notice of copyright is required*

12 – Works not reproduced for sale

- *Works not reproduced for sale may still be protected by copyright*

Berne

Article 5 – see page 274