Note 12

The new proclamations may be retroactive in terms and effect. Id.

So long as a state of war existed between Spain and the United States Spanish subjects had no right to the privilege of copyright conferred upon Spanish citizens by proclamation prior to the declaration of war. 1898, 22 Op.Atty.Gen. 268.

13. Foreign copyrights

British copyright based on certification by acting Colonial Secretary of Trinidad to receipt of three copies of booklet was valid and would be protected against infringement, though copies were not delivered by printers directly but by copyright holder as their agent. Khan v. Leo Feist, Inc., C.C.A.N.Y.1947, 165 F.2d 188.

A British copyright protects the author in England, but, unless he also copyrights the work in the United States, affords him no protection against any one who brings out in this country a piratical edition of the work. American Code Co. v. Bensinger, C.C.A.N.Y.1922, 282 F. 829.

Distribution by composer of stencil copies of his musical composition in Palestine, while Palestine was a British protectorate, would not forfeit any rights composer had under the British Copyright Act of 1911. Mills Music v. Cromwell Music, D.C.N.Y.1954, 126 F.Supp. 54.

§ 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.

Pub.L. 94–553, Title I, § 101, Oct. 19, 1976, 90 Stat. 2546.

Historical Note

Notes of Committee on the Judiciary, House Report No. 94–1476. Scope of the Prohibition. The basic premise of section 105 of the bill [this section] is the same as that of section 8 of the present law [former section 8 of this title]—that works produced for the U.S. Government by its officers and employees should not be subject to copyright. The provision applies the principle equally to unpublished and published works.

The general prohibition against copyright in section 105 [this section] applies to "any work of the United States Government," which is defined in section 101 [section 101 of this title] as "a work prepared by an officer or employee of the United States Government as part of that person's official duties." Under this definition a Government official or employee would not be prevented from securing copyright in a work written at that person's own volition and outside his or her duties, even though the subject matter involves the Government work or professional field of the official or employee. Although the wording of the definition of "work of the United States Government" differs somewhat from that of the definition of "work made for hire," the concepts are intended to be construed in the same way.

A more difficult and far-reaching problem is whether the definition should be broadened to prohibit copyright in works prepared under U.S. Government contract or grant. As the bill is written, the Government agency concerned could determine in each case whether to allow an independent contractor or grantee, to secure copyright in works prepared in whole or in part with the use of Government funds. The argument that has been made against allowing copyright in this situation is that the public should not be required to pay a "double subsidy," and that it is inconsistent to prohibit copyright in works by Government employees while permitting private copyrights in a growing body of works created by persons who are paid with Government funds. Those arguing in favor of potential copyright protection have stressed the importance of copyright as an incentive to creation and dissemination in this situation, and the basically different policy considerations, applicable to works written by Government employees and those applicable to works prepared by private organizations with the use of Federal funds.

The bill deliberately avoids making any sort of outright, unqualified prohibition against copyright in works prepared under Government contract or grant. There may well be cases where it would be in the public interest to deny copyright in the writings generated by Government research contracts and the like; it can be assumed that, where a Government agency commissions a work for its own use merely as an alternative to having one of its own employees prepare the work, the right to secure a private copyright would be withheld. However, there are almost certainly many other cases where the denial of copyright protection would be unfair or would hamper the production and publication of important works. Where, under the particular circumstances, Congress or the agency involved finds that the need to have a work freely available outweighs the need of the private author to secure copyright, the problem can be dealt with by specific legislation, agency regulations, or contractual restrictions.

The prohibition on copyright protection for United States Government works is not intended to have any effect on protection of these works abroad. Works of the governments of most other countries are copyrighted. There are no valid policy reasons for denying such protection to United States Government works in foreign countries, or for precluding the Government from making licenses for the use of its works abroad.

The effect of section 105 [this section] is intended to place all works of the United States Government, published or unpublished, in the public domain. This means that the individual Government official or employee who wrote the work could not secure copyright in it or restrain its dissemination by the Government or anyone else, but it also means that, as far as the copyright law is concerned, the Government could not restrain the employee or official from disseminating the work if he or she chooses to do so. The use of the term "work of the United States Government" does not mean that a work falling within the definition of that term is the property of the U.S. Government.

LIMITED EXCEPTION FOR NATIONAL TECHNICAL INFORMATION SERVICE

At the House hearings in 1975 the U.S. Department of Commerce called attention to its National Technical Information Service (NTIS), which has a statutory mandate, under Chapter 23 of Title 15 of the U.S. Code [chapter 23 (section 1151 et seq.) of Title 15, Commerce and Trade],

The bill deliberately avoids making any sort of outright, unqualified prohibition against copyright in works prepared under Government contract or grant. There may well be cases where it would be in the public interest to deny copyright in the writings generated by Government research contracts and the like; it can be assumed that, where a Government agency commissions a work for its own use merely as an alternative to having one of its own employees prepare the work, the right to secure a private copyright would be withheld. However, there are almost certainly many other cases where the denial of copyright protection would be unfair or would hamper the production and publication of important works. Where, under the particular circumstances, Congress or the agency involved finds that the need to have a work freely available outweighs the need of the private author to secure copyright, the problem can be dealt with by specific legislation, agency regulations, or contractual restrictions.

The prohibition on copyright protection for United States Government works is not intended to have any effect on protection of these works abroad. Works of the governments of most other countries are copyrighted. There are no valid policy reasons for denying such protection to United States Government works in foreign countries, or for precluding the Government from making licenses for the use of its works abroad.

The effect of section 105 [this section] is intended to place all works of the United States Government, published or unpublished, in the public domain. This means that the individual Government official or employee who wrote the work could not secure copyright in it or restrain its dissemination by the Government or anyone else, but it also means that, as far as the copyright law is concerned, the Government could not restrain the employee or official from disseminating the work if he or she chooses to do so. The use of the term "work of the United States Government" does not mean that a work falling within the definition of that term is the property of the U.S. Government.

LIMITED EXCEPTION FOR NATIONAL TECHNICAL INFORMATION SERVICE

At the House hearings in 1975 the U.S. Department of Commerce called attention to its National Technical Information Service (NTIS), which has a statutory mandate, under Chapter 23 of Title 15 of the U.S. Code [chapter 23 (section 1151 et seq.) of Title 15, Commerce and Trade], to operate a clearinghouse for the collection and dissemination of scientific, technical and engineering information. Under its statute, NTIS is required to be as self-sustaining as possible, and not to force the general public to bear publishing costs that are for private benefit. The Department urged an amendment to section 105 [this section] that would allow it to secure copyright in NTIS publications both in the United States and abroad, noting that a precedent exists in the Standard Reference Data Act (15 USC § 290(e) [section 290e of Title 15, Commerce and Trade]).

In response to this request the Committee adopted a limited exception to the general prohibition in section 105 [this section], permitting the Secretary of Commerce to "secure copyright for a limited term not to exceed five years, on behalf of the United States as author or copyright owner" in any NTIS publication disseminated pursuant to 15 U.S.C. Chapter 23 [chapter 23 (section 1151 et seq.) of Title 15, Commerce and Trade]. In order to "secure copyright" in a work under this amendment the Secretary would be required to publish the work with a copyright notice, and the five-year term would begin upon the date of first publication.

Proposed Saving Clause. Section 8 of the statute now in effect [former section 8 of this title] includes a saving clause intended to make clear that the copyright protection of a private work is not affected if the work is published by the Government. This provision serves a real purpose in the present law because of the ambiguity of the undefined term "any publication of the United States Government." Section 105 of the bill [this section], however, uses the operative term "work of the United States Government" and defines it in such a way that privately written works are clearly excluded from the prohibition; accordingly, a saving clause becomes superfluous.

Retention of a saving clause has been urged on the ground that the present statutory provision is frequently cited, and that having the provision expressly stated in the law would avoid questions and explanations. The committee here observes: (1) there is nothing in section 105 [this section] that would relieve the Government of its obligation to secure permission in order to publish a copyrighted work; and (2) publication or other use by the Government of a private work would not affect its copyright protection in any way. The question of use of copyrighted material in documents

published by the Congress and its Committees is discussed below in connection with section 107 [section 107 of this title].

Works of the United States Postal Service. The intent of section 105 [this section] is to restrict the prohibition against Government copyright to works written by employees of the United States Government within the scope of their official duties. In accordance with the objectives of the Postal Reorganization Act of 1970, this section does not apply to works created by employees of the United States Postal Service. In addition to enforcing the criminal statutes proscribing the forgery or counterfeiting of postage stamps, the Postal Service could, if it chooses, use the copyright law to prevent the reproduction of postage stamp designs for private or commerical non-postal services (for example, in philatelic publications and catalogs, in general advertising, in art reproductions, in textile designs, and so forth). However, any copyright claimed by the Postal Service in its works, including postage stamp designs, would be subject to the same conditions, formalities, and time limits as other copyrightable works.

Conference Committee Notes, House Conference Report No. 94–1733. Senate Bill. Under section 105 of the Senate bill [this section], both published and unpublished works of the United States Government were excluded from copyright protection.

House Bill. The House bill retained the general prohibition against copyright in U.S. Government works, but made one specific exception in favor of any publication of the National Technical Information Service. The Secretary of Commerce was authorized to secure copyright in such works, on behalf of the United States as author or copyright owner, for a limited term not to exceed five years.

Conference Substitute. The conference substitute conforms to the Senate bill. Because of the lack of Senate hearings on the issue, the conferees recommended that the NTIS request for limited copyright in order to control foreign copying be considered at hearings early in the next session. In the interim, consideration should also be given to compensatory appropriations to NTIS in lieu of revenues lost as a result of unauthorized foreign copying.

The Department of Commerce testified on May 8, 1975, before the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice that the lack of copyright protection in publications of its National Technical Information Service (NTIS) posed special problems, since NTIS is required (15 USC 1151–7 [sections 1151 to 1157 of Title 15, Commerce and Trade]) to be self-sustaining to the fullest extent feasible. Widespread copying of NTIS publications is especially prevalent in foreign nations. In Japan it is reported that NTIS reproductions are sold having a value of $3,000,000 annually. A United Kingdom copier sells nearly twice as many copies of NTIS publications as NTIS does directly to the U.K. The USSR buys substantial volume of NTIS publications from European copiers for further copying in the USSR. The lack of copyright protection in NTIS publications also results in widespread foreign use of U.S. tax-funded research and development without any return to the U.S. U.S. organizations also sell NTIS publications to foreign buyers without recouping for the taxpayer, as represented by NTIS, monies adequately reflecting the value of the scientific, engineering, and technical information contained therein.

Effective Date. Section effective Jan. 1, 1978, except as otherwise expressly provided, see section 102 of Pub.L. 94–553, set out as a note preceding section 101 of this title.

Cross References

Copyright infringement actions against United States in Court of Claims, see section 1498 of Title 28, Judiciary and Judicial Procedure.

Dissemination of technical, scientific and engineering information by Department of Commerce, see section 1151 et seq. of Title 15, Commerce and Trade.

Liability of Librarian of Congress for copyright infringement, see section 170 of Title 2, The Congress.

Limitation on liability of United States for infringement of copyright, see section 2113 of Title 44, Public Printing and Documents.

United States copyright and renewal rights in standard reference data, see section 290e of Title 15, Commerce and Trade.

Library

Copyrights ⟸4.

Notes o

Bulletins 1
Compositions 2
Drawings or sketches 3
Facts incorporated in government records 4
Maps 5
Statues 6
Works of government agents or employees 7

---

1. Bulletins

An article purporting to contain a proposed program for observance of "Peace Day" by public schools, taken almost exclusively from an official bulletin published by the United States Bureau of Education, was not copyrightable under former section 8 of this title which withdrew from copyright publications of the United States government. Du Puy v. Post Telegram Co., N.J.1914, 210 F. 883, 127 C.C.A. 493.

2. Compositions

Composition copied from government publication cannot be copyrighted. Andrews v. Guenther Pub. Co., D.C.N.Y.1932, 60 F.2d 555.

3. Drawings or sketches

A person who accompanied a government expedition, upon the understanding that all sketches and drawings he might make were to be the exclusive property of the government, where the same, upon his return, were incorporated in his report, and published for distribution, was not entitled to a copyright therein. Heine v. Appleton, C.C.N.Y.1857, Fed.Cas. No.6,324.

4. Facts incorporated in government records

Historical facts contained in government records are not subject to copyright protection, and factual material published and incorporated in official government records for benefit of public at large may not be privately appropriated and taken from the public under guise of copyright. Greenbie v. Noble, D.C.N.Y. 1957, 151 F.Supp. 45.