COPYRIGHT LAW REVISION

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AUTHOR:

Echols, Guy C.

Paralegal Specialist, Copyright Office, Library of Congress

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ISSUE DEFINITION

For more than 20 years, Congress has been attempting to modernize the current United States copyright law, enacted in 1909. Recent technological developments such as improved photocopying procedures, increased utilization of computers for storage of information, and publication and the development of cable television have highlighted the increasing inadequacies of the current copyright law. A much-amended general copyright revision bill, S. 22, finally received approval by both Houses during the closing days of the 94th Congress. It was signed by President Ford on Oct. 19, 1976, and became effective on Jan. 1, 1978. The new law seeks to reconcile conflicting interests of creators, users, and the public, and to devise a modern statute that will encourage creativity while recognizing the interests of the public.

On Sept. 26, 1977, President Carter named five commissioners to the Copyright Royalty Tribunal. The nominations were confirmed by the Senate on Oct. 26, 1977, and the Tribunal has already begun to hold a series of background meetings with representatives of the various industries that will be affected by their legislative mandate to review and distribute royalties.

The National Commission on New Technological Users of Copyrighted Works was granted an extension of seven months in which to file a final report relative to possible legislation for granting copyright protection to new technologies. The report was submitted on July 31, 1978.

BACKGROUND AND POLICY ANALYSIS

Under the new copyright law, both unpublished and published material will receive statutory copyright protection from the moment of creation. The term of such statutory protection will be the life of the author, plus 50 years. Works made for hire will receive a term of protection of 75 years. Works already in their first term of copyright on Jan. 1, 1978, will still have to be renewed, but the renewal will be for 47 years. Works in their second term of copyright on the effective date are to be extended for a period of 75 years from the date the copyright was first secured.

Limited exemptions are provided for the photocopying or recording of copyrighted materials by libraries and educators. Guidelines for photocopying in inter-library arrangements have been established by the National Commission on New Technological Uses of Copyrighted Works.

Though the U.S. Supreme Court had held in Teleprompter v. Columbia Broadcasting Systems, Inc. (415 U.S. 394) and earlier cases that cable television systems were not required to pay royalties for transmitting copyrighted programs, the new copyright law provides for the payment of copyright royalties based essentially on the number of distant signals carried. This compulsory licensing system is also extended to some cable systems carrying Mexican and Canadian signals in the United States. Conditions also are set forth under the compulsory license whereby certain cable systems outside the continential United States may be permitted to tape programs for nonsimultaneous transmission.

Performances of copyrighted works by public broadcasting entities are also brought under copyright. However, in the case of public broadcasts of published nondramatic musical works and published pictorial, graphic, and

sculptural works, a compulsory license mechanism is available if voluntary licenses cannot be negotiated.

The copyright law enacted in 1909 did not require jukebox operators to pay royalties for the performance of music on their coin-operated machines. Under the new copyright law, each operator is required to pay an annual license fee of $8.00 per box, to be distributed equitably among the copyright proprietors by the newly established Copyright Royalty Tribunal.

Concerning the compulsory license or mechanical royalty on phonograph records first provided for in the 1909 copyright law, the rate was increased from 2 cents per side to 2-3/4 cents per work or 1/2 cent per miniute of playing time, and based on the number of recordings made and distributed.

A Copyright Royalty Tribunal is established for the purpose of reviewing periodically and adjusting the statutory royalty rates provided for under the four compulsory licenses -- mechnical, cable, jukebox and public broadcasting. The five-member tribunal also has jurisdiction over the disputes which may arise from distribution of the royalties collected under the cable and jukebox licenses.

The former "manufacturing clause," which required works by United States citizens to be printed in the United States, has been enlarged to include possible manufacture in Canada. This restriction, however, will be completely phased out by July 1, 1982.

Title II, as incorporated in the Senate version of S. 22, would have created a new limited protection for "original" rather than "novel" designs of useful articles. The provisions, however, left unanswered two questions: (1) Which Government agency should administer this new design protection? (2) Would typeface designs be protected under the new system? Accordingly, Title II was deleted from the legislation by the House Judiciary Committee with the recommendation that a new bill on the subject be considered during the first session of the next Congress.

The National Technical Information Service, during the hearings on H.R. 2223 before the House Subcommittee, requested a special 5-year term of copyright protection for their publications. Though Government publications are not copyrightable under Sec. 105 of the copyright law, NTIS reported that there was widespread copying of their particular publications in foreign countries. Since they are required by law to be self-sustaining to the fullest extent feasible, they requested copyright protection in order to prevent continued duplication abroad without reimbursement for U.S. tax-funded research and technical development. Since the Senate had not had a chance to hold hearings on this matter, the Senate conferees asked that hearings on the problem be scheduled early in the first session of the 95th Congress.

Legislation designed to provide for the payment of royalties to recording artists and record manufacturers for the commercial use of their recordings by broadcasters and jukebox operators has been an integral part of the copyright revision bills introduced in prior Congresses. In the 94th Congress, however, separate bills, S. 1111 (Hugh Scott), H.R. 5345, H.R. 7059, and H.R. 7750 (Danielson), and H.R. 8015 (Mitchell) were introduced. Though a hearing on S. 1111 was held in the Senate in July 1975, no provision for performance royalties was included in the final copyright revision bill. The register of copyrights in Sec. 114(d) is directed, nonetheless, to file a report with Congress on Jan. 3, 1978, containing information on the status of

such rights in foreign countries, the views of interested persons with regard to the feasibility of providing for a performance royalty and making recommendations for possible amendatory legislation.

Policy questions that have evolved from the current copyright revision legislation are:

(1) Should a limited period of protection be given "original" designs of useful articles? If so, what Government agency should be responsible for administering the system? Should new typeface designs be given such protection?

(2) Should NTIS publications by copyrightable even though they may be Government publications?

(3) Should performing artists and sound recording producers be rewarded for their more popular renditions and musical arrangements by receiving a royalty based upon the number of times their recorded rendition is played commercially?

P.L. 94-553 (S. 22) provided for a general revision of the Copyright Law, title 17 of the United States Code. S. 22 passed the Senate, with amendments, on Feb. 19, 1976, by a vote of 97 to 0. Amendments 1353 (Tunney) would have reduced the interval for periodic review of royalty rates by the Copyright Royalty Tribunal from 10 to 7 years. The amendment was defeated by a vote of 28 to 23 on Feb. 16, 1976. Amendment 1383 (Humphrey) would have eliminated the literary, pictorial, graphic or sculptural categories from the compulsory license provisions for public broadcasting organizations contained in Sec. 118. The amendment was modified but tabled by a vote of 61 to 22. Amendment 1395 (Hollings) would have fixed the jukebox royalty at $8.00 per year, but was defeated. Amendment 1397 (Tunney), reducing the periodic review of royalty rates by the Copyright Royalty Tribunal to 8 years, was defeated. Amendment 1402 (Hathaway) to determine copyright liability of certain CATV systems on a computed rather than on a gross annual income base was adopted. The House Committee on the Judiciary reported their version of S. 22 (H.Rept. 94-1476) on Sept. 3, 1976. H.Res. 1550, introduced Sept. 15, 1976, by the House Committee on Rules, permitted placing S. 22 on the calendar; it was passed by the House on Sept. 22, 1976, and sent to the conference committee. The conference report was filed Sept. 29, 1976 (H.Rept. 94-1733), and was accepted by both Houses on Sept. 30, 1976. President Ford signed the bill on Oct. 19, 1976.

During the 95th Congress, five bills were introduced to amend the Copyright Act of 1976. H.R. 6063, introduced by Rep. Danielson on Apr. 5, 1977, and referred to the Committee on the Judiciary, would have provided for a performance right in sound recordings. Hearings were held on H.R. 6063 on May 24, 1978, before the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice.

On Jan. 3, 1978, the Copyright Office submitted to Congress, pursuant to section 114(d) of the newly revised copyright law (P.L. 94-533), a report entitled "Performance Rights in Sound Recordings." This report was subsequently published as Committee Print No. 95-15, by the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice.

H.R. 8098 was introduced by Reps. Spellman and Fraser on June 29, 1977, and would have removed certain limitations pertaining to the transmission of performances of dramatic literary works designed specifically for blind or

other handicapped persons. Another bill, H.R. 8261, was introduced by Rep. Drinan on July 13, 1977, to provide a moral right to the author or his legal representative for the entire term of the copyright. H.R. 14293 was introduced on Oct. 12, 1978, by Reps. Edwards, Mineta, and McCloskey to include pictorial, graphic, sculptural works and photographic masks used to imprint patterns on intergrated circuit chips under copyright protection. S. 3324 was introduced by Sen. Gravel on July 19, 1978, to amend section 111 of title 17 (U.S.C.) to clarify copyright liability status of delayed secondary transmissions by certain retransmission services located outside the continental United States. Another bill of interest, S. 3139, was introduced by Sen. Javits on May 24, 1978, to amend the National Labor Relations Act to give employers and performers in the performing arts the same rights given by section 8(f) of such act to employees in the construction industry. No further action was taken on any of these bills prior to adjournment of the 95th Congress.

LEGISLATION

N/A

HEARINGS

U.S. Congress. House. Committee on the Judiciary. Subcommittee on Courts, Civil Liberties, and the Administration of Justice. Performance rights in sound recordings. Hearings, 95th Congress, 2d session. May 24, 1978. [Not yet printed]

U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Patents, Trademarks, and Copyrights. Performance royalty. Hearings, 94th Congress, 1st session, on S. 1111. July 24, 1975. Washington, U.S. Govt. Print. Off. 1975. 93 p.

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----- Commission on New Technological Uses of Copyrighted Works; report to accompany H.R. 4836. (Includes cost estimate of the Congressional Budget Office.) Washington, U.S. Govt. Print. Off., Apr. 6, 1977. 4 p. (95th Congress, 1st session. House. Report no. 95-187)

----- Extending prohibition of piracy of sound recordings. Report together with dissenting views to accompany H.R. 13364. [Washington, U.S. Govt. Print. Off.] 1974. 17 p. (93d Congress, 2d session. House. Report no. 93-1389)

----- Copyright law revision. Report together with additional views to accompany S. 22. Washington [U.S. Govt. Print. Off.] Sept. 3, 1976. 368 p. (94th Congress, 2d session, H. Rept. no. 94-1476)

U.S. Congress. Senate. Committee on Commerce. Copyright law revision. Report to accompany S. 1361 together with minority and additional views. Washington, U.S. Govt. Print. Off., 1974. 82 p. (93d Congress, 1st session. Senate. Report no. 93-1035)

U.S. Congress. Senate. Committee on the Judiciary. Copyright law revision. Report together with additional and minority views to accompany S. 1361. Washington, U.S. Govt. Print. Off., July 3, 1974. 228 p. (93d Congress, 1st session. Senate. Report no. 93-983)

----- Copyright Law Revision. Report together with additional views to accompany S. 22. [Washington, U.S. Govt. Print. Off.] 1975. 169 p. (94th Congress, 1st session. Senate Report no. 94-473).

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----- Performance rights in sound recordings. Washington, U.S. Govt. Print. Off., 1978. 1162 p. (95th Congress, 2d Session. House Committee Print No. 15).

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CHRONOLOGY OF EVENTS

12/07/78 -- Copyright Office issues notice to advise the public of the extension of time for interested persons to submit written statements relating to the compulsory license for making and distributing phonorecords ("mechanical license"). 37 CFR Part 201.

10/31/78 -- Copyright Office issues final regulation. 37 CFR Part 201, Recordation and certification of coin-operated phonorecord players.

10/23/78 -- Copyright Royalty Tribunal issues proposed rule. 37 CFR Part 301, Agency Rules of Procedure. The CRT proposed rules of procedure includes regulations required by the Government in the Sunshine Act, the Privacy Act, the Freedom of Information Act, and the equal employment opportunity procedures of the Tribunal. Comments must be received on or before Nov. 8, 1978.

09/28/78 -- Copyright Office issues amendments to interim regulations and notice of hearings. 37 CFR Part 201, Compulsory license for making and distributing phonorecords. NOTE: The Copyright Office will hold hearings on Nov. 28 and 29, 1978, to hear testimony on amendments to Secs. 201. 18 and 201. 19 of Interim Regulation 201.

09/12/78 -- Copyright Royalty Tribunal issues final rule. 37 CFR Ch. III, Part 303, Access to phonorecord players (jukeboxes). Regulations for Copyright Owner Access to Phonorecord Player (Jukeboxes) and certain Establishments.

09/19/78 -- Copyright Office issues final regulations. 37 CFR Part 202, Registration of Claims to Copyright -- Deposit Requirements.

09/12/78 -- Copyright Roylty Tribunal issues final rule. 37 CFR Part 305, Claims to phonorecord player (Jukebox) royalty fees -- Regulations for copyright owners filing claims to phonorecord player (Jukebox) royalty fees.

09/11/78 -- Copyright Royalty Tribunal issues final rule. 37 CFR Part 302, Filing of Claims to Cable Royalty Fees, Proof of Fixation -- Rule with Respect to Proof of Fixation of Copyright Works.

08/08/78 -- Copyright Office issues final regulation. 37 CFR Part 202, Recordation of transfers and other documents.

07/31/78 -- National Commission on New Technological Uses of Copyrighted Works (CONTU) issues final report.

07/28/78 -- Copyright Royalty Tribunal issues proposed rule. 37 CFR Part 302, Filing of claims to cable royalty fees; proof of fixation.

-- Copyright Royalty Tribunal issues proposed rule. 37 CFR Part 305, Claims to phonorecord player (jukebox) royalty fees.

07/20/78 -- Copyright Office issues final regulations. 37 CFR Part 202, Registration of Claims to Copyright Deposit Requirements; Motion Pictures.

06/27/78 -- Copyright Office issues final regulations on compulsory license for cable systems.

06/08/78 -- The Copyright Royalty Tribunal establishes terms and rates of royalty payments for certain activities using published nondramatic musical works during a period beginning June 8, 1978, and ending Dec. 31, 1982, for compliance by public broadcasting entities.

06/06/78 -- The Copyright Royalty Tribunal (CRT), implements 17 U.S.C. 111(d)(5)(A) by adopting a final rule, 37 CFR 302, which prescribes requirements whereby persons claiming to be entitled to compulsory license fees for secondary transmissions by cable systems shall file claims with CRT.

06/02/78 -- Copyright Office implementation of 17 U.S.C. 508(c), requiring the recording of all documents received from the clerk of the courts regarding any action under the copyright statute.

05/24/78 -- The House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice held hearings on H.R. 6063, a bill to amend Section 114 of P.L. 94-553, providing performance rights in

sound recordings.

05/08/78 — Copyright Royalty Tribunal issued proposed phonorecord player access regulations, and notice of public hearing scheduled for June 21, 1978.

05/05/78 — Copyright Royalty Tribunal issued proposed rulemaking with respect to filing of claims to cable royalty fees.

03/21/78 — Addendum to the Report of the Register of Copyrights on Performance Rights in Sound Recordings filed with Congress.

03/15/78 — National Commission on New Technological Use of Copyrighted Works (CONTU), Draft Report of the Subcommittee on Photocopying, issued for public comment.

01/11/78 — Report on performance rights in sound recordings filed with Congress.

09/26/77 — President Carter named five commissioners to the Copyright Royalty Tribunal.

10/19/76 — S. 22 was enacted into law as P.L. 94-553.

09/30/76 — The conference report on S. 22 (H.R. 94-1733) was approved by both Houses of Congress.

09/22/76 — The House passed S. 22, amended. A conference was scheduled in the House.

08/27/76 — The House Judiciary Committee favorably voted S. 22, as amended, out of Committee by a vote of 27 to 1.

08/06/76 — The House Judiciary Committee's Subcommittee on Courts, Civil Liberties, and the Administration of Justice submitted an amendment in the nature of a substitute to S. 22 to the full Committee.

02/19/76 — The Senate passed S. 22, a bill for the general revision of the Copyright Law, title 17, United States Code, with amendments, by a vote of 97 to 0.

10/07/75 — The Senate Committee on the Judiciary ordered S. 22 to be favorably reported, with amendments.

05/07/75 — The House Judiciary Committee's Subcommittee on Courts, Civil Liberties, and the Administration of Justice began a series of hearings on H.R. 2223, H.R. 4965, and H.R. 5345. Testimony has been received from representatives of the Library of Congress, the Copyright Office, and the Departments of State, Justice, and Commerce. Some of the key issues were identified as being library photocopying, fair use and educational uses in general, performance royalties, computer uses of copyrighted works, copyright

liability of CATV and public broadcasting systems, and the role of the Copyright Tribunal.

02/25/75 -- The U.S. Supreme Court affirmed by an equally divided court the decision of the U.S. Court of Claims in Williams & Wilkins v. United States. Mr. Justice Blackmun took no part in the decision. The Court of Claims had held by a 4-3 vote that photocopying by the National Institutes of Health and the National Medical Library of articles from scientific journals published by Williams & Wilkins constituted "fair use."

12/31/74 — P.L. 93-573 extended a limited copyright in sound recordings indefinitely, increased the criminal penalties for piracy and counterfeiting of sound recordings, extended the duration of copyright protection in cases where the renewal period for copyright would expire prior to Dec. 31, 1976; and also established a National Commission on New Technological Uses of Copyrighted Works.

10/07/74 -- H.R. 13364 was passed by the House of Representatives.

09/30/74 — The House Judiciary Committee reported H.R. 13364 out of committee with amendments (H.Rept. 93-1389).

09/09/74 — The Senate passed S. 1361 with several amendments. Since it was not expected that the bill would be passed by the House before adjournment, another bill, S. 3976, was immediately introduced and passed in order to preserve the limited copyright in sound recordings and the renewal copyrights which might expire before Dec. 31, 1976, to increase the criminal penalties on pirated and counterfeit sound recordings, and to establish a National Commission on Technological Use of Copyrighted Works.

07/29/74 — The Commerce Committee of the Senate submitted a report on S. 1361, with minority and additional views, dealing mostly with the regulation of cable television and performance royalties.

07/09/74 — Senator Pastore requested that S. 1361, as amended by the Senate Judiciary Committee on July 3, be referred to the Senate Commerce Committee for review of provisions concerning radio and television.

07/03/74 — The Senate Judiciary Committee submitted its report on S. 1361 with amendments and minority views.

03/04/74 — The U.S. Supreme Court held in Teleprompter Corp. v. Columbia Broadcasting System that a CATV system's importation of "distant" signals does not entail copyright infringement liability since by extending the range of viewability, CATV does not interfere with the copyright owners' means of extracting recompense from advertisers which sponsor the copyrighted programs on television.

11/27/73 — The U.S. Court of Claims determined in Williams & Wilkins

v. United States that where Federal nonprofit institutions were devoted solely to advancement and dissemination of medical knowledge and normally restricted photocopying to a single copy of a single article of less than 50 pages, the practice constituted "fair use" of copyrighted material and would not be an infringement of the copyright.

06/07/72 — The U.S. Supreme Court reversed the Circuit Court holding in Midwest Video Corp. v. United States.

10/15/71 — P.L. 92-140, providing for a limited copyright in sound recordings, was enacted for the purpose of discouraging record and tape piracy.

07/04/71 — FCC announced suspension of its mandatory origination rules for cable television.

05/13/71 — A Circuit Court held in Midwest Video v. United States that the FCC lacked the authority to impose program origination rules on existing cable television systems.

01/01/71 — The FCC rule that cable systems having 3,500 or more subscribers were to originate programs went into effect.

08/07/68 — The Circuit Court for the 8th District held in Black Hills Video Corp. v. Federal Communications Commission that prohibiting duplication by CATV systems of copyrighted programs on the same day as the local originating station was not inconsistent with Federal copyright laws, since CATV systems did not "perform" but rather carried the programs for the originating stations.

06/17/68 — In Fortnightly v. United Artists Corp., the U.S. Supreme Court decided that a CATV system, by receiving and transmitting copyrighted motion pictures did not "perform" but rather carried the programs for the originating stations.

04/12/67 — A general copyright revision bill, H.R. 2512, passed the House of Representatives.

08/02/66 — The Senate Judiciary Committee began hearings on the copyright liability of CATV systems.

07/20/64 — The first general copyright revision bill, S. 3008, was introduced in the Senate.

07/00/61 — Register of Copyrights filed a report with Congress making recommendations as to the possible content of a copyright revision bill based upon the studies prepared by the Copyright Office.

08/05/55 — Congress authorized the Copyright Office to prepare studies on possible revision of the current copyright law.

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