1990 Statutes Affecting Copyright

Selected Portions of the Judicial Improvements Act of 1990

PUBLIC LAW 101-650--DEC. 1, 1990 [104 Stat. 5089]

An Act

To provide for the appointment of additional Federal circuit and district judges, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Judicial Improvements Act of 1990".

TITLE I--CIVIL JUSTICE EXPENSE AND DELAY REDUCTION PLANS [omitted]

TITLE II-- FEDERAL JUDGESHIPS [omitted]

TITLE III-- IMPLEMENTATION OF FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS [omitted]

TITLE IV--JUDICIAL DISCIPLINE AND JUDICIAL REMOVAL [omitted]

TITLE V-- TELEVISION PROGRAM IMPROVEMENT [omitted]

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[104 Stat. 5128] TITLE VI --VISUAL ARTISTS RIGHTS

SEC. 601. SHORT TITLE.

This title may be cited as the " Visual Artists Rights Act of 1990 ".

SEC. 602. WORK OF VISUAL ART DEFINED.

Section 101 of title 17 , United States Code, is amended by inserting after the paragraph defining "widow" the following:

"A 'work of visual art' is --

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

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

"A work of visual art does not include --

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

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

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

"(B) any work made for hire; or

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

SEC. 603. RIGHTS OF ATTRIBUTION AND INTEGRITY.

(a) RIGHTS OF ATTRIBUTION AND INTEGRITY. -- Chapter 1 of title 17, United States Code , is amended by inserting after section 106 the following new section:

" 106A . Rights of certain authors to attribution and integrity

"(a) RIGHTS OF ATTRIBUTION AND INTEGRITY. -- Subject to section 107 and independent of the exclusive rights provided in section 106 , the author of a work of visual art --

"(1) shall have the right --

"(A) to claim authorship of that work, and

"(B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

"(2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and

[104 Stat. 5129] "(3) subject to the limitations set forth in section 113(d) , shall have the right --

"(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

"(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right."

"(b) SCOPE AND EXERCISE OF RIGHTS. -- Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are co-owners of the rights conferred by subsection (a) in that work."

"(c) EXCEPTIONS. --

"(1) The modification of a work of visual art which is a result of the passage of time or the inherent nature of the materials is not a distortion, mutilation, or other modification described in subsection (a)(3)(A).

"(2) The modification of a work of visual art which is the result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.

"(3) The rights described in paragraphs (1) and (2) of subsection (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of 'work of visual art' in section 101 , and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a)."

"(d) DURATION OF RIGHTS. --

"(1) With respect to works of visual art created on or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990 , the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.

"(2) With respect to works of visual art created before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990 , but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a) shall be coextensive with, and shall expire at the same time as, the rights conferred by section 106 .

"(3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author.

"(4) All terms of the rights conferred by subsection (a) run to the end of the calendar year in which they would otherwise expire."

"(e) TRANSFER AND WAIVER. --

"(1) The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.

"(2) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy **[104 Stat. 5130]** of that work, or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred by subsection (a) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work, or of ownership of a copyright or of any exclusive right under a copyright in that work."

(b) CONFORMING AMENDMENT. -- The table of sections at the beginning of chapter 1 of title 17, United States Code , is amended by inserting after the item relating to section 106 the following new item:

"106A. Rights of certain authors to attribution and integrity."

SEC. 604. REMOVAL OF WORKS OF VISUAL ART FROM BUILDINGS.

Section 113 of title 17, United States Code , is amended by adding at the end thereof the following:

"(d)(1) In a case in which --

"(A) a work of visual art has been incorporated in or made part of a building in such a way that removing the work from the building will cause the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3) , and

"(B) the author consented to the installation of the work in the building either before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990 , or in a written instrument executed on or after such effective date that is signed by the owner of the building and the author and that specifies that installation of the work may subject the work to destruction, distortion, mutilation, or other modification, by reason of its removal, then the rights conferred by paragraphs (2) and (3) of section 106A(a) shall not apply.

"(2) If the owner of a building wishes to remove a work of visual art which is a part of such building and which can be removed from the building without the destruction, distortion, mutilation, or other modification of the work as described in section 106A(a)(3) , the author's rights under paragraphs (2) and (3) of section 106A(a) shall apply unless --

"(A) the owner has made a diligent, good faith attempt without success to notify the author of the owner's intended action affecting the work of visual art, or

"(B) the owner did provide such notice in writing and the person so notified failed, within 90 days after receiving such notice, either to remove the work or to pay for its removal."

For purposes of subparagraph (A), an owner shall be presumed to have made a diligent, good faith attempt to send notice if the owner sent such notice by registered mail to the author at the most recent address of the author that was recorded with the Register of Copyrights pursuant to paragraph (3). If the work is removed at the expense of the author, title to that copy of the work shall be deemed to be in the author.

"(3) The Register of Copyrights shall establish a system of records whereby any author of a work of visual art that has been incorporated in or made part of a building, may record his or her identity **[104 Stat. 5131]** and address with the Copyright Office. The Register shall also establish procedures under which any such author may update the information so recorded, and procedures under which owners of buildings may record with the Copyright Office evidence of their efforts to comply with this subsection."

SEC. 605. PREEMPTION.

Section 301 of title 17 , United States Code, is amended by adding at the end the following:

"(f)(1) On or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990 , all legal or equitable rights that are equivalent to any of the rights conferred by section 106A with respect to works of visual art to which the rights conferred by section 106A apply are governed exclusively by section 106A and section 113(d) and the provisions of this title relating to such sections. Thereafter, no person is entitled to any such right or equivalent right in any work of visual art under the common law or statutes of any State.

"(2) Nothing in paragraph (1) annuls or limits any rights or remedies under the common law or statutes of any State with respect to --

"(A) any cause of action from undertakings commenced before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990 ;

"(B) activities violating legal or equitable rights that are not equivalent to any of the rights conferred by section 106A with respect to works of visual art; or

"(C) activities violating legal or equitable rights which extend beyond the life of the author."

SEC. 606. INFRINGEMENT ACTIONS.

(a) IN GENERAL. -- Section 501(a) of title 17, United States Code , is amended --

(1) by inserting after "118" the following: "or of the author as provided in section 106A(a) "; and

(2) by striking out "copyright." and inserting in lieu thereof "copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506) , any reference to copyright shall be deemed to include the rights conferred by section 106A(a) ."

(b) EXCLUSION OF CRIMINAL PENALTIES. -- Section 506 of title 17, United States Code , is amended by adding at the end thereof the following:

"(f) RIGHTS OF ATTRIBUTION AND INTEGRITY. -- Nothing in this section applies to infringement of the rights conferred by section 106A(a) ."

(c) REGISTRATION NOT A PREREQUISITE TO SUIT AND CERTAIN REMEDIES. --

(1) Section 411(a) of title 17, United States Code , is amended in the first sentence by inserting after "United States" the following: "and an action brought for a violation of the rights of the author under section 106A(a) ".

(2) Section 412 of title 17, United States Code , is amended by inserting "an action brought for a violation of the rights of the author under section 106A(a) or" after "other than".

[104 Stat. 5132] SEC. 607 . FAIR USE.

Section 107 of title 17, United States Code , is amended by striking out "section 106" and inserting in lieu thereof "sections 106 and 106A".

SEC. 608. STUDIES BY COPYRIGHT OFFICE.

(a) STUDY ON WAIVER OF RIGHTS PROVISION. --

(1) STUDY. -- The Register of Copyrights shall conduct a study on the extent to which rights conferred by subsection (a) of section 106A of title 17, United States Code , have been waived under subsection (e)(1) of such section.

(2) REPORT TO CONGRESS. -- Not later than 2 years after the date of the enactment of this Act, the Register of Copyrights shall submit to the Congress a report on the progress of the study conducted under paragraph (1). Not later than 5 years after such date of enactment, the Register of Copyrights shall submit to the Congress a final report on the results of the study conducted under paragraph (1), and any recommendations that the Register may have as a result of the study.

(b) STUDY ON RESALE ROYALTIES. --

(1) NATURE OF STUDY. -- The Register of Copyrights, in consultation with the Chair of the National Endowment for the Arts, shall conduct a study on the feasibility of implementing --

(A) a requirement that, after the first sale of a work of art, a royalty on any resale of the work, consisting of a percentage of the price, be paid to the author of the work; and

(B) other possible requirements that would achieve the objective of allowing an author of a work of art to share monetarily in the enhanced value of that work.

(2) GROUPS TO BE CONSULTED. -- The study under paragraph (1) shall be conducted in consultation with other appropriate departments and agencies of the United States, foreign governments, and groups involved in the creation, exhibition, dissemination, and preservation of works of art, including artists, art dealers, collectors of fine art, and curators of art museums.

(3) REPORT TO CONGRESS. -- Not later than 18 months after the date of the enactment of this Act, the Register of Copyrights shall submit to the Congress a report containing the results of the study conducted under this subsection.

SEC. 609. FIRST AMENDMENT APPLICATION.

This title does not authorize any governmental entity to take any action or enforce restrictions prohibited by the First Amendment to the United States Constitution .

SEC. 610. EFFECTIVE DATE.

(a) IN GENERAL. -- Subject to subsection (b) and except as provided in subsection (c), this title and the amendments made by this title take effect 6 months after the date of the enactment of this Act.

(b) APPLICABILITY. -- The rights created by section 106A of title 17, United States Code , shall apply to --

(1) works created before the effective date set forth in subsection (a) but title to which has not, as of such effective date, been transferred from the author, and

(2) works created on or after such effective date, but shall not apply to any destruction, distortion, mutilation, or other modi- **[104 Stat. 5133]** fication (as described in section 106A(a)(3) of such title) of any work which occurred before such effective date.

(c) SECTION 608 . -- Section 608 takes effect on the date of the enactment of this Act.

TITLE VII --ARCHITECTURAL WORKS

SEC. 701. SHORT TITLE.

This title may be cited as the " Architectural Works Copyright Protection Act ".

SEC. 702. DEFINITIONS.

(a) ARCHITECTURAL WORKS. -- Section 101 of title 17, United States Code , is amended by inserting after the definition of "anonymous work" the following: "An 'architectural work' is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features."

(b) BERNE CONVENTION WORK. -- Section 101 of title 17, United States Code , is amended in the definition of "Berne Convention work" --

(1) in paragraph (3)(B) by striking "or" after the semicolon;

(2) in paragraph (4) by striking the period and inserting "; or"; and

(3) by inserting after paragraph (4) the following: "(5) in the case of an architectural work embodied in a building, such building is erected in a country adhering to the Berne Convention."

SEC. 703. SUBJECT MATTER OF COPYRIGHT.

Section 102(a) of title 17, United States Code , is amended --

(1) in paragraph (6) by striking "and" after the semicolon;

(2) in paragraph (7) by striking the period and inserting "; and"; and

(3) by adding after paragraph (7) the following: "(8) architectural works."

SEC. 704. SCOPE OF EXCLUSIVE RIGHTS IN ARCHITECTURAL WORKS.

(a) IN GENERAL. -- Chapter 1 of title 17, United States Code , is amended by adding at the end the following:

"120. Scope of exclusive rights in architectural works

"(a) PICTORIAL REPRESENTATIONS PERMITTED. -- The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.

"(b) ALTERATIONS TO AND DESTRUCTION OF BUILDINGS. -- Notwithstanding the provisions of section 106(2) , the owners of a building embodying an architectural work may, without the consent of the author or copyright owner of the architectural work, make or authorize the making of alterations to such building, and destroy or authorize the destruction of such building."

[104 Stat. 5134] (b) CONFORMING AMENDMENTS. --

(1) The table of sections at the beginning of chapter 1 of title 17, United States Code , is amended by adding at the end of the following:

"120. Scope of exclusive rights in architectural works."

(2) Section 106 of title 17, United States Code , is amended by striking "119" and inserting "120".

SEC. 705. PREEMPTION.

Section 301(b) of title 17, United States Code , is amended --

(1) in paragraph (2) by striking "or" after the semicolon:

(2) in paragraph (3) by striking the period and inserting "; or"; and

(3) by adding after paragraph (3) the following: "(4) State and local landmarks, historic preservation, zoning, or building codes, relating to architectural works protected under section 102(a)(8) ."

SEC. 706. EFFECTIVE DATE.

The amendments made by this title apply to --

(1) any architectural work created on or after the date of the enactment of this Act; and

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

TITLE VIII --COMPUTER SOFTWARE

SEC. 801. SHORT TITLE.

This title may be cited as the " Computer Software Rental Amendments Act of 1990 ".

SEC. 802. RENTAL OF COMPUTER PROGRAMS.

Section 109(b) of title 17, United States Code , is amended --

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(2) by striking paragraph (1) and inserting the following:

"(b)(1)(A) Notwithstanding the provisions of subsection (a), unless authorized by the owners of copyright in the sound recording or the owner of copyright in a computer program (including any tape, disk, or other medium embodying such program), and in the case of a sound recording in the musical works embodied therein, neither the owner of a particular phonorecord nor any person in possession of a particular copy of a computer program (including any tape, disk, or other medium embodying such program), may, for the purposes of direct or indirect commercial advantage, dispose of, or authorize the disposal of, the possession of that phonorecord or computer program (including any tape, disk, or other medium embodying such program) by rental, lease, or lending, or by any other act or practice in the nature of rental, lease, or lending. Nothing in the preceding sentence shall apply to the rental, lease, or lending of a phonorecord for nonprofit purposes by a nonprofit library or nonprofit educational institution. The transfer of possession of a lawfully made copy of a computer program by a nonprofit educational institution **[104 Stat. 5135]** to another nonprofit educational institution or to faculty, staff, and students does not constitute rental, lease, or lending for direct or indirect commercial purposes under this subsection.

"(B) This subsection does not apply to --

"(i) a computer program which is embodied in a machine or product and which cannot be copied during the ordinary operation or use of the machine or product; or

"(ii) a computer program embodied in or used in conjunction with a limited purpose computer that is designed for playing video games and may be designed for other purposes.

"(C) Nothing in this subsection affects any provision of *chapter 9* of this title .

"(2)(A) Nothing in this subsection shall apply to the lending of a computer program for nonprofit purposes by a nonprofit library, if each copy of a computer program which is lent by such library has affixed to the packaging containing the program a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.

"(B) Not later than three years after the date of the enactment of the Computer Software Rental Amendments Act of 1990, and at such times thereafter as the Register of Copyright considers appropriate, the Register of Copyrights, after consultation with representatives of copyright owners and librarians, shall submit to the Congress a report stating whether this paragraph has achieved its intended purpose of maintaining the integrity of the copyright system while providing nonprofit libraries the capability to fulfill their function. Such report shall advise the Congress as to any information or recommendations that the Register of Copyrights considers neck to carry out the purposes of this subsection"; and

(3) by striking paragraph (4), as redesignated by paragraph (1) of this section, and inserting the following: "(4) Any person who distributes a phonorecord or a copy of a computer program (including any tape, disk, or other medium embodying such program) in violation of paragraph (1) is an infringer of copyright under section 501 of this title and is subject to the remedies set forth in sections 502, 503, 504, 505, and 509 . Such violation shall not be a criminal offense under section 506 or cause such person to be subject to the criminal penalties set forth in section 2319 of title 18 ."

SEC. 803. PUBLIC DISPLAY OF ELECTRONIC VIDEO GAMES.

Section 109 of title 17, United States Code , is amended by adding at the end the following:

"(e) Notwithstanding the provisions of sections 106(4) and 106(5) , in the case of an electronic audiovisual game intended for use in coin-operated equipment, the owner of a particular copy of such a game lawfully made under this title, is entitled, without the authority of the copyright owner of the game, to publicly perform or display that game in coin-operated equipment, except that this subsection shall not apply to any work of authorship embodied in the audiovisual game if the copyright owner of the electronic audiovisual game is not also the copyright owner of the work of authorship."

[104 Stat. 5136]

SEC. 804. EFFECTIVE DATE.

(a) IN GENERAL. -- Subject to subsection (b), this title and the amendments made in section 802 shall take effect on the date of the enactment of this Act. The amendment made by section 803 shall take effect one year after such date of enactment.

(b) PROSPECTIVE APPLICATION. -- Section 109(b) of title 17, United States Code , as amended by section 802 of this Act, shall not affect the right of a person in possession of a particular copy of a computer program, who acquired such copy before the date of the enactment of this Act, to dispose of the possession of that copy on or after such date of enactment in any manner permitted by section 109 of title 17, United States Code , as in effect on the day before such date of enactment.

(c) TERMINATION. -- The amendments made by section 802 shall not apply to rentals, leasings, or lendings (or acts or practices in the nature of rentals, leasings, or lendings) occurring on or after October 1, 1997. The amendments made by section 803 shall not apply to public performances or displays that occur on or after October 1, 1995.

SEC. 805. RECORDATION OF SHAREWARE.

(a) IN GENERAL. -- The Register of Copyrights is authorized, upon receipt of any document designated as pertaining to computer shareware and the fee prescribed by section 708 of title 17, United States Code , to record the document and return it with a certificate of recordation.

(b) MAINTENANCE OF RECORDS; PUBLICATION OF INFORMATION. -- The Register of Copyrights is authorized to maintain current, separate records relating to the recordation of documents under subsection (a), and to compile and publish at periodic intervals information relating to such recordations. Such publications shall be offered for sale to the public at prices based on the cost of reproduction and distribution.

(c) DEPOSIT OF COPIES IN LIBRARY OF CONGRESS. -- In the case of public domain computer software, at the election of the person recording a document under subsection (a), 2 complete copies of the best edition (as defined in section 101 of title 17, United States Code) of the computer software as embodied in machine-readable form may be deposited for the benefit of the Machine-Readable Collections Reading Room of the Library of Congress.

(d) REGULATIONS. -- The Register of Copyrights is authorized to establish regulations not inconsistent with law for the administration of the functions of the Register under this section. All regu- **[104 Stat. 5137]** lations established by the Register are subject to the approval of the Librarian of Congress.