

Copyright Laws and Regulations

- 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 such author's 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, 1978, whichever is later.
- (4) The termination shall be effected by serving an advance notice in writing upon the grantee or the grantee's 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 that author or his or her duly authorized agent or, if that author is dead, by the number and proportion of the owners of his or her 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 that author is dead, to the persons owning his or her 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 vested on the date the notice of termination has been served as provided by clause (4) of this subsection.
- (C) Where the 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

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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 or her, that person's legal representatives, legatees, or heirs at law represent him or her for purposes of this subclause.

- (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 such grantee's 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 subsection, the grant, if it does not provide otherwise, continues in effect for the remainder of the extended renewal term.

(Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2573; Pub. L. 102-307, title I, Sec. 102(a), (d), June 26, 1992, 106 Stat. 264, 266.)

17 U.S.C. 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.

(Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2576.)

CHAPTER 4—COPYRIGHT NOTICE, DEPOSIT, AND REGISTRATION

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- 407. Deposit of copies or phonorecords for Library of Congress.
- 408. Copyright registration in general.
- 409. Application for copyright registration.
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- 411. Registration and infringement actions.
- 412. Registration as prerequisite to certain remedies for infringement.

17 U.S.C. 401 Notice of copyright: Visually perceptible copies

(a) **General Provisions.** - 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 may be placed on 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.** - If a notice appears on the copies, it shall consist of the following three elements:

- (1) the symbol (circled) (the letter C in a circle), or the word "Copyright", or the abbreviation "Copr."; and
- (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; and
- (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 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.

(d) **Evidentiary Weight of Notice.** - If a notice of copyright in the form and position specified by this section appears on the published copy or copies to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages, except as provided in the last sentence of section 504(c)(2).

(Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2576; Pub. L. 100-568, Sec. 7(a), Oct. 31, 1988, 102 Stat. 2857.)

17 U.S.C. 402 Notice of copyright: Phonorecords of sound recordings

(a) **General Provisions.** - Whenever a sound recording 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 may be placed on publicly distributed phonorecords of the sound recording.

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(b) **Form of Notice.** - If a notice appears on the phonorecords, it shall consist of the following three elements:

- (1) the symbol P (the letter P in a circle); and
- (2) the year of first publication of the sound recording; and
- (3) the name of the owner of copyright 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, the producer's 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.

(d) **Evidentiary Weight of Notice.** - If a notice of copyright in the form and position specified by this section appears on the published phonorecord or phonorecords to which a defendant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages, except as provided in the last sentence of section 504(c)(2).

(Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2577; Pub. L. 100-568, Sec. 7(b), Oct. 31, 1988, 102 Stat. 2857.)

17 U.S.C. 403 Notice of copyright: Publications incorporating United States Government works

Sections 401(d) and 402(d) shall not apply to a work published in copies or phonorecords consisting predominantly of one or more works of the United States Government unless the notice of copyright appearing on the published copies or phonorecords to which a defendant in the copyright infringement suit had access includes a statement identifying, either affirmatively or negatively, those portions of the copies or phonorecords embodying any work or works protected under this title.

(Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2577; Pub. L. 100-568, Sec. 7(c), Oct. 31, 1988, 102 Stat. 2858.)

17 U.S.C. 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 invoke the provisions of section 401(d) or 402(d), as applicable with respect to the separate contributions it contains (not including advertisements inserted on behalf of persons other than the owner 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) With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, 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).

(Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2577; Pub. L. 100-568, Sec. 7(d), Oct. 31, 1988, 102 Stat. 2858.)

17 U.S.C. 405 Notice of copyright: Omission of notice on certain copies and phonorecords

(a) **Effect of Omission on Copyright.** - With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, the omission of the copyright notice described in sections 401 through 403 from copies or phonorecords publicly distributed by authority of the copyright owner does not invalidate the copyright in a work if -

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- (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 phonorecords 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 phonorecord from which the copyright notice has been omitted and which was publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, 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 has been made under section 408, if such person proves that he or she 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 or permitting the continuation of the infringing undertaking, that the infringer 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 or phonorecords.

(Pub. L. 94-553, title I, Sec. 101, Oct. 19, 1976, 90 Stat. 2578; Pub. L. 100-568, Sec. 7(e), Oct. 31, 1988, 102 Stat. 2858.)

17 U.S.C. 406 Notice of copyright: Error in name or date on certain copies and phonorecords

(a) **Error in Name.** - With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, where the person named in the copyright notice on copies 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 such person proves that he or she 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 had 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 transfers or licenses purportedly made under the copyright by the person named in the notice.

(b) **Error in Date.** - When the year date in the notice on copies or phonorecords distributed before the effective date of the Berne Convention Implementation Act of 1988 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 before the effective date of the Berne Convention Implementation Act of 1988 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