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1D U.S. Copyright Law: An Index

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U.S. Copyright Law: An Index

Laura Quilter, Nov. 30, 2015

Important Materials

- US Code, Title 17
- Code of Federal Regulations, Title 37, Subchapter A
- Court opinions (virtually all federal but occasional important state decision)
- Copyright Office – An agency within the Library of Congress, so an odd hybrid of regulatory and legislative.
 - Copyright Office Compendium of Practices, Third Edition (2014) – Lots of practices that effectively delineate what is and is not copyrightable, who is and is not an author, etc.
 - Copyright Office website registration, searches <http://copyright.gov/>
 - Copyright Office Rulemakings & Procedures, such as the triennial DMCA rulemaking.
 - Copyright Office Circulars
 - Copyright Office hearings and reports
- International treaties, administered by WIPO (World Intellectual Property Office), <http://wipo.int/>
- Berne Convention for the Protection of Literary and Artistic Works. Expanded or supplemented by:
 - Universal Copyright Convention (Geneva, 1952, and Paris, 1971)
 - TRIPS (1994) – Added trade authorities & sanctions to IP violations
 - WIPO Copyright Treaty (1996). Notable particularly for establishing anticircumvention, for requiring that computer software be treated as a “literary work”, and that databases have protections.

US Code, Title 17 – Highlight

Chapter 1 (17 USC 101, 17 USC 102, etc.) – Subject Matter & Scope

101 Definitions

102 Subject matter – The classes of works (literary works, sound recordings, etc.; and exclusions for facts, formulas, etc.)

103 Subject matter – compilations & derivative works

104 Subject matter – national origin

104A – Copyright in restored works

105 – US government works not copyrighted

106 – Exclusive rights in copyrighted works

106A Visual Artists Rights Act (VARA) – Moral rights for limited or unique works of visual art.

107 – 122: Limitations on exclusive rights

107 – Fair use

108 – Reproduction by libraries & archives

109 – First sale

110 – Exemption of certain performances & displays

111 – Cable secondary transmissions

112 – Broadcaster temporary recordings; disability & religious exemptions

113 – Exemptions in pictorial, graphic, & sculptural works — ads; buildings

114 – No public performance rights for sound recordings; public broadcasting

115 – Compulsory license – the “cover license”

116 – Compulsory license – jukebox license

117 – Computer user backups for RAM copies, backups, and repair copies

118 – Voluntary licensing organizations & public broadcasters [college radio]

119 – Secondary transmissions by satellite carriers

120 – Architectural work exceptions

121 – Disability rights

122 – Secondary transmissions of TV broadcasts

Chapter 2 – Copyright Ownership & Transfer

201 – Ownership vests in the “author”. Unless it’s a work made for hire. Collective works and contribution to collective works are separately copyrightable. Copyright rights are separately transferable, and heritable by will or other transfers of personal property. Copyrights may never be seized by the government except for bootlegs.

202 – Ownership of copyright is distinct from ownership of the material object; see 109

203 – Original authors can terminate assignments [see also 304]

204 – Transfers of copyright ownership must be in writing.

205 – Copyright Office recordation rules.

Chapter 3 – Preemption & Duration

301 – State copyrights are preempted, if they would have been covered by copyright.

Pre-1972 sound recordings are only preempted if fixed before Feb. 15, 1972. Preemption shall apply to all sound recordings as of Feb. 15, 2067 (95 years). Moral rights established by VARA

302 – Term is life plus 70 for works created on or after Jan. 1, 1978. For works made for hire, or anonymous/pseudonymous, copyright is the FIRST to expire of 95 years after publication or 120 years after creation.

303 – Pre-1978 copyrighted works. Phonorecord distribution prior to 1978 does not constitute publication of embodied works.

304 – Pre-1978 copyrighted works terms & renewal. [see also 203]

305 – If it expires in a year, it doesn’t expire until the end of that year.

Chapter 4 – Copyright notices, registrations, etc. NOTE, If copyright notice is applied, then innocent infringer defense is not available.

Chapter 5 – Remedies

501 – Who can sue and for what.

502 – Injunctive relief available.

503 – Impoundments and destruction available.

504 – Actual or statutory damages.

504(c)(1) Statutory damages: \$750 – \$30,000

504(c)(2) Willful infringement statutory damages: Up to \$150,000

Innocent infringement : May be reduced to \$200.

Educational institutions & libraries, or public broadcasters : Statutory damages shall be remitted if reasonably believed the use was a fair use.

505 – Legal costs and attorney’s fees available.

506 – Criminal infringement. 18 USC 2319.

507 – Statute of limitations. 5 years for criminal; 3 years for civil.

508 – Courts must notify Copyright Office of litigation & judgments.

509 – Seizure & forfeiture.

510 – Secondary transmission remedies can include 30–day loss of license.

511 – States not immune [struck down as unconstitutional].

512 – Safe harbors, and notice & takedown procedures for ISPs.

513 – Individual small proprietors remedies for unlicensed performances.

Chapter 6 – Importations. [at issue in the *Kirtsaeng v. Wiley* case]

602 – Importation of works is an infringement of 106 distribution right.

- Importation of bootlegs/unlawful copies is infringement of 106 distribution.
- Archives and other government agency uses, but not for use in schools, exempted.
- Personal imports exempted.
- **Scholarly, educational, & religious exemptions, including libraries & archives.**
- Customs can seize.

603 – Treasury & Post rules for seizure, forfeiture, & destruction.

Chapter 7 – Copyright Office rules.

Chapter 8 – Copyright Royalty Board rules.

Chapter 9 – Sui generis protection for semiconductor chip masks.

Chapter 10 – Digital audio recording device rules.

Chapter 11 – Bootlegs [“unauthorized fixation and trafficking in sound recordings & music videos”]

Chapter 12 – Anticircumvention provisions, including triennial rulemaking for exemptions.

Chapter 13 – Sui generis protection for boat hulls