AMENDMENTS

1998—Subsec. (h)(3). Pub. L. 105–500, § 102(c)(1), added subpars. (A) to (E), struck out former subpars. (A) and (B) which read as follows:

"(A) a nation adhering to the Berne Convention or a WTO member country;

and

"(B) subject to a Presidental proclamation under subsection (g)."

Subsec. (h)(3). Pub. L. 105–304, § 102(c)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

"The term ‘eligible country’ means a nation, other than the United States, that—

(A) becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;

(B) on such date of enactment becomes, or after such date of enactment becomes, a member of the Berne Convention;

and

(C) after such date of enactment becomes subject to a proclamation under subsection (g).

For purposes of this section, a nation that is a member of the Berne Convention on the date of the enactment of the Uruguay Round Agreements Act shall be construed to become an eligible country on such date of enactment."


Subsec. (h)(7)(B)(i). Pub. L. 105–304, § 102(c)(4), inserted ‘‘of which’’ before ‘‘the majority’’ and struck out ‘‘of eligible countries’’ after ‘‘domiciliaries’’.

Subsec. (h)(9). Pub. L. 105–304, § 102(c)(5), struck out par. (9) which read as follows: ‘‘The terms ‘WTO Agreement’ and ‘WTO member country’ have the meanings given those terms in paragraphs (9) and (10), respectively, of section 2 of the Uruguay Round Agreements Act.’’

1997—Subsec. (d)(3)(A). Pub. L. 105–80, § 2(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ‘‘In the case of a derivative work that is based upon a restored work and is created—

(i) before the date of the enactment of the Uruguay Round Agreements Act, if the source country of the derivative work is an eligible country on such date, or

(ii) before the date of adherence or proclamation, if the source country of the derivative work is not an eligible country on such date of enactment, a reliance party may continue to exploit that work for the duration of the restored copyright if the reliance party pays to the owner of the restored copyright reasonable compensation for conduct which would be subject to a remedy for infringement but for the provisions of this paragraph."

Subsec. (e)(1)(B)(i). Pub. L. 105–80, § 2(2), struck out at end. ‘‘Such list shall also be published in the Federal Register on an annual basis for the first 2 years after the applicable date of restoration."

Subsec. (b)(2), (3), Pub. L. 105–80, § 2(3), (4), amended par. (2) and (3) generally. Prior to amendment, pars. (2) and (3) read as follows:

"(2) The ‘date of restoration’ of a restored copyright is the later of—

(A) the date on which the Agreement on Trade-Related Aspects of Intellectual Property entered into force with respect to the United States; if the source country of the restored work is a nation adhering to the Berne Convention or a WTO member country on such date; or

(B) the date of adherence or proclamation, in the case of any other source country of the restored work.

(3) The term ‘eligible country’ means a nation, other than the United States, that is a WTO member country, adheres to the Berne Convention, or is subject to a proclamation under subsection (g)."

1996—Subsec. (h)(3). Pub. L. 104–285 substituted ‘‘subsection (g)’’ for ‘‘section 194’’.

1994—Pub. L. 103–465 substituted ‘‘Copyright in restored works’’ for ‘‘Copyright in certain motion pictures’’ as section catchline and amended text generally, substituting present provisions for provisions restoring copyright in certain motion pictures and providing for an effective date of protection as well as use of previously owned copies.

EFFECTIVE DATE OF 1998 AMENDMENT

Subsec. (h)(1)(A), (B), (E), (3)(A), (B), (E) of this section and amendment by section 102(c)(4), (5) of Pub. L. 105–304 effective Oct. 28, 1998, except as otherwise provided, subsec. (h)(1)(C), (3)(C) of this section effective Mar. 6, 2002, and subsec. (h)(1)(D), (3)(D) of this section and amendment by section 102(c)(3) of Pub. L. 105–304 effective May 20, 2002, see section 105(a), (h)(1)(C), (D), (2)(D)–(F) of Pub. L. 105–304, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 355(a) of Pub. L. 103–182, set out in an Effective Date of 1993 Amendment note under section 1052 of Title 15, Commerce and Trade.

URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 351(d) of Title 19, Customs Duties, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of Title 19.

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.


HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–176

SCOPE OF THE PROHIBITION.

The basic premise of section 105 of the bill is the same as that of section 8 of the present law (section 8 of former title 17)—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 applies to ‘‘any work of the United States Government,’’ which is defined in section 101 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 situa-
tion is that the public should not be required to pay a "double subsidy," and that it is inconsistent to pro-
hibit copyright in works by Government employees while permitting private copyrights in a growing body of works created by persons who are paid with Govern-
ment funds. Those arguing in favor of potential copy-
right protection have stressed the importance of copy-
right as an incentive to creation and dissemination in this situa-
tion, and the basically different policy consider-
erations 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 out-
right, unconditional 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 commis-
sions a work for its own use merely as an alternative,
the Government could not restrain the em-
ployee from securing a private copyright. However, there are almost certainly many other cases where the denial of copyright protection would be unfair or unwise. There may be cases where the use of the 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 su-
perfluous.

Retention of a saving clause has been urged on the ground that the present statutory provision is fre-
frequently cited, and that having the provision expressly stated in the law would avoid questions and expla-
nations. The committee here observes: (1) there is noth-
ing in section 105 that would require 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 con-
nection with section 107.

Works of the United States Postal Service. The intent of section 105 (this section) is to restrict the pro-
hibition against Government copyright to works written by employees of the United States Government within the scope of their official duties. In accordance with the objec-
tives of the Postal Reorganization Act of 1970 (Pub. L. 91-375, which enacted title 39, Postal Service),
this section does not apply to works created by employ-
ees of the United States Postal Service. In addition to enforcing the criminal statutes prescribing 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 commercial non-postal services (for example, in phil-
ately 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.

§ 106. Exclusive rights in copyrighted works

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the follow-

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.