the United States [Jan. 1, 1994], see section 335(a) of Pub. L. 103-162, 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. 94-1476

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 The provision applies the principle equally to unpublished and published works.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 accept an independent contractor's or grantee's request 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 situation is that the public should not be required to pay a "double subsidy," and that it is inconsistent to prohibit copyright in works by Government employees while permitting private copyrights in a growing body of works created by persons who are paid with Government funds. Those arguing in favor of potential copyright protection have stressed the importance of copyright as an incentive to creation and dissemination in this situation, and the basically different policy considerations, 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 outright, unqualified 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 works prepared under Government research contracts and the like; it can be assumed that, where a Government agency commiss-
theobligationtosecurepermissioninordertopublish
acopyrightedwork;and(2)publicationorotheruseby
theGovernmentofaprivateworkwouldnotafffectits
copyrightprotectioninanyway.Thequestionofuse
ofcopyrightedmaterialindocumentspublishedbythe
CongressanditsCommitteesisdiscussedbelowincon-
nectionwithsection107.

Works of the United States Postal Service. The intent
of section105(thissection)istorestricttheprohi-
bition against Government copyright to works written
by employees of the United States Government within
thescopeoftheirofficialduties.Inaccordancewith
theobjectivesofthePostalReorganizationActof1970
[Pub. L. 91–375,whichenactedtitle39,PostalService],
thissectiondoesnotapplytotractscreatedbyemploy-
ees of the United States Postal Service. In addition to
enforcing the criminal statutes proscribing the forgery
orcounterfeitingofpostagestamps,thepostalService
could,ifitischosen,usethecopyrightlawtoprevent
thereproductionofpostagestampdesignsforprivate
orthecommercialnon-postalservices(forexample,inphil-
atelicpublicationsandcatalogs,ingenerealadvertising,
inartreproductions,innotelessdesignsandsoforth).
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 sections107through122, the owner
of copyright under this title has the exclusive
rights to do and to authorize any of the follow-
ing:

(1) toreproducethecopyrightedworkincopiesorphonorecords;

(2) to prepare derivative works based upon
thecopyrightedwork;

(3)todistributecopiesorphonorecords
ofthecopyrightedworktothepublicbysale
orethertransferofownership,orthroughrent,
lease, or lending;

(4) in the case of literary, musical, dramatic,
andchoreographicworks,pantomimes,and
motionpicturesandotheraudiovisualworks,
to perform the copyrighted work publicly;

(5) in the case of literary, musical, dramatic,
andchoreographicworks,pantomimes,and
pictorial, graphic, or sculptural works, includ-
ing 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 per-
display the copyrighted work publicly by
means of a digital audio transmission.

266; Pub. L. 101–650, title VII, § 704(b)(2), Dec. 1,
1999, 103 Stat. 5134; Pub. L. 104–39, § 2, Nov. 1,

HISTORICALANDREVISIONNOTES

HOUSE REPORT NO. 94–1476

General Scope of Copyright. The five fundamental
rights that the bill gives to copyright owners—the ex-
clusive rights of reproduction, adaptation, publication,
performance, and display—are stated generally in sec-
tion106.Theseexclusiverights,whichcomprise theso-
called “bundle of rights” that is a copyright, are cumu-
lative and may overlap in some cases. Each of the five
enumerated rights may be subdivided inad infinitum and,
as discussed below in connection with section 107, each
subdivision of an exclusive right may be owned and en-
forced separately.

Theapproachofthebillistoestethlockthecopyright
owner’s exclusive rights in broad terms in section106,
andthen toprovide various limitations, qualifications,
andexceptions that follow. Thus, everything in section
106 is made “subject to sections107 through118”, and
must be read in conjunction with those provisions.

The exclusive rights accorded to a copyright owner
undersection106are“todoreandtoauthorize”anyof
the activities specified in the five numbered clauses.
Use of the phrase “to authorize” is intended to avoid
any questions as to the liability of contributory infrin-
gers. For example, a person who lawfully acquires
anauthorized copy of a motion picture would be an in-
fringer if he or she engages in the business of renting
it to others for purposes of unauthorized public per-
formance.

Reproduction, Adaptation, and Publication. The first three clauses of section 106, which cover all
rights under a copyright except those of performance
and display, extend to every kind of copyrighted work.
The exclusive rights encompassed by these clauses,
though closely related, are independent; they can gen-
erally be characterized as rights of copying, recording,
adaptation, and publishing. A single act of infringe-
ment may violate all of these rights at once, as where
a publisher reproduces, adapts, and sells copies of a
private work. However, any copyright claimed by the
Postal Service in its work, including postage stamp designs, would be
subject to the same conditions, formalities, and time
limits as other copyrightable works.

Copyright owners have the right to produce a material object in which the work is
replicated,transcribed,imitated,orsimulatedinafixedformfromwhichitcancalled"expression"ratherthanthemanyauthor’s"ideas"
are taken. An exception to this general principle, applicable
to the reproduction of copyrighted sound recordings,
is specified in section 114. "Reproduction" under clause (1) of section 106 is to be
distinguished from "display" under clause (5). A work to be "reproduced," its fixation in tangible form must be "sufficiently permanent or stable to permit it
to bereceived,reproduced,orotherwisecommunicated,eitherdirectlyorwiththe
aid of a machine or device." As under the present law, a copyrighted work would be infringed by reproducing
itinwholeoranysubstantialpart,byduplicat-
ingitexactlyorbyimitationorsimulation.Wide de-
parts or variations from the copyrighted work would still be an infringement as long as the author’s
"expression" rather than merely the author’s "ideas"
are taken. An exception to this general principle, applicable
to the reproduction of copyrighted sound recordings,
is specified in section 114. "Reproduction" under clause (1) of section 106 is to be
distinguished from "display" under clause (5). A work to be "reproduced," its fixation in tangible form must be "sufficiently permanent or stable to permit it
to bereceived,reproduced,orotherwisecommunicated,foraperiodofmorethantransitoryduration." Thus, the showing of images on a screen or tube would not be a violation of clause (1), although it might come
within the scope of clause (5).

Preparation of Derivative Works.—The exclusive right
topreparederviativeworks,specifiedseparatelyin
clause (2) of section 106, overlaps the exclusive right
of reproduction to some extent. It is broader than that
right, however, in the sense that reproduction requires
fixation in copies or phonorecords, whereas the prepara-
tion of a derivative work, such as a ballet, pantomime,
orimprovedperformance,maybeaninfringe-
ment even though nothing is ever fixed in tangible
form.

To be an infringement the "derivative work" must be
"based upon the copyrighted work," and the definition
in section 101 refers to "a translation, musical trans-
formation, dramatization, fictionalization, motion picture
version, sound recording, art reproduction, abridgment,
condensation, or any other form in which a work may
be recast, transformed, or adapted." Thus, to con-
stitute a violation of section 106(2), the infringing work
must incorporate a portion of the copyrighted work in