

WHEREAS, by virtue of a proclamation by the President of the United States of America dated May 25, 1922, 42 Stat. 2271, German citizens are and have been entitled to the benefits of the act of Congress approved March 4, 1909, 35 Stat. 1075, as amended, including the benefits of Section 1(e) of the aforementioned Title 17 of the United States Code [section 1(e) of former Title 17]; and

WHEREAS, a letter of February 6, 1950, from the Chancellor of the Federal Republic of Germany to the Chairman of the Allied High Commission for Germany established the mutual understanding that reciprocal copyright relations continued in effect between the Federal Republic of Germany and the United States of America:

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States of America, by virtue of the authority vested in me by Section 9 of Title 17 of the United States Code [section 9 of former Title 17], do declare and proclaim:

(1) That, with respect to works first produced or published outside the United States of America: (a) where the work was subject to copyright under the laws of the United States of America on or after September 3, 1939, and on or before May 5, 1956, by an author or other owner who was then a German citizen; or (b) where the work was subject to renewal of copyright under the laws of the United States of America on or after September 3, 1939, and on or before May 5, 1956, by an author or other person specified in Sections 24 and 25 of the aforesaid Title 17 [sections 24 and 25 of former Title 17], who was then a German citizen, there has existed during several years of the aforementioned period such disruption and suspension of facilities essential to compliance with conditions and formalities prescribed with respect to such works by the copyright law of the United States of America as to bring such works within the terms of Section 9(b) of the aforesaid Title 17 [section 9(b) of former Title 17]; and

(2) That, in view of the reciprocal treatment accorded to citizens of the United States by the Federal Republic of Germany, the time within which persons who are presently German citizens may comply with such conditions and formalities with respect to such works is hereby extended for one year after the date of this proclamation.

It shall be understood that the term of copyright in any case is not and cannot be altered or affected by this proclamation. It shall also be understood that, as provided by Section 9(b) of Title 17, United States Code [section 9(b) of former Title 17], no liability shall attach under that title for lawful uses made or acts done prior to the effective date of this proclamation in connection with the above-described works, or with respect to the continuance for one year subsequent to such date of any business undertaking or enterprise lawfully undertaken prior to such date involving expenditure or contractual obligation in connection with the exploitation, production, reproduction, circulation or performance of any such works.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of July in the year of our Lord nineteen hundred and sixty-seven, and of the Independence of the United States of America the one hundred and ninety-second.

LYNDON B. JOHNSON.

PRESIDENTIAL PROCLAMATIONS ISSUED UNDER
PREDECESSOR PROVISIONS

Pub. L. 94-553, title I, § 104, Oct. 19, 1976, 90 Stat. 2599, provided that: "All proclamations issued by the President under section 1(e) or 9(b) of title 17 as it existed on December 31, 1977, or under previous copyright statutes of the United States, shall continue in force until terminated, suspended, or revised by the President."

§ 104A. Copyright in restored works

(a) AUTOMATIC PROTECTION AND TERM.—

(1) TERM.—

(A) Copyright subsists, in accordance with this section, in restored works, and vests automatically on the date of restoration.

(B) Any work in which copyright is restored under this section shall subsist for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States.

(2) EXCEPTION.—Any work in which the copyright was ever owned or administered by the Alien Property Custodian and in which the restored copyright would be owned by a government or instrumentality thereof, is not a restored work.

(b) OWNERSHIP OF RESTORED COPYRIGHT.—A restored work vests initially in the author or initial rightholder of the work as determined by the law of the source country of the work.

(c) FILING OF NOTICE OF INTENT TO ENFORCE RESTORED COPYRIGHT AGAINST RELIANCE PARTIES.—On or after the date of restoration, any person who owns a copyright in a restored work or an exclusive right therein may file with the Copyright Office a notice of intent to enforce that person's copyright or exclusive right or may serve such a notice directly on a reliance party. Acceptance of a notice by the Copyright Office is effective as to any reliance parties but shall not create a presumption of the validity of any of the facts stated therein. Service on a reliance party is effective as to that reliance party and any other reliance parties with actual knowledge of such service and of the contents of that notice.

(d) REMEDIES FOR INFRINGEMENT OF RESTORED COPYRIGHTS.—

(1) ENFORCEMENT OF COPYRIGHT IN RESTORED WORKS IN THE ABSENCE OF A RELIANCE PARTY.—As against any party who is not a reliance party, the remedies provided in chapter 5 of this title shall be available on or after the date of restoration of a restored copyright with respect to an act of infringement of the restored copyright that is commenced on or after the date of restoration.

(2) ENFORCEMENT OF COPYRIGHT IN RESTORED WORKS AS AGAINST RELIANCE PARTIES.—As against a reliance party, except to the extent provided in paragraphs (3) and (4), the remedies provided in chapter 5 of this title shall be available, with respect to an act of infringement of a restored copyright, on or after the date of restoration of the restored copyright if the requirements of either of the following subparagraphs are met:

(A)(i) The owner of the restored copyright (or such owner's agent) or the owner of an exclusive right therein (or such owner's agent) files with the Copyright Office, during the 24-month period beginning on the date of restoration, a notice of intent to enforce the restored copyright; and

(ii)(I) the act of infringement commenced after the end of the 12-month period beginning on the date of publication of the notice in the Federal Register;

(II) the act of infringement commenced before the end of the 12-month period described

in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available only for infringement occurring after the end of that 12-month period; or

(III) copies or phonorecords of a work in which copyright has been restored under this section are made after publication of the notice of intent in the Federal Register.

(B)(i) The owner of the restored copyright (or such owner's agent) or the owner of an exclusive right therein (or such owner's agent) serves upon a reliance party a notice of intent to enforce a restored copyright; and

(ii)(I) the act of infringement commenced after the end of the 12-month period beginning on the date the notice of intent is received;

(II) the act of infringement commenced before the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case remedies shall be available only for the infringement occurring after the end of that 12-month period; or

(III) copies or phonorecords of a work in which copyright has been restored under this section are made after receipt of the notice of intent.

In the event that notice is provided under both subparagraphs (A) and (B), the 12-month period referred to in such subparagraphs shall run from the earlier of publication or service of notice.

(3) EXISTING DERIVATIVE WORKS.—(A) 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 restored work is an eligible country on such date, or

(ii) before the date on which the source country of the restored work becomes an eligible country, if that country is not an eligible country on such date of enactment,

a reliance party may continue to exploit that derivative 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.

(B) In the absence of an agreement between the parties, the amount of such compensation shall be determined by an action in United States district court, and shall reflect any harm to the actual or potential market for or value of the restored work from the reliance party's continued exploitation of the work, as well as compensation for the relative contributions of expression of the author of the restored work and the reliance party to the derivative work.

(4) COMMENCEMENT OF INFRINGEMENT FOR RELIANCE PARTIES.—For purposes of section 412, in the case of reliance parties, infringement shall be deemed to have commenced before registration when acts which would have constituted infringement had the restored work

been subject to copyright were commenced before the date of restoration.

(e) NOTICES OF INTENT TO ENFORCE A RESTORED COPYRIGHT.—

(1) NOTICES OF INTENT FILED WITH THE COPYRIGHT OFFICE.—(A)(i) A notice of intent filed with the Copyright Office to enforce a restored copyright shall be signed by the owner of the restored copyright or the owner of an exclusive right therein, who files the notice under subsection (d)(2)(A)(i) (hereafter in this paragraph referred to as the "owner"), or by the owner's agent, shall identify the title of the restored work, and shall include an English translation of the title and any other alternative titles known to the owner by which the restored work may be identified, and an address and telephone number at which the owner may be contacted. If the notice is signed by an agent, the agency relationship must have been constituted in a writing signed by the owner before the filing of the notice. The Copyright Office may specifically require in regulations other information to be included in the notice, but failure to provide such other information shall not invalidate the notice or be a basis for refusal to list the restored work in the Federal Register.

(ii) If a work in which copyright is restored has no formal title, it shall be described in the notice of intent in detail sufficient to identify it.

(iii) Minor errors or omissions may be corrected by further notice at any time after the notice of intent is filed. Notices of corrections for such minor errors or omissions shall be accepted after the period established in subsection (d)(2)(A)(i). Notices shall be published in the Federal Register pursuant to subparagraph (B).

(B)(i) The Register of Copyrights shall publish in the Federal Register, commencing not later than 4 months after the date of restoration for a particular nation and every 4 months thereafter for a period of 2 years, lists identifying restored works and the ownership thereof if a notice of intent to enforce a restored copyright has been filed.

(ii) Not less than 1 list containing all notices of intent to enforce shall be maintained in the Public Information Office of the Copyright Office and shall be available for public inspection and copying during regular business hours pursuant to sections 705 and 708.

(C) The Register of Copyrights is authorized to fix reasonable fees based on the costs of receipt, processing, recording, and publication of notices of intent to enforce a restored copyright and corrections thereto.

(D)(i) Not later than 90 days before the date the Agreement on Trade-Related Aspects of Intellectual Property referred to in section 101(d)(15) of the Uruguay Round Agreements Act enters into force with respect to the United States, the Copyright Office shall issue and publish in the Federal Register regulations governing the filing under this subsection of notices of intent to enforce a restored copyright.

(ii) Such regulations shall permit owners of restored copyrights to file simultaneously for registration of the restored copyright.

(2) NOTICES OF INTENT SERVED ON A RELIANCE PARTY.—(A) Notices of intent to enforce a restored copyright may be served on a reliance party at any time after the date of restoration of the restored copyright.

(B) Notices of intent to enforce a restored copyright served on a reliance party shall be signed by the owner or the owner's agent, shall identify the restored work and the work in which the restored work is used, if any, in detail sufficient to identify them, and shall include an English translation of the title, any other alternative titles known to the owner by which the work may be identified, the use or uses to which the owner objects, and an address and telephone number at which the reliance party may contact the owner. If the notice is signed by an agent, the agency relationship must have been constituted in writing and signed by the owner before service of the notice.

(3) EFFECT OF MATERIAL FALSE STATEMENTS.—Any material false statement knowingly made with respect to any restored copyright identified in any notice of intent shall make void all claims and assertions made with respect to such restored copyright.

(f) IMMUNITY FROM WARRANTY AND RELATED LIABILITY.—

(1) IN GENERAL.—Any person who warrants, promises, or guarantees that a work does not violate an exclusive right granted in section 106 shall not be liable for legal, equitable, arbitral, or administrative relief if the warranty, promise, or guarantee is breached by virtue of the restoration of copyright under this section, if such warranty, promise, or guarantee is made before January 1, 1995.

(2) PERFORMANCES.—No person shall be required to perform any act if such performance is made infringing by virtue of the restoration of copyright under the provisions of this section, if the obligation to perform was undertaken before January 1, 1995.

(g) PROCLAMATION OF COPYRIGHT RESTORATION.—Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States, restored copyright protection on substantially the same basis as provided under this section, the President may by proclamation extend restored protection provided under this section to any work—

(1) of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation; or

(2) which was first published in that nation.

The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under such a proclamation.

(h) DEFINITIONS.—For purposes of this section and section 109(a):

(1) The term “date of adherence or proclamation” means the earlier of the date on which a foreign nation which, as of the date the WTO Agreement enters into force with respect to the United States, is not a nation adhering to the Berne Convention or a WTO member country, becomes—

(A) a nation adhering to the Berne Convention;

(B) a WTO member country;

(C) a nation adhering to the WIPO Copyright Treaty;

(D) a nation adhering to the WIPO Performances and Phonograms Treaty; or

(E) subject to a Presidential proclamation under subsection (g).

(2) The “date of restoration” of a restored copyright is—

(A) January 1, 1996, 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—

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

(B) on such date of enactment is, or after such date of enactment becomes, a nation adhering to the Berne Convention;

(C) adheres to the WIPO Copyright Treaty;

(D) adheres to the WIPO Performances and Phonograms Treaty; or

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

(4) The term “reliance party” means any person who—

(A) with respect to a particular work, engages in acts, before the source country of that work becomes an eligible country, which would have violated section 106 if the restored work had been subject to copyright protection, and who, after the source country becomes an eligible country, continues to engage in such acts;

(B) before the source country of a particular work becomes an eligible country, makes or acquires 1 or more copies or phonorecords of that work; or

(C) as the result of the sale or other disposition of a derivative work covered under subsection (d)(3), or significant assets of a person described in subparagraph (A) or (B), is a successor, assignee, or licensee of that person.

(5) The term “restored copyright” means copyright in a restored work under this section.

(6) The term “restored work” means an original work of authorship that—

(A) is protected under subsection (a);

(B) is not in the public domain in its source country through expiration of term of protection;

(C) is in the public domain in the United States due to—

(i) noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, lack of proper notice, or failure to comply with any manufacturing requirements;

(ii) lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

(iii) lack of national eligibility;

(D) has at least one author or rightholder who was, at the time the work was created, a national or domiciliary of an eligible country, and if published, was first published in an eligible country and not published in the United States during the 30-day period following publication in such eligible country; and

(E) if the source country for the work is an eligible country solely by virtue of its adherence to the WIPO Performances and Phonograms Treaty, is a sound recording.

(7) The term “rightholder” means the person—

(A) who, with respect to a sound recording, first fixes a sound recording with authorization, or

(B) who has acquired rights from the person described in subparagraph (A) by means of any conveyance or by operation of law.

(8) The “source country” of a restored work is—

(A) a nation other than the United States; (B) in the case of an unpublished work—

(i) the eligible country in which the author or rightholder is a national or domiciliary, or, if a restored work has more than 1 author or rightholder, of which the majority of foreign authors or rightholders are nationals or domiciliaries; or

(ii) if the majority of authors or rightholders are not foreign, the nation other than the United States which has the most significant contacts with the work; and

(C) in the case of a published work—

(i) the eligible country in which the work is first published, or

(ii) if the restored work is published on the same day in 2 or more eligible countries, the eligible country which has the most significant contacts with the work.

(Added Pub. L. 103-182, title III, § 334(a), Dec. 8, 1993, 107 Stat. 2115; amended Pub. L. 103-465, title V, § 514(a), Dec. 8, 1994, 108 Stat. 4976; Pub. L. 104-295, § 20(e)(2), Oct. 11, 1996, 110 Stat. 3529; Pub. L. 105-80, § 2, Nov. 13, 1997, 111 Stat. 1530; Pub. L. 105-304, title I, § 102(c), Oct. 28, 1998, 112 Stat. 2862.)

REFERENCES IN TEXT

The date of the enactment of the Uruguay Round Agreements Act, referred to in subsecs. (d)(3)(A) and (h)(3), is the date of enactment of Pub. L. 103-465, which was approved Dec. 8, 1994.

Section 101(d)(15) of the Uruguay Round Agreements Act, referred to in subsec. (e)(1)(D)(i), is classified to section 3511(d)(15) of Title 19, Customs Duties.

AMENDMENTS

1998—Subsec. (h)(1)(A) to (E). Pub. L. 105-304, § 102(c)(1), added subpars. (A) to (E) and struck out former subpars. (A) and (B) which read as follows:

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

“(B) subject to a Presidential 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 is, or after such date of enactment becomes, a member of the Berne Convention; or

“(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)(6)(E). Pub. L. 105-304, § 102(c)(3), added subpar. (E).

Subsec. (h)(8)(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)(ii). 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. (h)(2), (3). Pub. L. 105-80, § 2(3), (4), amended pars. (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 referred to in section 101(d)(15) of the Uruguay Round Agreements Act enters 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. 104-295 substituted “subsection (g)” for “section 104A(g)”.

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 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), (b)(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 335(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 3511(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.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2546.)

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 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 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 the writings generated by Government research contracts and the like; it can be assumed that, where a Government agency commissions a work for its own use merely as an alternative to having one of its own employees prepare the work, the right to secure a private copyright would be withheld. However, there are almost certainly many other cases where the denial of copyright protection would be unfair or would hamper the production and publication of important works. Where, under the particular circumstances, Congress or the agency involved finds that the need to have a work freely available outweighs the need of the private author to secure copyright, the problem can be dealt with by specific legislation, agency regulations, or contractual restrictions.

The prohibition on copyright protection for United States Government works is not intended to have any effect on protection of these works abroad. Works of the governments of most other countries are copyrighted. There are no valid policy reasons for denying such protection to United States Government works in foreign countries, or for precluding the Government from making licenses for the use of its works abroad.

The effect of section 105 is intended to place all works of the United States Government, published or unpublished, in the public domain. This means that the individual Government official or employee who wrote the work could not secure copyright in it or restrain its dissemination by the Government or anyone else, but it also means that, as far as the copyright law is concerned, the Government could not restrain the employee or official from disseminating the work if he or she chooses to do so. The use of the term “work of the United States Government” does not mean that a work falling within the definition of that term is the property of the U.S. Government.

LIMITED EXCEPTION FOR NATIONAL TECHNICAL INFORMATION SERVICE

At the House hearings in 1975 the U.S. Department of Commerce called attention to its National Technical Information Service (NTIS), which has a statutory mandate, under Chapter 23 [§ 1151 et seq.] of Title 15 of the U.S. Code, to operate a clearinghouse for the collection and dissemination of scientific, technical and engineering information. Under its statute, NTIS is required to be as self-sustaining as possible, and not to force the general public to bear publishing costs that are for private benefit. The Department urged an amendment to section 105 that would allow it to secure copyright in NTIS publications both in the United States and abroad, noting that a precedent exists in the Standard Reference Data Act (15 U.S.C. § 290(e) [§ 290e]).

In response to this request the Committee adopted a limited exception to the general prohibition in section 105, permitting the Secretary of Commerce to “secure copyright for a limited term not to exceed five years, on behalf of the United States as author or copyright owner” in any NTIS publication disseminated pursuant to 15 U.S.C. Chapter 23 [§ 1151 et seq.]. In order to “secure copyright” in a work under this amendment the Secretary would be required to publish the work with a copyright notice, and the five-year term would begin upon the date of first publication.

Proposed Saving Clause. Section 8 of the statute now in effect [section 8 of former title 17] includes a saving clause intended to make clear that the copyright protection of a private work is not affected if the work is published by the Government. This provision serves a real purpose in the present law because of the ambiguity of the undefined term “any publication of the United States Government.” Section 105 of the bill, however, uses the operative 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 superfluous.