dent under section 1(e) or 9(b) of title 17 as it existed on December 31, 1977, or under previous copyright stat-
utes of the United States, shall continue in force until ter-
minated, 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 re-

stored under this section shall vest for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never en-
tered the public domain in the United States.

(2) Exception.—Any work in which the copy-

right was ever owned or administered by the Alien Property Custodian and in which the re-

stored copyright would be owned by a govern-

ment or instrumentality thereof, is not a re-

stored work.

(b) Ownership of Restored Copyright.—A re-

stored work vests initially in the author or ini-

tial 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 Par-

ties.—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 reli-

ance 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 rem-

edies provided in chapter 5 of this title shall be available, with respect to an act of infringe-

ment 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) files with the Copyright Office, dur-

ing the 24-month period beginning on the date of restoration, a notice of intent to en-

force the restored copyright; and

(ii) the act of infringement commenced after the end of the 12-month period begin-

ning on the date of publication of the notice in the Federal Register;

(II) the act of infringement commenced be-

fore the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case rem-

edies shall be available only for infringe-

ment 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 no-

tice 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) the act of infringement commenced after the end of the 12-month period begin-

ning on the date the notice of intent is re-

ceived;

(II) the act of infringement commenced be-

fore the end of the 12-month period described in subclause (I) and continued after the end of that 12-month period, in which case rem-

edies shall be available only for the infringe-

ment 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 pe-
riod 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 eli-

gible country on such date, or

(ii) before the date on which the source country of the restored work becomes an eligi-

ble 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 re-

stored copyright if the reliance party pays to the owner of the restored copyright reasonable compensation for conduct which would be sub-

ject 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 con-

tributions of expression of the author of the
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restored work and the reliance party to the de-

rivative work.

(4) COMMENCEMENT OF INFRINGEMENT FOR RE-

LIANCE 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 con-

stituted infringement had the restored work been subject to copyright were commenced before the date of restoration.

(e) NOTICES OF INTENT TO ENFORCE A RESTO-

RED COPYRIGHT.—

(1) NOTICES OF INTENT FILED WITH THE COPY-

RIGHT 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 exclu-
sive right therein, who files the notice under subsection (d)(2)(A)(i) (hereafter in this para-

graph 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 alter-

native titles known to the owner by which the restored work may be identified, and an ad-

dress 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 in-

cluded 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 cor-

rected by further notice at any time after the notice of intent is filed. Notices of corrections for such minor errors or omissions shall be ac-

cepted after the period established in sub-

section (d)(2)(A)(i). Notices shall be published in the Federal Register pursuant to subpara-

graph (B).

(B)(i) The Register of Copyrights shall pub-

lish in the Federal Register, commencing not later than 4 months after the date of restora-
tion 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 re-
stored 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 Of-

cine and shall be available for public inspection and copying during regular business hours pursuant to sections 705 and 706.

(C) The Register of Copyrights is authorized to fix reasonable fees based on the costs of re-
cipt, processing, recording, and publication of notices of intent to enforce a restored copy-

right 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 sub-

section of notices of intent to enforce a re-
stored 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 re-

stored 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 ad-
dress and telephone number at which the reli-

ance party may contact the owner. If the no-
tice is signed by an agent, the agency relation-

ship must have been constituted in writing and signed by the owner before service of the notice.

(3) EFFECT OF MATERIAL FALSE STATE-

MENTS.—Any material false statement know-

ingly made with respect to any restored copy-

right 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, arbi-

tral, or administrative relief if the warranty, promise, or guarantee is breached by virtue of the restoration of copyright under this sec-

tion, if such warranty, promise, or guarantee is made before January 1, 1995.

(2) PERFORMANCES.—No person shall be re-

quired 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 under-


(g) PROCLAMATION OF COPYRIGHT RESTORA-

TION.—Whenever the President finds that a par-


cular foreign nation extends, to works by au-

thors 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, domi-

ciliary, 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 proclama-

tion.
(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.


Editorial Notes

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. 103–165, which was approved Dec. 8, 1994.
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—
“(1) becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;
“(2) 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)(8)(B)(1). 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 subpar. (B) 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.”
“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 “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.

Statutory Notes and Related Subsidiaries

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 entered force 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, formerly set out as a note under §105 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 331 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

(a) In general.—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.

(b) Copyright protection of certain of 1 works.—Subject to subsection (c), the covered author of a covered work owns the copyright to that covered work.

(c) Use by Federal Government.—The Secretary of Defense may direct the covered author of a covered work to provide the Federal Government with an irrevocable, royalty-free, world-wide, nonexclusive license to reproduce, distribute, perform, or display such covered work for purposes of the United States Government.

(1) Definitions.—In this section:

(1) the term “covered author” means a civilian member of the faculty of a covered institution;

(2) the term “covered institution” means the following:

(A) National Defense University.

(B) United States Military Academy.

(C) Army War College.

(D) United States Army Command and General Staff College.

(E) United States Naval Academy.

(F) Naval War College.

(G) Naval Post Graduate School.

(H) Marine Corps University.

(I) United States Air Force Academy.

1 So in original. There are two subsections designated (c).