§ 204. Execution of transfers of copyright ownership

(a) A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner’s duly authorized agent.

(b) A certificate of acknowledgement is not required for the validity of a transfer, but is prima facie evidence of the execution of the transfer if—

(1) in the case of a transfer executed in the United States, the certificate is issued by a person authorized to administer oaths within the United States; or

(2) in the case of a transfer executed in a foreign country, the certificate is issued by a diplomatic or consular officer of the United States, or by a person authorized to administer oaths within the United States, or at any time before recordation in the Copyright Office if the document filed for recordation pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work; and

(2) registration has been made for the work.

(d) Priority between conflicting transfers.—As between two conflicting transfers, the one executed first prevails if it is recorded, in the manner required to give constructive notice under subsection (c), within one month after its execution in the United States or within two months after its execution outside the United States, or at any time before recordation in such manner of the later transfer. Otherwise the later transfer prevails if recorded first in such manner, and if taken in good faith, for valuable consideration or on the basis of a binding promise to pay royalties, and without notice of the earlier transfer.

(Historical and Revision Notes)

House Report No. 94–1476

Section 204 is a somewhat broadened and liberalized counterpart of sections 28 and 29 of the present statute (sections 28 and 29 of former title 17). Under subsection (a), a transfer of copyright ownership (other than one brought about by operation of law) is valid only if there exists an instrument of conveyance, or alternatively a “note or memorandum of the transfer,” which is in writing and signed by the copyright owner “or such owner’s duly authorized agent.” Subsection (b) makes clear that a notarial or consular acknowledgment is not essential to the validity of any transfer, whether executed in the United States or abroad. However, the subsection would liberalize the conditions under which certificates of acknowledgment of documents executed abroad are to be accorded prima facie weight, and would give the same weight to domestic acknowledgments under appropriate circumstances.

§ 205. Recordation of transfers and other documents

(a) Conditions for recordation.—Any transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Copyright Office if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document. A sworn or official certification may be submitted to the Copyright Office electronically, pursuant to regulations established by the Register of Copyrights.

(b) Certificate of recordation.—The Register of Copyrights shall, upon receipt of a document as provided by subsection (a) and of the fee provided by section 708, record the document and return it with a certificate of recordation.

(c) Recordation as constructive notice.—Recordation of a document in the Copyright Office gives all persons constructive notice of the facts stated in the recorded document, but only if—

(1) the document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work; and

(2) registration has been made for the work.

(d) Priority between conflicting transfers.—As between two conflicting transfers, the one executed first prevails if it is recorded, in the manner required to give constructive notice under subsection (c), within one month after its execution in the United States or within two months after its execution outside the United States, or at any time before recordation in such manner of the later transfer. Otherwise the later transfer prevails if recorded first in such manner, and if taken in good faith, for valuable consideration or on the basis of a binding promise to pay royalties, and without notice of the earlier transfer.

(Historical and Revision Notes)

House Report No. 94–1476

The recording and priority provisions of section 205 are intended to clear up a number of uncertainties arising from sections 30 and 31 of the present law (sections 30 and 31 of former title 17) and to make them more effective and practical in operation. Any “document pertaining to a copyright” may be recorded under section (a) if it “bears that actual signature of the person who executed it,” or if it is appropriately certified as a true copy. However, subsection (c) makes clear that the recorded document will give constructive notice of its contents only if two conditions are met: (1) the document or attached material specifically identifies the work to which it pertains so that a reasonable search under the title or registration number of the work would reveal it, and (2) registration has been made for the work. Moreover, even though the Register of Copyrights may be compelled to accept for recordation documents that on their face appear self-serving or colorable, the Register should take care that their nature is not concealed from the public in the Copyright Office’s indexing and search reports.

The provisions of subsection (d), requiring recordation of transfers as a prerequisite to the institution of an infringement suit, represent a desirable change in the law. The one- and three-month grace periods provided in subsection (e) are a reasonable compromise between those who want a longer hiatus and those who argue that any grace period makes it impossible for a bona fide transferee to rely on the record at any particular time.

Under subsection (f) of section 205, a nonexclusive license in writing and signed, whether recorded or not, would be valid against a later transfer, and would also prevail as against a prior unrecorded transfer if taken
in good faith and without notice. Objections were raised by motion picture producers, particularly to the provision allowing unrecorded nonexclusive licenses to prevail over subsequent transfers, on the ground that a nonexclusive license can have drastic effects on the value of a copyright. On the other hand, the impracticalities and burdens that would accompany any requirement of recording of nonexclusive licenses outweigh the limited advantages of a statutory recordation system for them.

Editorial Notes

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–295 inserted at end “A sworn or official certification may be submitted to the Copyright Office electronically, pursuant to regulations established by the Register of Copyrights.”

1988—Subsecs. (d) to (f). Pub. L. 100–568 redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out former subsec. (d), which read as follows: “No person claiming by virtue of a transfer to be the owner of copyright or of any exclusive right under a copyright is entitled to institute an infringement action under this title until the instrument of transfer under which such person claims has been recorded in the Copyright Office, but suit may be instituted after such recordation on a cause of action that arose before recordation.”

§ 301. Preemption with respect to other laws

(a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

(b) Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any State with respect to—

(1) subject matter that does not come within the subject matter of copyright as specified by sections 102 and 103, including works of authorship not fixed in any tangible medium of expression; or

(2) any cause of action arising from undertakings commenced on or after January 1, 1978;

(3) activities violating legal or equitable rights that are not equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106; or

(4) State and local landmarks, historic preservation, zoning, or building codes, relating to architectural works protected under section 102(a)(8).

(c) Notwithstanding the provisions of section 303, and in accordance with chapter 14, no sound recording fixed before February 15, 1972, shall be subject to copyright under this title. With respect to sound recordings fixed before February 15, 1972, the preemptive provisions of subsection (a) shall apply to activities that are commenced on and after the date of enactment of the Classics Protection and Access Act. Nothing in this subsection may be construed to affirm or negate the preemption of rights and remedies pertaining to any cause of action arising from the nonsubscription broadcast transmission of sound recordings under the common law or statutes of any State for activities that do not qualify as covered activities under chapter 14 undertaken during the period between the date of enactment of the Classics Protection and Access Act and the date on which the term of prohibition on unauthorized acts under section 1401(a)(2) expires for such sound recordings. Any potential preemption of rights and remedies related to such activities undertaken during that period shall apply in all respects as it did the