

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Section 403 is aimed at a publishing practice that, while technically justified under the present law, has been the object of considerable criticism. In cases where a Government work is published or republished commercially, it has frequently been the practice to add some "new matter" in the form of an introduction, editing, illustrations, etc., and to include a general copyright notice in the name of the commercial publisher. This in no way suggests to the public that the bulk of the work is uncopyrightable and therefore free for use.

To make the notice meaningful rather than misleading, section 403 requires that, when the copies or phonorecords consist "preponderantly of one or more works of the United States Government," the copyright notice (if any) identify those parts of the work in which copyright is claimed. A failure to meet this requirement would be treated as an omission of the notice, subject to the provisions of section 405.

AMENDMENTS

1988—Pub. L. 100-568 amended section generally. Prior to amendment, section read as follows: "Whenever a work is published in copies or phonorecords consisting preponderantly of one or more works of the United States Government, the notice of copyright provided by sections 401 or 402 shall also include a statement identifying, either affirmatively or negatively, those portions of the copies or phonorecords embodying any work or works protected under this title."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-568 effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions in effect when cause of action arose, see section 13 of Pub. L. 100-568, set out as a note under section 101 of this title.

§ 404. Notice of copyright: Contributions to collective works

(a) A separate contribution to a collective work may bear its own notice of copyright, as provided by sections 401 through 403. However, a single notice applicable to the collective work as a whole is sufficient to invoke the provisions of section 401(d) or 402(d), as applicable with respect to the separate contributions it contains (not including advertisements inserted on behalf of persons other than the owner of copyright in the collective work), regardless of the ownership of copyright in the contributions and whether or not they have been previously published.

(b) With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, where the person named in a single notice applicable to a collective work as a whole is not the owner of copyright in a separate contribution that does not bear its own notice, the case is governed by the provisions of section 406(a).

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2577; Pub. L. 100-568, § 7(d), Oct. 31, 1988, 102 Stat. 2858.)

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In conjunction with the provisions of section 201(c), section 404 deals with a troublesome problem under the present law: the notice requirements applicable to contributions published in periodicals and other collective works. The basic approach of the section is threefold:

(1) To permit but not require a separate contribution to bear its own notice;

(2) To make a single notice, covering the collective work as a whole, sufficient to satisfy the notice requirement for the separate contributions it contains, even if they have been previously published or their ownership is different; and

(3) To protect the interests of an innocent infringer of copyright in a contribution that does not bear its own notice, who has dealt in good faith with the person named in the notice covering the collective work as a whole.

As a general rule, under this section, the rights in an individual contribution to a collective work would not be affected by the lack of a separate copyright notice, as long as the collective work as a whole bears a notice. One exception to this rule would apply to "advertisements inserted on behalf of persons other than the owner of copyright in the collective work." Collective works, notably newspapers and magazines, are major advertising media, and it is common for the same advertisement to be published in a number of different periodicals. The general copyright notice in a particular issue would not ordinarily protect the advertisements inserted in it, and relatively little advertising matter today is published with a separate copyright notice. The exception in section 404(a), under which separate notices would be required for most advertisements published in collective works, would impose no undue burdens on copyright owners and is justified by the special circumstances.

Under section 404(b) a separate contribution that does not bear its own notice, and that is published in a collective work with a general notice containing the name of someone other than the copyright owner of the contribution, is treated as if it has been published with the wrong name in the notice. The case is governed by section 406(a), which means that an innocent infringer who in good faith took a license from the person named in the general notice would be shielded from liability to some extent.

REFERENCES IN TEXT

The effective date of the Berne Convention Implementation Act of 1988, referred to in subsec. (b), is Mar. 1, 1989, see section 13 of Pub. L. 100-568, set out as an Effective Date of 1988 Amendment note under section 101 of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-568, § 7(d)(1), substituted "to invoke the provisions of section 401(d) or 402(d), as applicable" for "to satisfy the requirements of sections 401 through 403".

Subsec. (b). Pub. L. 100-568, § 7(d)(2), substituted "With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, where" for "Where".

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-568 effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions in effect when cause of action arose, see section 13 of Pub. L. 100-568, set out as a note under section 101 of this title.

§ 405. Notice of copyright: Omission of notice on certain copies and phonorecords

(a) EFFECT OF OMISSION ON COPYRIGHT.—With respect to copies and phonorecords publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, the omission of the copyright notice described in sections 401 through 403 from copies or phonorecords publicly distributed by authority of the copyright