

ant in a copyright infringement suit had access, then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages, except as provided in the last sentence of section 504(c)(2).

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2577; Pub. L. 100-568, § 7(b), Oct. 31, 1988, 102 Stat. 2857.)

#### HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

A special notice requirement, applicable only to the subject matter of sound recordings, is established by section 402. Since the bill protects sound recordings as separate works, independent of protection for any literary or musical works embodied in them, there would be a likelihood of confusion if the same notice requirements applied to sound recordings and to the works they incorporate. Like the present law, therefore, section 402 thus sets forth requirements for a notice to appear on the "phonorecords" of "sound recordings" that are different from the notice requirements established by section 401 for the "copies" of all other types of copyrightable works. Since "phonorecords" are not "copies," there is no need to place a section 401 notice on "phonorecords" to protect the literary or musical works embodied in the records.

In general, the form of the notice specified by section 402(b) consists of the symbol "©"; the year of first publication of the sound recording; and the name of the copyright owner or an admissible variant. Where the record producer's name appears on the record label, album, sleeve, jacket, or other container, it will be considered a part of the notice if no other name appears in conjunction with it. Under subsection (c), the notice for a copyrighted sound recording may be affixed to the surface, label, or container of the phonorecord "in such manner and location as to give reasonable notice of the claim of copyright."

There are at least three reasons for prescribing use of the symbol "©" rather than "©" in the notice to appear on phonorecords of sound recordings. Aside from the need to avoid confusion between claims to copyright in the sound recording and in the musical or literary work embodied in it, there is also a necessity for distinguishing between copyright claims in the sound recording and in the printed text or art work appearing on the record label, album cover, liner notes, et cetera. The symbol "©" has also been adopted as the international symbol for the protection of sound recordings by the "Phonograms Convention" (the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, done at Geneva October 29, 1971), to which the United States is a party.

#### AMENDMENTS

1988—Subsec. (a). Pub. L. 100-568, § 7(b)(1), (2), substituted "General provisions" for "General requirement" in heading, and "may be placed on" for "shall be placed on all" in text.

Subsec. (b). Pub. L. 100-568, § 7(b)(3), substituted "If a notice appears on the phonorecords, it" for "The notice appearing on the phonorecords".

Subsec. (d). Pub. L. 100-568, § 7(b)(4), added subsec. (d).

#### 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.

### § 403. Notice of copyright: Publications incorporating United States Government works

Sections 401(d) and 402(d) shall not apply to a work published in copies or phonorecords con-

sisting predominantly of one or more works of the United States Government unless the notice of copyright appearing on the published copies or phonorecords to which a defendant in the copyright infringement suit had access includes a statement identifying, either affirmatively or negatively, those portions of the copies or phonorecords embodying any work or works protected under this title.

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

#### HISTORICAL AND REVISION NOTES

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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