(Added Pub. L. 106–113, div. B, §1000(a)(9) [title I, §1002(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–523; amended Pub. L. 107–273, div. C, title III, §13210(2)(A), Nov. 2, 2002, 116 Stat. 1909; Pub. L. 108–447, div. J, title IX [title I, §111(b)], Dec. 8, 2004, 118 Stat. 3409; Pub. L. 110–403, title II, §209(a)(5), Oct. 13, 2008, 122 Stat. 4264; Pub. L. 111–175, title I, §103(a)(1), (b)–(f), May 27, 2010, 124 Stat. 1227–1230; Pub. L. 113–200, title II, §204, Dec. 4, 2014, 128 Stat. 2067.)

Editorial Notes

REFERENCES IN TEXT

Section 397 of the Communications Act of 1934, referred to in subsec. (j)(5), is classified to section 397 of Title 47, Telecommunications.

The date of the enactment of the Satellite Television Extension and Localism Act of 2010, referred to in subsec. (j)(5), is the date of enactment of Pub. L. 111–175, which shall be deemed to refer to Feb. 27, 2010, see section 307(a) of Pub. L. 111–175, set out as an Effective Date of 2010 Amendment note under section 111 of this title.

AMENDMENTS

2014—Subsec. (j)(2)(B) to (D). Pub. L. 113–200, §204(1), realigned margins.

Subsec. (j)(2)(E). Pub. L. 113–200, §204(2), added subpar. (E).

2010—Pub. L. 111–175, §103(a)(1), substituted ''of local television programming by satellite'' for ''by satellite carriers within local markets'' in section catchline.

Subsec. (a). Pub. L. 111–175, §103(b), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to secondary transmissions of television broadcast stations by satellite carriers.

Subsec. (b)(1). Pub. L. 111–175, §103(c)(1), substituted ''station—'' for ''station a list identifying (by name in alphabetical order and street address, including county and zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission under subsection (a).'' and added subpars. (A) and (B).

Subsec. (b)(2). Pub. L. 111–175, §103(c)(2), substituted ''network—'' for ''network a list identifying (by name in alphabetical order and street address, including county and zip code) any subscribers who have been added or dropped as subscribers since the last submission under this subsection.'' and added subpars. (A) and (B).

Subsec. (c). Pub. L. 111–175, §103(d), inserted ''for Certain Secondary Transmissions'' after ''Required'' in heading and substituted ''paragraphs (1), (2), and (3) of subsection (a)'' for ''subsection (a)'' in text.

Subsec. (f)(1). Pub. L. 111–175, §103(e)(2)(A), substituted ''section 119, subject to statutory licensing by reason of paragraph (2)(A), (3), or (4) of subsection (a), or subject to'' for ''section 119 or'' in introductory provisions.

Subsec. (f)(1)(B). Pub. L. 111–175, §103(e)(1)(A), substituted ''$250'' for ''$5''.

Subsec. (f)(2). Pub. L. 111–175, §103(e)(2)(A), substituted ''section 119, subject to statutory licensing by reason of paragraph (2)(A), (3), or (4) of subsection (a), or subject to'' for ''section 119 or'' in introductory provisions.

Subsec. (f)(2)(A)(ii), (B)(ii). Pub. L. 111–175, §103(e)(1)(B), substituted ''$2,500,000'' for ''$250,000''.

Subsec. (g). Pub. L. 111–175, §103(e)(2)(B), substituted ''section 119, paragraph (2)(A), (3), or (4) of subsection (a), or'' for ''section 119 or''.

Subsec. (j)(1). Pub. L. 111–175, §103(f)(1), substituted ''that contracts'' for ''which contracts''.

Subsec. (j)(3). Pub. L. 111–175, §103(f)(4), added par. (3). Former par. (3) redesignated (4).

Subsec. (j)(4). Pub. L. 111–175, §103(f)(3), redesignated par. (3) as (4) and inserted ''non-network station;'' after ''Network station;'' in heading and '' 'non-network station','' after '' 'network station','' in text. Former par. (4) redesignated (6).

Subsec. (j)(5). Pub. L. 111–175, §103(f)(5), added par. (5). Former par. (5) redesignated (7).

Subsec. (j)(6). Pub. L. 111–175, §103(f)(6), amended par. (6) generally. Prior to amendment, text read as follows: ''The term 'subscriber' means a person who receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.''

Pub. L. 111–175, §103(f)(2), redesignated par. (4) as (6).

Subsec. (j)(7). Pub. L. 111–175, §103(f)(2), redesignated par. (5) as (7).

2008—Subsec. (d). Pub. L. 110–403, §209(a)(5)(A), struck out ''and 509'' after ''506''.

Subsec. (e). Pub. L. 110–403, §209(a)(5)(B), substituted ''section 510'' for ''sections 509 and 510''.

Subsec. (f)(1). Pub. L. 110–403, §209(a)(5)(C), struck out ''and 509'' after ''506'' in introductory provisions.

2004—Subsec. (j)(2)(D). Pub. L. 108–447 added subpar. (D).

2002—Pub. L. 107–273 substituted ''rights: Secondary'' for ''rights; secondary'' in section catchline.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–175 effective Feb. 27, 2010, see section 307(a) of Pub. L. 111–175, set out as a note under section 111 of this title.

EFFECTIVE DATE

Section effective July 1, 1999, see section 1000(a)(9) [title I, §1012] of Pub. L. 106–113, set out as an Effective Date of 1999 Amendment note under section 101 of this title.

CHAPTER 2—COPYRIGHT OWNERSHIP AND TRANSFER

§ 201. Ownership of copyright

(a) INITIAL OWNERSHIP.—Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are coowners of copyright in the work.

(b) WORKS MADE FOR HIRE.—In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

(c) CONTRIBUTIONS TO COLLECTIVE WORKS.—Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular

collective work, any revision of that collective work, and any later collective work in the same series.

(d) TRANSFER OF OWNERSHIP.—

(1) The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

(2) Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by section 106, may be transferred as provided by clause (1) and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this title.

(e) INVOLUNTARY TRANSFER.—When an individual author's ownership of a copyright, or of any of the exclusive rights under a copyright, has not previously been transferred voluntarily by that individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect under this title, except as provided under title 11.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2568; Pub. L. 95–598, title III, § 313, Nov. 6, 1978, 92 Stat. 2676.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

Initial Ownership. Two basic and well-established principles of copyright law are restated in section 201(a): that the source of copyright ownership is the author of the work, and that, in the case of a ''joint work,'' the coauthors of the work are likewise coowners of the copyright. Under the definition of section 101, a work is ''joint'' if the authors collaborated with each other, or if each of the authors prepared his or her contribution with the knowledge and intention that it would be merged with the contributions of other authors as ''inseparable or interdependent parts of a unitary whole.'' The touchstone here is the intention, at the time the writing is done, that the parts be absorbed or combined into an integrated unit, although the parts themselves may be either ''inseparable'' (as the case of a novel or painting) or ''interdependent'' (as in the case of a motion picture, opera, or the words and music of a song). The definition of ''joint work'' is to be contrasted with the definition of ''collective work,'' also in section 101, in which the elements of merger and unity are lacking; there the key elements are assemblage or gathering of ''separate and independent works * * * into a collective whole.''

The definition of ''joint works'' has prompted some concern lest it be construed as converting the authors of previously written works, such as plays, novels, and music, into coauthors of a motion picture in which their work is incorporated. It is true that a motion picture would normally be a joint rather than a collective work with respect to those authors who actually work on the film, although their usual status as employees for hire would keep the question of coownership from coming up. On the other hand, although a novelist, playwright, or songwriter may write a work with the hope or expectation that it will be used in a motion picture, this is clearly a case of separate or independent authorship rather than one where the basic intention behind the writing of the work was for motion picture use. In this case, the motion picture is a derivative work within the definition of that term, and section 103 makes plain that copyright in a derivative work is independent of, and does not enlarge the scope of rights in, any preexisting material incorporated in it. There is thus no need to spell this conclusion out in the definition of ''joint work.''

There is also no need for a specific statutory provision concerning the rights and duties of the coowners of a work; court-made law on this point is left undisturbed. Under the bill, as under the present law, coowners of a copyright would be treated generally as tenants in common, with each coowner having an independent right to use or license the use of a work, subject to a duty of accounting to the other coowners for any profits.

Works Made for Hire. Section 201(b) of the bill adopts one of the basic principles of the present law: that in the case of works made for hire the employer is considered the author of the work, and is regarded as the initial owner of copyright unless there has been an agreement otherwise. The subsection also requires that any agreement under which the employee is to own rights be in writing and signed by the parties.

The work-made-for-hire provisions of this bill represent a carefully balanced compromise, and as such they do not incorporate the amendments proposed by screenwriters and composers for motion pictures. Their proposal was for the recognition of something similar to the ''shop right'' doctrine of patent law: with some exceptions, the employer would acquire the right to use the employee's work to the extent needed for purposes of his regular business, but the employee would retain all other rights as long as he or she refrained from the authorizing of competing uses. However, while this change might theoretically improve the bargaining position of screenwriters and others as a group, the practical benefits that individual authors would receive are highly conjectural. The presumption that initial ownership rights vest in the employer for hire is well established in American copyright law, and to exchange that for the uncertainties of the shop right doctrine would not only be of dubious value to employers and employees alike, but might also reopen a number of other issues.

The status of works prepared on special order or commission was a major issue in the development of the definition of ''works made for hire'' in section 101, which has undergone extensive revision during the legislative process. The basic problem is how to draw a statutory line between those works written on special order or commission that should be considered as ''works made for hire,'' and those that should not. The definition now provided by the bill represents a compromise which, in effect, spells out those specific categories of commissioned works that can be considered ''works made for hire'' under certain circumstances.

Of these, one of the most important categories is that of ''instructional texts.'' This term is given its own definition in the bill: ''a literary, pictorial, or graphic work prepared for publication with the purpose of use in systematic instructional activities.'' The concept is intended to include what might be loosely called ''textbook material,'' whether or not in book form or prepared in the form of text matter. The basic characteristic of ''instructional texts'' is the purpose of their preparation for ''use in systematic instructional activities,'' and they are to be distinguished from works prepared for use by a general readership.

Contributions to Collective Works. Subsection (c) of section 201 deals with the troublesome problem of ownership of copyright in contributions to collective works, and the relationship between copyright ownership in a contribution and in the collective work in which it appears. The first sentence establishes the basic principle that copyright in the individual contribution and copyright in the collective work as a whole are separate and distinct, and that the author of the contribution is, as in every other case, the first owner of copyright in it. Under the definitions in sec-

tion 101, a ''collective work'' is a species of ''compilation'' and, by its nature, must involve the selection, assembly, and arrangement of ''a number of contributions.'' Examples of ''collective works'' would ordinarily include periodical issues, anthologies, symposia, and collections of the discrete writings of the same authors, but not cases, such as a composition consisting of words and music, a work published with illustrations or front matter, or three one-act plays, where relatively few separate elements have been brought together. Unlike the contents of other types of ''compilations,'' each of the contributions incorporated in a ''collective work'' must itself constitute a ''separate and independent'' work, therefore ruling out compilations of information or other uncopyrightable material and works published with editorial revisions or annotations. Moreover, as noted above, there is a basic distinction between a ''joint work,'' where the separate elements merge into a unified whole, and a ''collective work,'' where they remain unintegrated and disparate.

The bill does nothing to change the rights of the owner of copyright in a collective work under the present law. These exclusive rights extend to the elements of compilation and editing that went into the collective work as a whole, as well as the contributions that were written for hire by employees of the owner of the collective work, and those copyrighted contributions that have been transferred in writing to the owner by their authors. However, one of the most significant aims of the bill is to clarify and improve the present confused and frequently unfair legal situation with respect to rights in contributions.

The second sentence of section 201(c), in conjunction with the provisions of section 404 dealing with copyright notice, will preserve the author's copyright in a contribution even if the contribution does not bear a separate notice in the author's name, and without requiring any unqualified transfer of rights to the owner of the collective work. This is coupled with a presumption that, unless there has been an express transfer of more, the owner of the collective work acquires, ''only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.''

The basic presumption of section 201(c) is fully consistent with present law and practice, and represents a fair balancing of equities. At the same time, the last clause of the subsection, under which the privilege of republishing the contribution under certain limited circumstances would be presumed, is an essential counterpart of the basic presumption. Under the language of this clause a publishing company could reprint a contribution from one issue in a later issue of its magazine, and could reprint an article from a 1980 edition of an encyclopedia in a 1990 revision of it; the publisher could not revise the contribution itself or include it in a new anthology or an entirely different magazine or other collective work.

Transfer of Ownership. The principle of unlimited alienability of copyright is stated in clause (1) of section 201(d). Under that provision the ownership of a copyright, or of any part of it, may be transferred by any means of conveyance or by operation of law, and is to be treated as personal property upon the death of the owner. The term ''transfer of copyright ownership'' is defined in section 101 to cover any ''conveyance, alienation, or hypothecation,'' including assignments, mortgages, and exclusive licenses, but not including nonexclusive licenses. Representatives of motion picture producers have argued that foreclosures of copyright mortgages should not be left to varying State laws, and that the statute should establish a Federal foreclosure system. However, the benefits of such a system would be of very limited application, and would not justify the complicated statutory and procedural requirements that would have to be established.

Clause (2) of subsection (d) contains the first explicit statutory recognition of the principle of divisibility of copyright in our law. This provision, which has long been sought by authors and their representatives, and which has attracted wide support from other groups, means that any of the exclusive rights that go to make up a copyright, including those enumerated in section 106 and any subdivision of them, can be transferred and owned separately. The definition of ''transfer of copyright ownership'' in section 101 makes clear that the principle of divisibility applies whether or not the transfer is ''limited in time or place of effect,'' and another definition in the same section provides that the term ''copyright owner,'' with respect to any one exclusive right, refers to the owner of that particular right. The last sentence of section 201(d)(2) adds that the owner, with respect to the particular exclusive right he or she owns, is entitled ''to all of the protection and remedies accorded to the copyright owner by this title.'' It is thus clear, for example, that a local broadcasting station holding an exclusive license to transmit a particular work within a particular geographic area and for a particular period of time, could sue, in its own name as copyright owner, someone who infringed that particular exclusive right.

Subsection (e) provides that when an individual author's ownership of a copyright, or of any of the exclusive rights under a copyright, have not previously been voluntarily transferred, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect under this title.

The purpose of this subsection is to reaffirm the basic principle that the United States copyright of an individual author shall be secured to that author, and cannot be taken away by any involuntary transfer. It is the intent of the subsection that the author be entitled, despite any purported expropriation or involuntary transfer, to continue exercising all rights under the United States statute, and that the governmental body or organization may not enforce or exercise any rights under this title in that situation.

It may sometimes be difficult to ascertain whether a transfer of copyright is voluntary or is coerced by covert pressure. But subsection (e) would protect foreign authors against laws and decrees purporting to divest them of their rights under the United States copyright statute, and would protect authors within the foreign country who choose to resist such covert pressures.

Traditional legal actions that may involve transfer of ownership, such as bankruptcy proceedings and mortgage foreclosures, are not within the scope of this subsection; the authors in such cases have voluntarily consented to these legal processes by their overt actions—for example, by filing in bankruptcy or by hypothecating a copyright.

Editorial Notes

AMENDMENTS

1978—Subsec. (e). Pub. L. 95–598 inserted '', except as provided under title 11''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598 set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 202. Ownership of copyright as distinct from ownership of material object

Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of any material object, including the copy or phonorecord in which the work is first fixed, does not