

Nimmer
on
Copyright

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MATTHEW  BENDER

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GLOSSARY OF ABBREVIATIONS AND OTHER REFERENCES

Certain references in the text, not otherwise identified, are as follows:

<i>Reference</i>	<i>Identification</i>
BCIA	Berne Convention Implementation Act of 1988 (see Overview) (see also Appendix 2A <i>infra</i>)
Commerce Rep. (DMCA)	H.R. Rep. No. 105-551, Part 2, 105th Cong., 2d Sess. (1998) (see Appendix 53 <i>infra</i>)
Conf. Rep.	H.R. Rep. No. 94-1733, 94th Cong., 2d Sess. (1976) (see Appendix 5 <i>infra</i>)
Conf. Rep. (DMCA)	Joint Explanatory Statement of the Committee of Conference, H.R. Rep. No. 105-796, 105th Cong., 2d Sess. (1998) (see Appendix 57 <i>infra</i>)
Current Act (1976 Act)	17 U.S.C. § 101 <i>et seq.</i> (Pub. L. 94-553, 90 Stat. 2541) (see Appendix 2 <i>infra</i>)
Decennial	January 1, 1978 — March 1, 1989 (see Overview <i>infra</i>)
DPRA	Digital Performance Rights in Sound Recordings Act of 1995 (see Appendix 2H)
Hearings on GATT Intellectual Property Provisions	<i>General Agreement on Tariffs and Trade (GATT): Intellectual Property Provisions</i> , Joint Hearings Before the Subcommittee on Intellectual Property and Judicial Administration of the House Committee on the Judiciary and the Subcommittee on Patents, Copyrights, and Trademarks of the Senate Committee on the Judiciary, 103d Cong., 2d Sess. (August 12, 1994)
H. Rep.	H.R. Rep. No. 94-1476, 94th Cong., 2d Sess. (1976) (see Appendix 4 <i>infra</i>)
H. Rep. (AHRA)	H.R. Rep. No. 102-873 Part 1, 102d Cong., 2d Sess. (1992). (see Appendix 37 <i>infra</i>)
H. Rep. (BCIA)	H.R. Rep. No. 100-609, 100th Cong., 2d Sess. (1988) (see Appendix 32 <i>infra</i>)

<i>Reference</i>	<i>Identification</i>
H. Rep. (DMCA)	H.R. Rep. No. 105-551, Part 1, 105th Cong., 2d Sess. (1998) (see Appendix 52 <i>infra</i>)
H. Rep. (DPRA)	H.R. Rep. No. 104-274, 104th Cong., 1st Sess. (1995) (see Appendix 45 <i>infra</i>)
H. Rep. (FECA)	H.R. Rep. No. 109-33(I), 109th Cong., 1st Sess. (2005)
H. Rep. (PRO IP)	H. R. Rep. No. 110-617, 110th Cong., 2d Sess. (2008)
H. Rep. (SCPA)	H.R. Rep. No. 98-781, 98th Cong., 2d Sess. (1984) (see Appendix 30 <i>infra</i>)
H. Rep. (SHVA)	H.R. Rep. No.100-887(I), 100th Cong., 2d Sess. (1988), reprinted in 1988 U.S. Code Cong. & Admin. News 5611
OCILLA	Online Copyright Infringement Liability Limitation Act (see § 12B.01[C] <i>infra</i>)
Reg. Rep.	Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law, 87th Cong., 1st Sess., Copyright Law Revision (House Comm. Print 1961) (see Appendix 14 <i>infra</i>)
Reg. Supp. Rep.	Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law: 1965 Revision Bill, 89th Cong., 1st Sess., Copyright Law Revision Part 6 (House Comm. Print 1965) (see Appendix 15 <i>infra</i>)
SAA	Statement of Administrative Action (see § 18.06 [C][2][c] <i>infra</i>)
S. Rep.	S. Rep. No. 94-473, 94th Cong., 1st Sess. (1975) (see Appendix 4A <i>infra</i>)
S. Rep. (AHRA)	S. Rep. No. 102-294, 102d Cong., 2d Sess. (1992) (see Appendix 36 <i>infra</i>)
S. Rep. (BCIA)	S. Rep. No. 100-352, 100th Cong., 2d Sess. (1988) (see Appendix 35 <i>infra</i>)
S. Rep. (DMCA)	S. Rep. No. 105-190, 105th Cong., 2d Sess. (1998) (see Appendix 54 <i>infra</i>)

<i>Reference</i>	<i>Identification</i>
S. Rep. (DPRA)	S. Rep. No. 104–128, 104th Cong., 1st Sess. (1995) (see Appendix 46 <i>infra</i>)
Trans. Supp. Prov.	Transitional and Supplementary Provisions (see Appendix 2 <i>infra</i>)
TRIPs	Trade-Related Aspects of Intellectual Property Rights (see § 18.06[A] <i>infra</i>)
U.C.C.	Universal Copyright Convention (see Appendices 24 and 25 <i>infra</i>)
U.S.P.Q.	United States Patent Quarterly
1909 Act	Act of March 4, 1909, ch. 320, 35 Stat. 1075, as thereafter codified in 17 U.S.C. § 1 <i>et seq.</i> , and as amended (see Appendix 6 <i>infra</i>)
1997 Hearings, Serial No. 33	<i>The WIPO Copyright Treaties Implementation Act and Online Copyright Liability Limitation Act</i> , Hearing Before the Subcommittee on Courts and Intellectual Property, Serial No. 33 (Sept. 16-17, 1997)
2000 Hearings, Serial No. 145	<i>United States Copyright Office and Sound Recordings as Work Made for Hire</i> , Hearing Before the Subcommittee on Courts and Intellectual Property, Serial No. 145 (May 25, 2000)

APPENDIX 1

The Constitutional Provision Respecting Copyright

The Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries. (U.S. Const. Art. I, § 8)

APPENDIX 2 The Copyright Act of 1976 (as amended and codified)

The Act of October 19, 1976, Public Law Number 94-553, 90 Stat. 2598, effective January 1, 1978.

Chronology of Amendments

Public Law No. 95-94, 91 Stat. 653, 682 (Aug. 5, 1977) amended Sections 203 and 708.

Public Law No. 95-598, 92 Stat. 2676 (Nov. 6, 1978) amended Section 201.

Public Law No. 96-517, 94 Stat. 3028 (Dec. 12, 1980) amended Sections 101 and 117.

Public Law No. 97-180, 96 Stat. 93 (May 24, 1982) amended Section 506.

Public Law No. 97-215, 96 Stat. 178 (July 13, 1982) amended Section 601.

Public Law No. 97-366, 96 Stat. 1759 (Oct. 25, 1982) amended Section 110, 708.

Public Law No. 98-450, 98 Stat. 1727 (Oct. 4, 1984) amended Sections 109 and 115.

Public Law No. 98-620, 98 Stat. 3347 (Nov. 8, 1984) added Chapter 9 (§§ 901 *et seq.*).

Public Law No. 99-397, 100 Stat. 848 (Aug. 27, 1986) amended Sections 111 and 801.

Public Law No. 100-159, 101 Stat. 900 (Nov. 9, 1987) amended Sections 902 and 914.

Public Law No. 100-568, 102 Stat. 2853 (Oct. 31, 1988) added Section 116A and amended Sections 101, 116, 205, 301, 401, 402, 403, 404, 405, 406, 407, 408, 411, 501, 504, 801, and 804.

Public Law No. 100-617, 102 Stat. 3194 (Nov. 5, 1988) amended Section 109 and 17 U.S.C. § 109 note.

Public Law No. 100-667, 102 Stat. 3949 (Nov. 16, 1988) added Section 119 and amended Sections 111, 501, 801, and 804.

Public Law No. 101-318, 104 Stat. 287 (July 3, 1990) amended Section 106, 111, 704, 708, 801 and 804.

Public Law No. 101-319, 104 Stat. 290 (July 3, 1990) amended Sections 701 and 802.

Public Law No. 101-553, 104 Stat. 2749 (Nov. 15, 1990) added Section 511 and amended Sections 501, 901, 910, and 911.

Public Law No. 101-650, 104 Stat. 5089 (Dec. 1, 1990) added Sections 106A and 120; amended Sections 101, 102, 106, 107, 109, 113, 411, 412, 501, and 506.

Public Law No. 102-64, 105 Stat. 320 (June 28, 1991) amended Section 914.

Public Law No. 102-307, 106 Stat. 264 (June 26, 1992) amended Sections 101, 304, 408, 409, 708; repealed Section 108(i).

Public Law No. 102-492, 106 Stat. 3145 (Oct. 24, 1992) amended Section 107.

Public Law No. 102-563, 106 Stat. 4237 (Oct. 28, 1992) added Chapter 10 (§§ 1001 *et seq.*).

Public Law No. 103-182, 107 Stat. 2057 (Dec. 9, 1993) added Section 104A.

Public Law No. 103-198, 107 Stat. 2304 (Dec. 17, 1993) amended Sections 111, 116, 116A, 118, 119, 801, 802, 803, 805-810, 1004, 1007, and 1010.

Public Law No. 103-369, 108 Stat. 3477 (Oct. 18, 1994) amended Sections 111 and 119.

Public Law No. 103-465, 108 Stat. 4809 (Dec. 8, 1994) added Chapter 11 (§§ 1101 *et seq.*) and amended Sections 104A and 109.

Public Law No. 104-39, 109 Stat. 336 (Nov. 1, 1995) amended Sections 101, 106, 114, 115, 119, and 801-803.

Public Law No. 104-153, 110 Stat. 1386 (July 2, 1996) amended Section 603.

Public Law No. 104-197, 110 Stat. 2394 (Sept. 16, 1996) added Section 121.

Public Law No. 105-80, 111 Stat. 1529 (Nov. 13, 1997) amended Sections 101, 104A, 108, 110, 114, 303, 304, 405, 411, 504, 801, 802, and 803.

Public Law No. 105-147, 111 Stat. 2678 (Dec. 16, 1997) amended Sections 101, 506, and 507.

Public Law No. 105-298, 112 Stat. 2827 (Oct. 27, 1998) added Section 513 and amended Sections 101, 108, 110, 203, 301, 302, 303, 304, 305, and 504.

Public Law No. 105-304, 112 Stat. 2861 (Oct. 28, 1998) added Section 512 and Chapters 12 (§§ 1201 *et seq.*) and 13 (§§ 1301 *et seq.*); amended Sections 101, 104, 104A, 108, 112, 114, 117, 411, 507, 701, 801, 802, and 803.

Public Law No. 106-44, 113 Stat. 221 (Aug. 5, 1999) amended Sections 101, 106, 110, 112, 118, 119, 501, 511, 512, 513, 1202, 1302, and 1320.

Public Law No. 106-113, 113 Stat. 1501 (Nov. 29, 1999) added Section 122; amended Sections 101, 111, 119, 501, 510, 1201, 1203, 1204, 1301, 1313.

Public Law No. 106-160, 113 Stat. 1774 (Dec. 9, 1999) amended Section 504.

Public Law No. 106-379, 114 Stat. 1445 (Oct. 27, 2000) repealed Section 710; amended Sections 101, 121, 705, 708.

Public Law No. 107-273, 116 Stat. 1908 (Nov. 2, 2002) amended Sections 101, 106, 110, 112, 118, 119, 121, 122, 203, 304, 501, 511, 802.

Public Law No. 107-321, 116 Stat. 2781 (Dec. 4, 2002) amended Section 114.

Public Law No. 108-419, 118 Stat. 2361 (Nov. 30, 2004) amended Sections 101, 111, 112, 114, 115, 116, 118, 119, 801, 802, 803, 804, 805, 1004, 1006, 1007, 1010.

Public Law No. 108-446, 118 Stat. 2807 (Dec. 3, 2004) amended Section 121.

Public Law No. 108-447, 118 Stat. 3394 (Dec. 8, 2004) amended Sections 111, 119, 122, 803 and 17 U.S.C. § 119 note.

Public Law No. 108-482, 118 Stat. 3916 (Dec. 23, 2004) amended Section 504.

Public Law No. 109-9, 119 Stat. 218 (Apr. 27, 2005) amended Sections 101, 108, 110, 408, 411, 412, 506.

Public Law No. 109-181, 120 Stat. 288 (March 16, 2006) amended Section 1101.

Public Law No. 109-303, 120 Stat. 1478 (October 6, 2006) amended Sections 111, 114, 115, 118, 119, 801, 802, 803, 804, 1007.

Public Law No. 110-229, 122 Stat. 874 (May 8, 2008) amended Section 111.

Public Law No. 110-403, 122 Stat. 4260 (October 13, 2008) amended Sections 109(b)(4), 111, 115, 119, 122, 411, 412, 503, 506, 509, 601, 602.

Public Law No. 110-434, 122 Stat. 4972 (October 16, 2008) amended Section 1301.

Public Law No. 110-435, 122 Stat. 4974 (October 16, 2008) amended Section 114.

Public Law No. 111-36, 123 Stat. 1926 (June 30, 2009) amended Section 114.

Public Law No. 111-118, 123 Stat. 3409 (December 19, 2009) amended Section 119.

See the Transitional and Supplementary Provisions at the end of this Appendix for important information regarding the effective dates and construction of the Act and amendments.

**An Act
For the general revision of the Copyright Law,
title 17 of the United States Code
and for other purposes.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I— GENERAL REVISION OF COPYRIGHT LAW

SEC. 101.

Title 17 of the United States Code, entitled “Copyrights,” is hereby amended in its entirety to read as follows:

TITLE 17— COPYRIGHTS

Chapter

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CHAPTER 1 SUBJECT MATTER AND SCOPE OF COPYRIGHT

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120. Scope of exclusive rights in architectural works

121. Limitations on exclusive rights: Reproduction for blind or other people with disabilities

122. Limitations on exclusive rights: Secondary transmissions by satellite carriers within local markets

§ 101. Definitions

Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

An “anonymous work” is a work on the copies or phonorecords of which no natural person is identified as author.

An “architectural work” is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.

“Audiovisual works” are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

The “Berne Convention” is the Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto.

The “best edition” of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

A person’s “children” are that person’s immediate offspring, whether legitimate or not, and any children legally adopted by that person.

A “collective work” is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

A “compilation” is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term “compilation” includes collective works.

A “computer program” is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

“Copies” are material objects, other than phonorecords, in which a work is fixed

by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “copies” includes the material object, other than a phonorecord, in which the work is first fixed.

A “Copyright Royalty Judge” is a Copyright Royalty Judge appointed under section 802 of this title, and includes any individual serving as an interim Copyright Royalty Judge under such section.

“Copyright owner”, with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

A work is “created” when it is fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.

A “derivative work” is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a “derivative work”.

A “device”, “machine”, or “process” is one now known or later developed.

A “digital transmission” is a transmission in whole or in part in a digital or other non-analog format.

To “display” a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

An “establishment” is a store, shop, or any similar place of business open to the general public for the primary purpose of selling goods or services in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.

A “food service or drinking establishment” is a restaurant, inn, bar, tavern, or any other similar place of business in which the public or patrons assemble for the primary purpose of being served food or drink, in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.

The term “financial gain” includes receipt, or expectation of receipt, of anything of value, including the receipt of other copyrighted works.

A work is “fixed” in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of

sounds, images, or both, that are being transmitted, is “fixed” for purposes of this title if a fixation of the work is being made simultaneously with its transmission.

The “Geneva Phonograms Convention” is the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, concluded at Geneva, Switzerland, on October 29, 1971.

The “gross square feet of space” of an establishment means the entire interior space of that establishment, and any adjoining outdoor space used to serve patrons, whether on a seasonal basis or otherwise.

The terms “including” and “such as” are illustrative and not limitative.

An “international agreement” is—

- (1) the Universal Copyright Convention;
- (2) the Geneva Phonograms Convention;
- (3) the Berne Convention;
- (4) the WTO Agreement;
- (5) the WIPO Copyright Treaty;
- (6) the WIPO Performances and Phonograms Treaty; and
- (7) any other copyright treaty to which the United States is a party.

A “joint work” is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

“Literary works” are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.

“Motion pictures” are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

The term “motion picture exhibition facility” means a movie theater, screening room, or other venue that is being used primarily for the exhibition of a copyrighted motion picture, if such exhibition is open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances.

To “perform” a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

A “performing rights society” is an association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers,

Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.

“Phonorecords” are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “phonorecords” includes the material object in which the sounds are first fixed.

“Pictorial, graphic, and sculptural works” include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.

For purposes of section 513, a “proprietor” is an individual, corporation, partnership, or other entity, as the case may be, that owns an establishment or a food service or drinking establishment, except that no owner or operator of a radio or television station licensed by the Federal Communications Commission, cable system or satellite carrier, cable or satellite carrier service or programmer, provider of online services or network access or the operator of facilities therefor, telecommunications company, or any other such audio or audiovisual service or programmer now known or as may be developed in the future, commercial subscription music service, or owner or operator of any other transmission service, shall under any circumstances be deemed to be a proprietor.

A “pseudonymous work” is a work on the copies or phonorecords of which the author is identified under a fictitious name.

“Publication” is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

To perform or display a work “publicly” means—

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance

or display receive it in the same place or in separate places and at the same time or at different times.

“Registration”, for purposes of sections 205(c)(2), 405, 406, 410(d), 411, 412, and 506(e) [17 USCS §§ 205(c)(2), 405, 406, 410(d), 411, 412, and 506(e)], means a registration of a claim in the original or the renewed and extended term of copyright.

“Sound recordings” are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

“State” includes the District of Columbia and the Commonwealth of Puerto Rico, and any territories to which this title is made applicable by an Act of Congress.

A “transfer of copyright ownership” is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.

A “transmission program” is a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.

To “transmit” a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent.

A “treaty party” is a country or intergovernmental organization other than the United States that is a party to an international agreement.

The “United States”, when used in a geographical sense, comprises the several States, the District of Columbia and the Commonwealth of Puerto Rico, and the organized territories under the jurisdiction of the United States Government.

For purposes of section 411 [17 USCS § 411], a work is a “United States work” only if—

(1) in the case of a published work, the work is first published—

(A) in the United States;

(B) simultaneously in the United States and another treaty party or parties, whose law grants a term of copyright protection that is the same as or longer than the term provided in the United States;

(C) simultaneously in the United States and a foreign nation that is not a treaty party; or

(D) in a foreign nation that is not a treaty party, and all of the authors of the work are nationals, domiciliaries, or habitual residents of, or in the case of an audiovisual work legal entities with headquarters in, the United States;

(2) in the case of an unpublished work, all the authors of the work are nationals,