Register's Report on the General Revision of the U.S. Copyright Law (1961)

SUMMARY OF RECOMMENDATIONS

(Numbered as they appear in the report)

CHAPTER II--COPYRIGHTABLE WORKS

A 3. *General Standards of Copyrightability*

(*a*) The statute should mention the general requirements that any work, in order to be copyrightable, must be fixed in some tangible form and must represent the product of original creative authorship.

(*b*) The statute should make it clear that these requirements apply to new versions of preexisting works.

B 5. *Specification of Classes of Copyrightable Works*

(*a*) The provision of section 4, making "all the writings of an author" copyrightable, should be eliminated.

(*b*) Section 5, which now lists the classes of works for purposes of registration, should be reformulated as a specification of the categories of works copyrightable under the statute. The categories should be stated in broad terms to cover all the classes of works now included under section 5 and any others that Congress may wish to add, and to allow coverage of these general categories in any new forms or media that may be developed.

(*c*) The classification of works for purposes of administering the deposit and registration system should be left to administrative regulation by the Register of Copyrights with approval of the Librarian of Congress.

C. *Copyrightability of Certain Works*

1 *d. Works of "applied art"*

(1) The copyright statute should make it clear that, for purposes of registration, the "works of art" category includes pictorial graphics, and sculptural works even though they may portray or be intended for use in useful articles, but that useful articles, as such, are not acceptable for deposit.

(2) When a copyrighted work of art is used as a design or decoration of a useful article, it should continue to have all the protection afforded by the copyright law. If the work is registered as a design under the patent law or special design legislation, copyright protection should terminate insofar as it relates to useful articles, but if patent or design registration is not made, copyright protection should continue unaffected.

(3) The statute should not alter the distinctions drawn in this area by existing court decisions--that copyright in a pictorial, graphic, or sculptural work, portraying a useful article as such, does not extend to the manufacture of the useful article itself.

[150] 2 *c. Architectural drawings and structures*

(1)The copyright law should continue to protect:

(*a*) Architectural drawings, against the unauthorized making and distribution of copies;

(*b*) Nonfunctional architectural structures that constitute works of art, on the same basis as sculptural works of art;

(*c*) Drawings for such a nonfunctional structure, on the same basis as drawings for a sculptural work of art.

(2) The copyright law should not be extended to the design of functional architectural structures. Protection for these designs on a more limited basis should be considered in separate legislation for the protection of ornamental designs of useful articles.

3 *d. Choreographic works*

(1) Choreographic works prepared for presentation to an audience should be mentioned specifically in the statute as a category of copyrightable works.

(2) They should be given the same protection as is accorded to dramatic compositions.

4 *d. Sound recordings*

Sound recordings should be protected against unauthorized duplication under copyright principles, but detailed recommendations are being deferred pending further study.

CHAPTER III--RIGHTS OF COPYRIGHT OWNERS

A 4. *Rights Specified in the Present Law*

(*a*) Subject to certain limitations and exceptions to be discussed below, the statute should continue to accord to copyright owners the exclusive rights to exploit their works by (1) making and publishing copies, (2) making new versions, (3) giving public performances, and (4) making records of the work.

(*b)* The present provisions of section 1 granting these rights should be redrafted in simpler and clearer language.

B *Special Rights, Limitations, and Exceptions*

1 *c. Fair use in general*

The statute should include a provision affirming and indicating the scope of the principle that fair use does not infringe the copyright owner's rights.

2 *d. Photocopying by libraries*

The statute should permit a library, whose collections are available to the public without charge, to supply a single photocopy of copyrighted material in its collections to any applicant under the following conditions:

(1) A single photocopy of one article in any issue of a periodical, or of a reasonable part of any other publication, may be supplied when the applicant states in writing that he needs and will use such material solely for his own research.

(2) A single photocopy of an entire publication may be supplied when the applicant also states in writing, and the library is not otherwise informed, that a copy is not available from the publisher.

[151] (3) Where the work bears a copyright notice, the library should be required to affix to the photocopy a warning that the material appears to be copyrighted.

3 *c. Limitations on the performance right*

(1) For nondramatic literary and musical works, the right of public performance should continue to be limited to such performances "for profit."

(2) For dramatic works, the right of public performance should continue to apply to all such performances, whether for profit or not. (As recommended in ch. II, C 3, this would be extended to choreographic works.)

4 *e. Extension of the performance right to motion pictures*

The statute should provide explicitly that the copyright owner of any motion picture shall have the exclusive right to perform (or exhibit) it in public, with no "for profit" limitation.

5 *c. Public reception of broadcasts*

The statute should exempt the mere reception of broadcasts from the public performance right, except where the receiver makes a charge to the public for such reception.

6 *b. The jukebox exemption*

The jukebox exemption should be repealed, or at least should be replaced by a provision requiring jukebox operators to pay reasonable license fees for the public performance of music for profit. The consideration of legislation proposed for this purpose should continue without awaiting a general revision of the law.

7 *f. The compulsory license for the recording of music*

(1) The compulsory license provisions in sections 1(e) and 101(e) of the present statute should be eliminated.

(2) Since elimination of the compulsory license would require negotiations between music publishers and record companies to make new contractual arrangements as to royalty rates etc., we propose that the present compulsory license provisions be left in effect for 1 year after the enactment of the new law.

CHAPTER IV--UNPUBLISHED WORKS: COMMON LAW AND STATUTORY PROTECTION

E 1. The statute should apply, and common law rights should end, when a copyrightable work is publicly disseminated by the publication of copies, registration in the Copyright Office, public performances, or the public distribution of sound recordings.

E 2. Common law protection should be left in effect for copyrightable works not publicly disseminated. The privilege of securing statutory copyright in lieu of common law protection, by voluntary registration in the Copyright Office, should be extended to all copyrightable works.

E 3. When any holder of a manuscript has made it accessible to the public in a library or other archival institution--

(*a*) The institution should be permitted to supply any applicant with a single copy of the manuscript for his use in research.

(*b*) The manuscript should be subject to fair use.

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(*c*) The manuscript material should go into the public domain when it is 50 years old and has been in the institution for more than 10 years, unless the owner of the literary property rights has registered a claim of copyright which is still subsisting. With respect to manuscripts placed in an institution before the effective date of the new law, this rule should not become applicable until 10 years after the effective date.

CHAPTER V--DURATION OF COPYRIGHT

G. With respect to copyrights secured under the new law--

1. The copyright should endure for an original term of 28 years from the first public dissemination of the work (i.e., publication of copies, registration, public performance, or public distribution of sound recordings).

2. Any person claiming an interest in a copyright should be entitled to renew it by filing an application for renewal in the Copyright Office during the last 5 years of the original term. Renewal by any interested person should extend all rights in the copyright to endure for a total of 76 years from first public dissemination.

3. An alternative term should be provided in cases where a work (1) is first publicly disseminated otherwise than by the publication of copies, (2) is later published during the original 28-year term, and (3) is not renewed before the end of the original 28-year term. In such cases the copyright should continue for 28 years from first publication and then expire.

4. All terms should run to the end of the calendar year in which they would otherwise expire.

H 4. *Application of New Term Provisions to Preexisting Works*

a. With respect to preexisting works not under copyright at the effective date of the new law--

(1) Works in the public domain on that date should stay in the public domain.

(2) Preexisting works that have not been published or registered before the effective date should come under the new law upon their first public dissemination after that date. But this should not apply to a dissemination that merely continues a series of disseminations begun before that date.

b. With respect to copyrights subsisting at the effective date of the new law--

(1) The term should continue to be computed from the first publication or earlier registration of the work. The new law should apply in the following respects:

(*a*) The term should run to the end of the calendar year.

(*b*) The period for renewal registration should be the last 5 years of the original 28-year term.

(*c*) The renewal term should be lengthened to 48 years.

(2) Subsisting copyrights that are still in the original term on the effective date should be renewable by the persons entitled to renew under the present law.

(3) Assignments of renewal rights, executed by an author or his representatives or heirs before the effective date, should expire at the end of the 28th year of the renewal term, and the **[153]** copyright for the additional 20 years should revert to the author or his heirs, except where the assignee is obligated to continue paying royalties or a part of his revenue to the author or his heirs during the entire life of the copyright.

CHAPTER VI--NOTICE OF COPYRIGHT

D 1. A notice of copyright, consisting of either the word "copyright" or the symbol (c), accompanied by the name of the copyright owner and the year date of first publication, should be required in all published copies of copyrighted works.

D 2. With respect to inadvertent omission of the notice:

(*a*) If the notice is omitted inadvertently from a few copies only, and other copies bear the notice, the copyright should not be invalidated.

(*b*) If the notice is omitted inadvertently from more than a few copies or from an entire edition or printing, the copyright should not be invalidated if--

(1) A copyright claim is registered before, or within 1 year after, publication of the copies without notice; and

(2) A statement of the circumstances of the omission is filed within that 1-year period.

(*c*) In any case, an innocent infringer who is misled by the omission should not be liable for an infringement begun before he is actually informed that a copyright claim has been registered, and should not be enjoined from completing the infringement innocently begun unless he is fully reimbursed for his outlay.

D 3. An erroneous name or date in the notice should not invalidate the copyright. However:

(*a*) Any person not actually informed otherwise should be entitled to act on the assumption that the name and date given in the notice are correct.

(*b*) Where the year date in the notice is more than 1 year later than the date of first publication, the claimant should be required to record in the Copyright Office, within 1 year after the publication of copies bearing the later date, a statement showing the correct year date and the circumstances in which the later date was given.

D 4. Where there is no name or no date accompanying or clearly associated with the rest of the notice, it should be presumed that, for purposes of the notice--

(*a*) The author named in the copy, or the publisher if no author is named, is the copyright owner.

(*b*) The imprint or issue date in the copy is the date of first publication.

D 5. The statute should not require that the notice be placed in a specified position. Instead, it should merely require that the notice be so placed that a reasonable inspection of the copy will reveal it.

D 6. A single notice in a collective work should be a sufficient notice for the work as a whole and for each of the component works, including those previously copyrighted. The single notice should be presumed to apply to all the component works for which no separate notice is given.

[154] CHAPTER VII--REGISTRATION AND DEPOSIT OF COPIES

B 3. *The Registration System*

(*a*) Registration should not be a requirement for copyright protection, but it should be available for any valid copyright claim.

(*b*) The Register of Copyrights should be required to make registration of any copyright claim that appears to be valid, upon deposit of the prescribed copies, application, and fee. His authority to refuse registration of any claim he finds invalid, subject to review by the courts, should be stated expressly.

(*c*) Registration should continue to be a prerequisite to an action for copyright infringement. But where the procedural requirements for obtaining registration have been fulfilled and the Register of Copyrights refuses registration, the claimant should be entitled to bring an infringement suit if the Register is notified and permitted to become a party to the suit.

(*d*) The certificate of registration should continue to be admitted in any court as prima facie evidence of the facts stated, if registration is made within one year after the first public dissemination of the work. In the case of a later registration, the probative weight to be given to the certificate should be left to the discretion of the court.

(*e*) If registration is made within 3 months after the first public dissemination of the work in the United States, or within 6 months after its first public dissemination abroad, or at any time before an infringement is commenced, all remedies for the infringement should be available to the copyright owner. If registration is not made within that time, the civil remedies for an infringement commenced before registration should be limited to the following:

(1) The actual damages suffered by the copyright owner.

(2) In the discretion of the court, an injunction against future infringements.

(3) In the discretion of the court, an injunction against completion of the infringing undertaking commenced before registration, and the impounding and destruction of infringing articles made in the course of the undertaking, but only on condition that the infringer be fully reimbursed for his outlay.

(*f*) Foreign works entitled to protection under the Universal Copyright Convention, if they are unpublished or if published with the notice prescribed by the convention, should have all remedies for infringement without regard to the time of registration.

(*g*) An award of costs and attorney's fees to the prevailing party should be left to the court's discretion in all cases.

(*h*) The criminal penalties against a willful infringement for profit should be applicable without regard to the time of registration.

C 6. *Deposit of Copies*

(*a*) For copyright registration, the deposit of two copies of the best edition of a published work, or one copy of an unpublished work, should be required, except that--

(1) The Register of Copyrights, with the approval of the Librarian, should be authorized to make such modifications in these requirements, by regulation, as they find warranted by special circumstances.

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(2) For the registration of a work published abroad, a foreign claimant should have the option of depositing either one copy with the registration fee or two copies without the fee.

(*b*) The copyright owner of any work published in the United States with a copyright notice should be required to deposit two copies of the best edition in the Copyright Office for the Library of Congress, not later than 3 months after the date of publication, if such copies have not meanwhile been deposited for copyright registration.

(1) The Register, with the approval of the Librarian, should be authorized to exclude any categories of works from this requirement.

(2) The Register should be authorized to make a written demand for deposit of the copies. Failure to deposit within 3 months after the demand should subject the copyright owner to a fine of $ 200 plus the retail price of the two copies.

(3) We make no recommendation at this time as to whether the present provision, that failure to comply with a demand voids the copyright, should be changed. In any event, failure to deposit copies would not affect the copyright in a foreign work protected under the Universal Copyright Convention.

(*c*) Section 15 of the present law--providing for a postmaster's receipt and free mailing of copyright deposits--should be eliminated.

(*d*) Section 214 of the present law--providing for the disposition of deposits not transferred to the Library--should be retained in substance, except for deletion of the requirement that a notice be printed in the Catalog of Copyright Entries before the deposits of published works are destroyed.

CHAPTER VIII--OWNERSHIP OF COPYRIGHT

B 4. *Initial Ownership*

The statute should provide that copyright may be secured by the author or his representatives, successors, or assigns, except that--

(*a*) In the case of a work made for hire (defined as a work created for an employer by an employee within the regular scope of his employment), the employer should have the right to secure copyright.

(*b*) In the case of a periodical, encyclopedia, or other composite work containing the contributions of a number of authors, the publisher should have the right to secure copyright. The copyright secured by the publisher in the composite work as a whole should cover all of the contributions not separately copyrighted; but the publisher should be deemed to hold in trust for the author all rights in the author's contribution, except the right to publish it in a similar composite work and any other rights expressly assigned.

C 4. *Co-ownership*

(*a*) The rules established by the court decisions in regard to co-owners of a copyright--that any one co-owner may use or license the use of the work, but that he must account for profits to the other co-owners--should be left undisturbed.

[156] (*b*) A "work of joint authorship" should be defined in the statute as a work created initially by two or more authors with the object of integrating their contributions into a single work.

D 4. *Transfer of Rights*

(*a*) The statute should recognize the divisibility of copyright ownership. Specifically, it should provide--

(1) That any of the various rights comprised in a copyright may be assigned separately.

(2) That an exclusive license or other exclusive transfer of any particular right constitutes an assignment of that right.

(3) That the assignee of any particular right may sue in his own name alone for infringement of that right; but that the court, in its discretion, may require that notice of the suit be given to other persons appearing to have an interest in the suit, and may require or permit the joinder or intervention of any such persons.

(*b*) The statute should provide that any assignment by an author or his representative or heirs shall not be effective for more than 20 years from the date of its execution, unless it provides for the continuing payment of royalties based on the uses made of the work or the revenue derived from it.

E 6. *Execution and Recordation of Transfers*

(*a*) The provisions of the statute regarding "assignments" should be extended to cover exclusive licenses, mortgages, and all other transfers of any exclusive right under a copyright.

(*b*) The present requirement that assignments be in writing and signed by the assignor should be retained.

(*c*) Acknowledgement of the execution of an assignment, whether executed in the United States or abroad, should not be required but, when made, should be prima facie evidence of its execution. Acknowledgment abroad should be permitted before an authorized officer of the United States or before a foreign officer whose authority is certified by an officer of the United States.

(*d*) The statute should provide that an assignment or any other document pertaining to a copyright may be recorded in the Copyright Office, and that recordation will give constructive notice to all persons of the facts contained in the recorded document with respect to the works specifically identified.

(*e*) The statute should require that the document to be recorded must bear either the actual signature of the person executing it or a sworn or official certification that it is a true copy of the original signed instrument.

(*f*) The statute should provide that if an assignment is not recorded within 1 month after its execution in the United States, or within 3 months after its execution abroad, or before the recordation of a subsequent assignment, then the subsequent assignment will prevail when it is taken for a valuable consideration without notice and recorded first.

(*g*) The statute should specify that a nonexclusive license taken without notice of an unrecorded assignment will be valid as against the assignee; and that a nonexclusive license, though not recorded, will be valid as against a subsequent assignment.

[157] CHAPTER IX--REMEDIES FOR INFRINGEMENT

B 3. *Damages and Profits*

(*a*) The present provisions of section 101(b) regarding actual damages and profits should be clarified to provide that:

(1) An infringer is liable for the actual damages suffered by the copyright owner, or the profits of the infringer attributable to the infringement, whichever is greater.

(2) In establishing profits, the plaintiff is required to prove only "gross revenue," rather than "sales." The defendant should continue to have the burden of proving deductions.

(*b*) The present provisions of section 101(b) regarding statutory damages should be modified to provide that:

(1) Where an award of actual damages or profits would be less than $ 250, the court shall award instead, as statutory damages for all infringements for which the defendant is liable, a sum of not less than $ 250 nor more than $ 10,000, as it deems just. However, if the defendant proves that he did not know and had no reason to suspect that he was infringing, the court in its discretion may withhold statutory damages or award less than $ 250.

(2) Where an award of actual damages or profits would exceed $ 250 but would be less than the court deems just, the court in its discretion may award instead, as statutory damages for all infringements for which the defendant is liable, any higher sum not exceeding $ 10,000.

(*c*) The following provisions of the present statute should be omitted:

(1) The provisions in sections 101(b) and 1(c) fixing special amounts of damages in certain cases.

(2) The provision in section 101(b) for statutory damages in excess of the maximum where notice has been served on the infringer.

(3) The schedule of amounts per copy or performance in section 101(b).

C 3. *Other Remedies*

(*a*) The statute should simply provide that injunctions may be issued in the court's discretion.

(*b*) The present provisions for the impounding and destruction of infringing articles should be retained in substance.

D 2. *Costs and Attorney's Fees*

The statute should provide that the court, in its discretion, may allow costs and a reasonable attorney's fee to the prevailing party.

CHAPTER X--INTERNATIONAL ASPECTS OF COPYRIGHT

A 5. *Works of Foreign Authors*

(*a*) Sections 9(a) and (b) should be replaced by a provision extending the statute to all foreign and domestic works on the same basis, but with a proviso authorizing the President to withhold, suspend, or restrict statutory protection for the works of nationals or domiciliaries of any country.

[158] (*b*) The present exemptions enjoyed by foreign works that qualify under the Universal Copyright Convention should be continued in substance.

B 5. *Manufacturing and Related Provisions*

(*a*) The requirement of manufacture in the United States as a condition of copyright (sec. 16), and the related provisions dealing with affidavits (secs. 22 and 23), should be eliminated.

(*b*) The prohibition against the importation of copyrighted English-language books manufactured abroad (sec. 107), and the provision for importing up to 1,500 copies under ad interim copyright (sec. 16), should be eliminated. If Congress finds that an import limitation on English-language books is necessary for the protection of the U.S. printing industry, the limitation need not be confined to copyrighted books, and it should be provided for in legislation other than the copyright statute.

C 4. *Other Import Provisions*

(*a*) The provision of section 106 prohibiting importation of any article bearing a false notice of copyright should be deleted.

(*b*) The prohibition in section 106 against importation of "piratical copies"--i.e., copies made without authorization of the author or any other copyright owner--should be retained in substance.

(*c*) The provision of section 109, authorizing the Secretary of the Treasury and the Postmaster General to prescribe rules and regulations for the enforcement of the import restrictions, should be retained in substance.

CHAPTER XI--MISCELLANEOUS PROBLEMS

A 8. *Government Publications*

(*a*) The general prohibition against copyright in "publications of the United States Government" should be retained in the copyright statute, with that term being defined as meaning published works produced for the Government by its officers or employees. To avoid duplication and possible confusion, the similar prohibition in the Printing Law should be deleted.

(*b*) A central Government agency should be empowered to authorize exceptions to the general prohibition in special cases, and to authorize the exclusive licensing or transfer of Government-owned copyrights.

(*c*) The saving clause, preserving the copyright of a private owner when his work is published by the Government, should be clarified to assure copyright protection for the private owner of a previously unpublished work. The Government should be required to insert a copyright notice identifying privately owned material in documents published by it.

C 4. *Criminal Provisions*

(*a*) The present criminal penalties against willful infringement for profit should be retained.

(*b*) The provisions of section 105 concerning false use of the copyright notice should be retained in substance, with some improvements in language.

[159] (*c*) No special provisions concerning the filing of false information in the Copyright Office appear to be needed.

D 4. *Judicial Procedures*

(*a*) The first sentence of section 112 (stating that the courts may issue injunctions according to equity principles) and section 114 (stating that district court decisions are reviewable on appeal) should be deleted as superfluous.

(*b*) The second sentence of section 112 and section 113, which provide for the service and enforcement of injunctions anywhere in the United States, should be retained in substance.

E 4. *Performing Rights Organizations*

Whether performing rights organizations should be further regulated, and the appropriate method for their regulation, involve problems that are too large and complex to be dealt with in the present program for copyright law revision, but Congress should make it the special subject of comprehensive study.

CHAPTER XII--ADMINISTRATIVE PROVISIONS

B 2. *Accounting Procedures*

Section 203 (which specifies procedures now obsolete for depositing and accounting for fees) should be deleted.

C 4. *Contents of Registration Records and Certificates*

(*a*) In addition to any statutory specification of facts to be included in applications, registration records, and certificates, the Register of Copyrights should be authorized to include any other pertinent information that will identify the work and show facts bearing upon the validity, ownership, or duration of the copyright claim.

(*b*) The certificate of registration should be prima facie evidence of any and all pertinent information it contains if registration is made within 1 year of the first public dissemination of the work.

D 2. *Receipt for Copies Deposited*

(*a*) The provision in section 209 requiring issuance of a receipt, upon request, for copies deposited in connection with registration should be deleted.

(*b*) The statute should provide that a receipt will be issued, upon request and payment of a small fee, for copies deposited without registration.

E 4. *The Catalog of Copyright Entries*

(*a*) Instead of requiring that the Register of Copyrights prepare a printed catalog of all copyright registrations, the statute should authorize him to prepare catalogs of registrations in such form and with such content as he may determine.

(*b*) The catalogs should continue to be available for free distribution to libraries and for sale to the public.

F 4. *Fees*

(*a*) The fees charged by the Copyright Office should be so fixed that the total of its receipts plus the value of deposits added to the Library's collections is approximately equal to its total expenditures. **[160]** An increase in the present fees may soon be necessary to maintain this position, but specific recommendations should await further experience in the near future.

(*b*) The fee for all original and renewal registrations should be uniform.

(*c*) The Register of Copyrights should be authorized to fix fees, commensurate with cost, for services not covered by the statutory fee schedule.