Selected Sections from the Judicial Code (28 U.S.C.) Relating to Copyright

28 U.S.C. § 1338. Patents, plant variety protection, copyrights, mask works, designs, trademarks, and unfair competition

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent, plant variety protection or trademark laws.

(c) Subsections (a) and (b) apply to exclusive rights in mask works under chapter 9 of title 17, and to exclusive rights in designs under chapter 13 of title 17, to the same extent as such subsections apply to copyrights.

Legislative History

(June 25, 1948, ch 646, § 1, 62 Stat. 931; Dec. 24, 1970, P.L. 91-577, Title III, § 143(b), 84 Stat. 1559.)

(As amended Nov. 19, 1988, P.L. 100-702, Title X, § 1020(a)(4), 102 Stat. 4671; Oct. 28, 1998, P.L. 105-304, Title V, § 503(b)(1), (2)(A), 112 Stat. 2917.)

28 U.S.C. § 1400. Patents and copyrights, mask works, and designs

(a) Civil actions, suits, or proceedings arising under any Act of Congress relating to copyrights or exclusive rights in mask works or designs may be instituted in the district in which the defendant or his agent resides or may be found.

(b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.

Legislative History

(June 25, 1948, ch 646, § 1, 62 Stat. 936.)

(As amended Nov. 19, 1988, P.L. 100-702, Title X, § 1020(a)(5), 102 Stat. 4671; Oct. 28, 1998, P.L. 105-304, Title V, § 503(c)(1), (2), 112 Stat. 2917; Aug. 5, 1999, Pub. L. 106-44, § (2)(a), 113 Stat. 222.)

28 U.S.C. § 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise nonremovable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based

upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e) The court to which such civil action is removed is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

Legislative History

(June 25, 1948, ch 646, § 1, 62 Stat. 937; Oct. 21, 1976, P.L. 94-583, § 6, 90 Stat. 2898; June 19, 1986, P.L. 99-336, § 3(a), 100 Stat. 637.)

(As amended Nov. 19, 1988, P.L. 100-702, Title X, § 1016(a), 102 Stat. 4669 Dec. 1, 1990, P.L. 101-650, Title III, § 312, 104 Stat. 5114; Dec. 9, 1991, P.L. 102-198, § 4, 105 Stat. 1623.)

28 U.S.C. § 1498. Patent and copyright cases

(a) Whenever an invention described in and covered by a patent of the United States is used or manufactured by or for the United States without license of the owner thereof or lawful right to use or manufacture the same, the owner's remedy shall be by action against the United States in the United States Court of Federal Claims for the recovery of his reasonable and entire compensation for such use and manufacture. Reasonable and entire compensation shall include the owner's reasonable costs, including reasonable fees for expert witnessses and attorneys, in pursuing th eaction if the owner is an independet inventor, a nonprofit organization, or an entity that had no more than 500 employees at any time during the 5-year period preceding the use or manufacture of the patented invention by or for the United States. Nothwithstanding the preceding sentences, unless the action has been pending for more than 10 years from the time of filing to the time that the owner applies for such costs and fees, reasonable and entire compensation shall not include such coss and fees if the court finds that the position of the United States was substantially justrified of that special circumstances make an award unjust.

For the purposes of this section, the use or manufacture of an invention described in and covered by a patent of the United States by a contractor, a subcontractor, or any person, firm, or corporation for the Government and with the authorization or consent of the Government, shall be construed as use or manufacture for the United States.

The court shall not award compensation under this section if the claim is based on the use or manufacture by or for the United States of any article owned, leased, used by, or in the possession of the United States prior to July 1, 1918.

A Government employee shall have the right to bring suit against the Government under this section except where he was in a position to order, influence, or induce use of the invention by the Government. This section shall not confer a right of action on any patentee or any assignee of such patentee with respect to any invention discovered or invented by a person while in the employment or service of the United States, where the invention was related to the official functions of the employee, in cases in which such functions included research and development, or in the making of which Government time, materials or facilities were used.

(b) Hereafter, whenever the copyright in any work protected under the copyright laws of the United States shall be infringed by the United States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government and with the authorization or consent of the Government, the exclusive action which may be brought for such infringement shall be an action by the copyright owner against the United States in the Court of Federal Claims for the recovery of his reasonable and entire compensation as damages for such infringement, including the minimum statutory damages as set forth in section 504(b) of title 17, United States Code: Provided, That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence, or induce use of the copyrighted work by the Government: Provided, however, That this subsection shall not confer a right of action on any copyright owner or any assignee of such owner with respect to any copyrighted work prepared by a person while in the employment or service of the United States, where the copyrighted work was prepared as a part of the official functions of the employee, or in the preparation of which Government time, material, or facilities were used: And provided further, That before such action against the United States has been instituted the appropriate corporation owned or controlled by the United States or the head of the appropriate department or agency of the Government, as the case may be, is authorized to enter into an agreement with the copyright owner in full settlement and compromise for the damages accruing to him by reason of such infringement and to settle the claim administratively out of available appropriations.

Except as otherwise provided by law, no recovery shall be had for any infringement of a copyright covered by this subsection committed more than three years prior to the filing of the complaint or counterclaim for infringement in the action, except that the period between the date of receipt of a written claim for compensation by the Department or agency of the Government or corporation owned or controlled by the United States, as the case may be, having authority to settle such claim and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as a part of the three years, unless suit is brought before the last-mentioned date.

(c) The provisions of this section shall not apply to any claim arising in a foreign country.

(d) Hereafter, whenever a plant variety protected by a certificate of plant variety protection under the laws of the United States shall be infringed by the United States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government and with the authorization and consent of the Government, the exclusive remedy of the owner of such certificate shall be by action against the United States in the Court of Federal Claims for the recovery of his reasonable and entire compensation as damages for such infringement: Provided, That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence, or induce use of the protected plant variety by the Government: Provided, however, That this subsection shall not confer a right of action on any certificate owner or any assignee of such owner with respect to any protected plant variety made by a person while in the employment or service of the United States, where such variety was prepared as a part of the official functions of the employee, or in the preparation of which Government time, material, or facilities were used: And provided further, That before such action against the United States has been instituted, the appropriate corporation owned or controlled by the United States or the head of the appropriate agency of the Government, as the case may be, is authorized to enter into an agreement with the certificate owner in full settlement and compromise, for the damages accrued to him by reason of such infringement and to settle the claim administratively out of available appropriations.

(e) Subsections (b) and (c) of this section apply to exclusive rights in mask works under chapter 9 of title 17, and to exclusive rights in designs under chapter 13 of title 17, to the same extent as such subsections apply to copyrights.

Legislative History

(June 25, 1948, ch 646, § 1, 62 Stat. 941; May 24, 1949, ch 139, § 87, 63 Stat. 102; Oct. 31, 1951, ch 655, § 50(c), 65 Stat. 727; July 17, 1952, ch 930, 66 Stat. 757; Sept. 8, 1960, P.L. 86-726, § § 1, 4, 74 Stat. 855, 856; Dec. 24, 1970, P.L. 91-577, Title III, § 143(d), 84 Stat. 1559; Oct. 19, 1976, P.L. 94-553, Title I, § 105(c), 90 Stat. 2599; Apr. 2, 1982, P.L. 97-164, Title I, Part A, § 133(d), 96 Stat. 40; Nov. 19, 1988, P.L. 100-702, Title X, § 1020(a)(6), 102 Stat. 4671.)

(As amended Oct. 29, 1992, P.L. 102-572, Title IX, § 902(a), 106 Stat. 4516; Oct. 19, 1996, P.L. 104-308, § 1(a), 110 Stat. 3814; Dec. 16, 1997, P.L. 105-147, § 3, 111 Stat. 2680; Oct. 28, 1998, P.L. 105-304, Title V, § 503(d), 112 Stat. 2917.)

28 U.S.C. § 4001. Assumption of contractual obligations related to transfers of rights in motion pictures

(a) Assumption of obligations.

(1) In the case of a transfer of copyright ownership under United States law in a motion picture (as the terms "transfer of copyright ownership" and "motion picture" are defined in section 101 of title 17) that is produced subject to 1 or more collective bargaining agreements negotiated under the laws of the United States, if the transfer is executed on or after the effective date of this chapter and is not limited to public performance rights, the transfer instrument shall be deemed to incorporate the assumption agreements applicable to the copyright ownership being transferred that are required by the applicable collective bargaining agreement, and the transferee shall be subject to the obligations under each such assumption agreement to make residual payments and provide related notices, accruing after the effective date of the transfer and applicable to the exploitation of the rights transferred, and any remedies under each such assumption agreement for breach of those obligations, as those obligations and remedies are set forth in the applicable collective bargaining agreement, if --

(A) the transferee knows or has reason to know at the time of the transfer that such collective bargaining agreement was or will be applicable to the motion picture; or

(B) in the event of a court order confirming an arbitration award against the transferor under the collective bargaining agreement, the transferor does not have the financial ability to satisfy the award within 90 days after the order is issued.

(2) For purposes of paragraph (1)(A), "knows or has reason to know" means any of the following:

(A) Actual knowledge that the collective bargaining agreement was or will be applicable to the motion picture.

(B) (i) Constructive knowledge that the collective bargaining agreement was or will be applicable to the motion picture, arising from recordation of a document pertaining to copyright in the motion picture under section 205 of title 17 or from publication, at a site available to the public on-line that is operated by the relevant union, of information that identifies the motion picture as subject to a collective bargaining agreement with that union, if the site permits commercially reasonable verification of the date on which the information was available for access.

(ii) Clause (i) applies only if the transfer referred to in subsection (a)(1) occurs --

(I) after the motion picture is completed, or

(II) before the motion picture is completed and --

(aa) within 18 months before the filing of an application for copyright registration for the motion picture under section 408 of title 17, or

(bb) if no such application is filed, within 18 months before the first publication of the motion picture in the United States.

(C) Awareness of other facts and circumstances pertaining to a particular transfer from which it is apparent that the collective bargaining agreement was or will be applicable to the motion picture.

(b) Scope of exclusion of transfers of public performance rights. For purposes of this section, the exclusion under subsection (a) of transfers of copyright ownership in a motion picture that are limited to public performance rights includes transfers to a terrestrial broadcast station, cable system, or programmer to the extent that the station, system, or programmer is functioning as an exhibitor of the motion picture, either by exhibiting the motion picture on its own network, system, service, or station, or by initiating the transmission of an exhibition that is carried on another network, system, service, or station. When a terrestrial broadcast station, cable system, or programmer, or other transferee, is also functioning otherwise as a distributor or as a producer of the motion picture, the public performance exclusion does not affect any obligations imposed on the transferee to the extent that it is engaging in such functions.

(c) Exclusion for grants of security interests. Subsection (a) shall not apply to --

(1) a transfer of copyright ownership consisting solely of a mortgage, hypothecation, or other security interest; or

(2) a subsequent transfer of the copyright ownership secured by the security interest described in paragraph (1) by or under the authority of the secured party, including a transfer through the exercise of the secured party's rights or remedies as a secured party, or by a subsequent transferee.

The exclusion under this subsection shall not affect any rights or remedies under law or contract.

(d) Deferral pending resolution of bona fide dispute. A transferee on which obligations are imposed under subsection (a) by virtue of paragraph (1) of that subsection may elect to defer performance of such obligations that are subject to a bona fide dispute between a union and a prior transferor until that dispute is resolved, except that such deferral shall not stay accrual of any union claims due under an applicable collective bargaining agreement.

(e) Scope of obligations determined by private agreement. Nothing in this section shall expand or diminish the rights, obligations, or remedies of any person under the collective bargaining agreements or assumption agreements referred to in this section.

(f) Failure to notify. If the transferor under subsection (a) fails to notify the transferee under subsection (a) of applicable collective bargaining obligations before the execution of the transfer instrument, and subsection (a) is made applicable to the transferee solely by virtue of subsection (a)(1)(B), the transferor shall be liable to the transferee for any damages suffered by the transferee as a result of the failure to notify.

(g) Determination of disputes and claims. Any dispute concerning the application of subsections (a) through (f) shall be determined by an action in United States district court, and the court in its discretion may allow the recovery of full costs by or against any party and may also award a reasonable attorney's fee to the prevailing party as part of the costs.

(h) Study. The Comptroller General, in consultation with the Register of Copyrights, shall conduct a study of the conditions in the motion picture industry that gave rise to this section, and the impact of this section on the motion picture industry. The Comptroller General shall report the findings of the study to the Congress within 2 years after the effective date of this chapter.

Legislative History

(Added Oct. 28, 1998, P.L. 105-304, Title IV, § 406(a), 112 Stat. 2903.)