

TITLE 17 - COPYRIGHTS**CHAPTER 1 - SUBJECT MATTER AND SCOPE OF COPYRIGHT****§ 104. Subject matter of copyright: National origin**

(a) **Unpublished Works.**— The works specified by sections 102 and 103, while unpublished, are subject to protection under this title without regard to the nationality or domicile of the author.

(b) **Published Works.**— The works specified by sections 102 and 103, when published, are subject to protection under this title if—

(1) on the date of first publication, one or more of the authors is a national or domiciliary of the United States, or is a national, domiciliary, or sovereign authority of a treaty party, or is a stateless person, wherever that person may be domiciled; or

(2) the work is first published in the United States or in a foreign nation that, on the date of first publication, is a treaty party; or

(3) the work is a sound recording that was first fixed in a treaty party; or

(4) the work is a pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party; or

(5) the work is first published by the United Nations or any of its specialized agencies, or by the Organization of American States; or

(6) the work comes within the scope of a Presidential proclamation. Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States or to works that are first published in the United States, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under this title to works of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation, or which was first published in that nation. The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under a proclamation.

For purposes of paragraph (2), a work that is published in the United States or a treaty party within 30 days after publication in a foreign nation that is not a treaty party shall be considered to be first published in the United States or such treaty party, as the case may be.

(c) **Effect of Berne Convention.**— No right or interest in a work eligible for protection under this title may be claimed by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto. Any rights in a work eligible for protection under this title that derive from this title, other Federal or State statutes, or the common law, shall not be expanded or reduced by virtue of, or in reliance upon, the provisions of the Berne Convention, or the adherence of the United States thereto.

(d) **Effect of Phonograms Treaties.**— Notwithstanding the provisions of subsection (b), no works other than sound recordings shall be eligible for protection under this title solely by virtue of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2545; Pub. L. 100–568, § 4(a)(2), (3), Oct. 31, 1988, 102 Stat. 2855; Pub. L. 105–304, title I, § 102(b), Oct. 28, 1998, 112 Stat. 2862.)

Historical and Revision Notes**house report no. 94–1476**

Section 104 of the bill [this section], which sets forth the basic criteria under which works of foreign origin can be protected under the U.S. copyright law, divides all works coming within the scope of sections 102 and 103 into

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

two categories: unpublished and published. Subsection (a) imposes no qualifications of nationality and domicile with respect to unpublished works. Subsection (b) would make published works subject to protection under any one of four conditions:

- (1) The author is a national or domiciliary of the United States or of a country with which the United States has copyright relations under a treaty, or is a stateless person;
- (2) The work is first published in the United States or in a country that is a party to the Universal Copyright Convention;
- (3) The work is first published by the United Nations, by any of its specialized agencies, or by the Organization of American States; or
- (4) The work is covered by a Presidential proclamation extending protection to works originating in a specified country which extends protection to U.S. works "on substantially the same basis" as to its own works.

The third of these conditions represents a treaty obligation of the United States. Under the Second Protocol of the Universal Copyright Convention, protection under U.S. Copyright law is expressly required for works published by the United Nations, by U.N. specialized agencies and by the Organization of American States.

Amendments

1998—Subsec. (b). Pub. L. 105–304, § 102(b)(1)(G), inserted concluding provisions.

Subsec. (b)(1). Pub. L. 105–304, § 102(b)(1)(A), substituted "treaty party" for "foreign nation that is a party to a copyright treaty to which the United States is also a party".

Subsec. (b)(2). Pub. L. 105–304, § 102(b)(1)(B), substituted "treaty party" for "party to the Universal Copyright Convention".

Subsec. (b)(3). Pub. L. 105–304, § 102(b)(1)(E), added par. (3). Former par. (3) redesignated (5).

Subsec. (b)(4). Pub. L. 105–304, § 102(b)(1)(F), substituted "pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party" for "Berne Convention work".

Subsec. (b)(5), (6). Pub. L. 105–304, § 102(b)(1)(C), (D), redesignated par. (3) as (5) and transferred it to appear after par. (4) and redesignated former par. (5) as (6).

Subsec. (d). Pub. L. 105–304, § 102(b)(2), added subsec. (d).

1988—Subsec. (b)(4), (5). Pub. L. 100–568, § 4(a)(2), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 100–568, § 4(a)(3), added subsec. (c).

Effective Date of 1998 Amendment

Amendment by section 102(b)(1) of Pub. L. 105–304 effective Oct. 28, 1998, except as otherwise provided, and amendment by section 102(b)(2) of Pub. L. 105–304 effective May 20, 2002, see section 105(a), (b)(2)(C) of Pub. L. 105–304, set out as a note under section 101 of this title.

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–568 effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions in effect when cause of action arose, see section 13 of Pub. L. 100–568, set out as a note under section 101 of this title.

Proc. No. 3792. Copyright Extension: Germany

Proc. No. 3792, July 12, 1967, 32 F.R. 10341, provided:

WHEREAS the President is authorized, in accordance with the conditions prescribed in Section 9 of Title 17 of the United States Code which includes the provisions of the act of Congress approved March 4, 1909, 35 Stat. 1075, as amended by the act of September 25, 1941, 55 Stat. 732, to grant an extension of time for fulfillment of the conditions and formalities prescribed by the copyright laws of the United States of America, with respect to works first produced or published outside the United States of America and subject to copyright or to renewal of copyright under the laws of the United States of America, by nationals of countries which accord substantially equal treatment to citizens of the United States of America; and

WHEREAS satisfactory official assurances have been received that, since April 15, 1892, citizens of the United States have been entitled to obtain copyright in Germany for their works on substantially the same basis as German citizens without the need of complying with any formalities, provided such works secured protection in the United States; and

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WHEREAS, pursuant to Article 2 of the Law No. 8, Industrial, Literary and Artistic Property Rights of Foreign Nations and Nationals, promulgated by the Allied High Commission for Germany on October 20, 1949, literary or artistic property rights in Germany owned by United States nationals at the commencement of or during the state of war between Germany and the United States of America which were transferred, seized, requisitioned, revoked or otherwise impaired by war measures, whether legislative, judicial or administrative, were, upon request made prior to October 3, 1950, restored to such United States nationals or their legal successors; and

WHEREAS, pursuant to Article 5 of the aforesaid law, any literary or artistic property right in Germany owned by a United States national at the commencement of or during the state of war between Germany and the United States of America was, upon request made prior to October 3, 1950, extended in term for a period corresponding to the inclusive time from the date of the commencement of the state of war, or such later date on which such right came in existence, to September 30, 1949; and

WHEREAS, by virtue of a proclamation by the President of the United States of America dated May 25, 1922, 42 Stat. 2271, German citizens are and have been entitled to the benefits of the act of Congress approved March 4, 1909, 35 Stat. 1075, as amended, including the benefits of Section 1(e) of the aforementioned Title 17 of the United States Code [section 1(e) of former Title 17]; and

WHEREAS, a letter of February 6, 1950, from the Chancellor of the Federal Republic of Germany to the Chairman of the Allied High Commission for Germany established the mutual understanding that reciprocal copyright relations continued in effect between the Federal Republic of Germany and the United States of America:

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States of America, by virtue of the authority vested in me by Section 9 of Title 17 of the United States Code [section 9 of former Title 17], do declare and proclaim:

(1) That, with respect to works first produced or published outside the United States of America: (a) where the work was subject to copyright under the laws of the United States of America on or after September 3, 1939, and on or before May 5, 1956, by an author or other owner who was then a German citizen; or (b) where the work was subject to renewal of copyright under the laws of the United States of America on or after September 3, 1939, and on or before May 5, 1956, by an author or other person specified in Sections 24 and 25 of the aforesaid Title 17 [sections 24 and 25 of former Title 17], who was then a German citizen, there has existed during several years of the aforementioned period such disruption and suspension of facilities essential to compliance with conditions and formalities prescribed with respect to such works by the copyright law of the United States of America as to bring such works within the terms of Section 9(b) of the aforesaid Title 17 [section 9(b) of former Title 17]; and

(2) That, in view of the reciprocal treatment accorded to citizens of the United States by the Federal Republic of Germany, the time within which persons who are presently German citizens may comply with such conditions and formalities with respect to such works is hereby extended for one year after the date of this proclamation.

It shall be understood that the term of copyright in any case is not and cannot be altered or affected by this proclamation. It shall also be understood that, as provided by Section 9 (b) of Title 17, United States Code [section 9(b) of former Title 17], no liability shall attach under that title for lawful uses made or acts done prior to the effective date of this proclamation in connection with the above-described works, or with respect to the continuance for one year subsequent to such date of any business undertaking or enterprise lawfully undertaken prior to such date involving expenditure or contractual obligation in connection with the exploitation, production, reproduction, circulation or performance of any such works.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of July in the year of our Lord nineteen hundred and sixty-seven, and of the Independence of the United States of America the one hundred and ninety-second.

Lyndon B. Johnson.

Presidential Proclamations Issued Under Predecessor Provisions

Section 104 of Pub. L. 94-553 provided that: "All proclamations issued by the President under section 1 (e) or 9 (b) of title 17 as it existed on December 31, 1977, or under previous copyright statutes of the United States, shall continue in force until terminated, suspended, or revised by the President."