TITLE 17 - COPYRIGHTS
CHAPTER 1 - SUBJECT MATTER AND SCOPE OF COPYRIGHT

§ 113. Scope of exclusive rights in pictorial, graphic, and sculptural works

(a) Subject to the provisions of subsections (b) and (c) of this section, the exclusive right to reproduce a copyrighted pictorial, graphic, or sculptural work in copies under section 106 includes the right to reproduce the work in or on any kind of article, whether useful or otherwise.

(b) This title does not afford, to the owner of copyright in a work that portrays a useful article as such, any greater or lesser rights with respect to the making, distribution, or display of the useful article so portrayed than those afforded to such works under the law, whether title 17 or the common law or statutes of a State, in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.

(c) In the case of a work lawfully reproduced in useful articles that have been offered for sale or other distribution to the public, copyright does not include any right to prevent the making, distribution, or display of pictures or photographs of such articles in connection with advertisements or commentaries related to the distribution or display of such articles, or in connection with news reports.

(d) (1) In a case in which—

(A) a work of visual art has been incorporated in or made part of a building in such a way that removing the work from the building will cause the destruction, distortion, mutilation, or other modification of the work as described in section 106A (a)(3), and

(B) the author consented to the installation of the work in the building either before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, or in a written instrument executed on or after such effective date that is signed by the owner of the building and the author and that specifies that installation of the work may subject the work to destruction, distortion, mutilation, or other modification, by reason of its removal,

then the rights conferred by paragraphs (2) and (3) of section 106A (a) shall not apply.

(2) If the owner of a building wishes to remove a work of visual art which is a part of such building and which can be removed from the building without the destruction, distortion, mutilation, or other modification of the work as described in section 106A (a)(3), the author’s rights under paragraphs (2) and (3) of section 106A (a) shall apply unless—

(A) the owner has made a diligent, good faith attempt without success to notify the author of the owner’s intended action affecting the work of visual art, or

(B) the owner did provide such notice in writing and the person so notified failed, within 90 days after receiving such notice, either to remove the work or to pay for its removal.

For purposes of subparagraph (A), an owner shall be presumed to have made a diligent, good faith attempt to send notice if the owner sent such notice by registered mail to the author at the most recent address of the author that was recorded with the Register of Copyrights pursuant to paragraph (3). If the work is removed at the expense of the author, title to that copy of the work shall be deemed to be in the author.

(3) The Register of Copyrights shall establish a system of records whereby any author of a work of visual art that has been incorporated in or made part of a building, may record his or her identity and address with the Copyright Office. The Register shall also establish procedures under which any such author may update the information so recorded, and procedures under which owners of buildings may record with the Copyright Office evidence of their efforts to comply with this subsection.

Historical and Revision Notes

house report no. 94–1476

Section 113 deals with the extent of copyright protection in “works of applied art.” The section takes as its starting point the Supreme Court’s decision in Mazer v. Stein, 347 U.S. 201 (1954) [74 S.Ct. 460, 98 L.Ed. 630, rehearing denied 74 S.Ct. 637, 347 U.S. 949, 98 L.Ed. 1096], and the first sentence of subsection (a) restates the basic principle established by that decision. The rule of Mazer, as affirmed by the bill, is that copyright in a pictorial, graphic, or sculptural work will not be affected if the work is employed as the design of a useful article, and will afford protection to the copyright owner against the unauthorized reproduction of his work in useful as well as nonuseful articles. The terms “pictorial, graphic, and sculptural works” and “useful article” are defined in section 101, and these definitions are discussed above in connection with section 102.

The broad language of section 106(1) and of subsection (a) of section 113 raises questions as to the extent of copyright protection for a pictorial, graphic, or sculptural work that portrays, depicts, or represents an image of a useful article in such a way that the utilitarian nature of the article can be seen. To take the example usually cited, would copyright in a drawing or model of an automobile give the artist the exclusive right to make automobiles of the same design?

The 1961 Report of the Register of Copyrights stated, on the basis of judicial precedent, 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,” and recommended specifically that “the distinctions drawn in this area by existing court decisions” not be altered by the statute. The Register’s Supplementary Report, at page 48, cited a number of these decisions, and explained the insuperable difficulty of finding “any statutory formulation that would express the distinction satisfactorily.” Section 113 (b) reflects the Register’s conclusion that “the real need is to make clear that there is no intention to change the present law with respect to the scope of protection in a work portraying a useful article as such.”

Section 113 (c) provides that it would not be an infringement of copyright, where a copyright work has been lawfully published as the design of useful articles, to make, distribute or display pictures of the articles in advertising, in feature stories about the articles, or in the news reports.

In conformity with its deletion from the bill of Title II, relating to the protection of ornamental designs of useful articles, the Committee has deleted subsections (b), (c), and (d) of section 113 of S. 22 as adopted by the Senate, since they are no longer relevant.

References in Text


Amendments


Effective Date of 1990 Amendment