

## Chapter 6

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### Importation and Exportation<sup>1</sup>

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**§ 601 · [Repealed]<sup>4</sup>****§ 602 · Infringing importation or exportation of copies or phonorecords<sup>5</sup>**

(a) INFRINGING IMPORTATION OR EXPORTATION. —

(1) IMPORTATION. — Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501.

(2) IMPORTATION OR EXPORTATION OF INFRINGING ITEMS. — Importation into the United States or exportation from the United States, without the authority of the owner of copyright under this title, of copies or phonorecords, the making of which either constituted an infringement of copyright, or which would have constituted an infringement of copyright if this title had been applicable, is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under sections 501 and 506.

(3) EXCEPTIONS. — This subsection does not apply to —

(A) importation or exportation of copies or phonorecords under the authority or for the use of the Government of the United States or of any State or political subdivision of a State, but not including copies or phonorecords for use in schools, or copies of any audiovisual work imported for purposes other than archival use;

(B) importation or exportation, for the private use of the importer or exporter and not for distribution, by any person with respect to no more than one copy or phonorecord of any one work at any one time, or by any person arriving from outside the United States or departing from the United States with respect to copies or phonorecords forming part of such person's personal baggage; or

(C) importation by or for an organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to no more than one copy of an audiovisual work solely for its archival purposes, and no more than five copies or phonorecords of any other work for its library lending or archival purposes, unless the importation of such copies or phonorecords is part of an activity consisting of systematic reproduction or distribution, engaged in by such organization in violation of the provisions of section 108(g)(2).

(b) IMPORT PROHIBITION. — In a case where the making of the copies or phonorecords would have constituted an infringement of copyright if this title had

been applicable, their importation is prohibited. In a case where the copies or phonorecords were lawfully made, the United States Customs and Border Protection Service has no authority to prevent their importation. In either case, the Secretary of the Treasury is authorized to prescribe, by regulation, a procedure under which any person claiming an interest in the copyright in a particular work may, upon payment of a specified fee, be entitled to notification by the United States Customs and Border Protection Service of the importation of articles that appear to be copies or phonorecords of the work.

### **§ 603 · Importation prohibitions: Enforcement and disposition of excluded articles<sup>6</sup>**

(a) The Secretary of the Treasury and the United States Postal Service shall separately or jointly make regulations for the enforcement of the provisions of this title prohibiting importation.

(b) These regulations may require, as a condition for the exclusion of articles under section 602—

(1) that the person seeking exclusion obtain a court order enjoining importation of the articles; or

(2) that the person seeking exclusion furnish proof, of a specified nature and in accordance with prescribed procedures, that the copyright in which such person claims an interest is valid and that the importation would violate the prohibition in section 602; the person seeking exclusion may also be required to post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

(c) Articles imported in violation of the importation prohibitions of this title are subject to seizure and forfeiture in the same manner as property imported in violation of the customs revenue laws. Forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be.

## **Chapter 6 · Notes**

1. The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended the title of Chapter 6 to add “Exportation” to it, so that now the title is “Manufacturing Requirements, Importation, and Exportation.” Pub. L. No. 110-403, 122 Stat. 4256, 4259. The Copyright Cleanup, Clarification, and Corrections Act of 2010 amended chapter six by repealing section 601, entitled “Manufacture, importation, and public distribution of certain copies.” Pub. L. No. 111-295, 124 Stat. 3180. It also deleted “Manufacturing Requirements” from the beginning of the title for chapter six. *Id.*

2. See note 4, *infra*.

3. The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended the title of section 602 in the table of contents by adding “Exportation” to it, so that the new title is “Infringing importation or exportation of copies or phonorecords.” Pub. L. No. 110-403, 122 Stat. 4256, 4260.

4. In 1982, section 601(a) was amended in the first sentence by substituting “1986” for “1982.” Pub. L. No. 97-215, 96 Stat. 178. The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended the first sentence of subpart 601(b)(2) by inserting “and Border Protection” after “United States Customs.” Pub. L. No. 110-403, 122 Stat. 4256, 4260. The Copyright Cleanup, Clarification, and Corrections Act of 2010 repealed section 601. Pub. L. No. 111-295, 124 Stat. 3180.

5. The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended the title of section 602 by adding “Exportation” to it, so the new title is “Infringing importation or exportation of copies or phonorecords.” Pub. L. No. 110-403, 122 Stat. 4256, 4260. The Act also amended section 602(a) by dividing it into paragraphs (1), (2) and (3); by adding paragraph (2); and by adding references to exports throughout. *Id.* at 4259-60. It further amended subsection 602(b) by inserting the subtitle, “Import Prohibition,” at the beginning and adding references to the United States Customs and Border Protection Service. *Id.* at 4260. The Copyright Cleanup, Clarification, and Corrections Act of 2010 made a conforming amendment to subsection 602(b) to eliminate the reference to section 601, which the Act had repealed, by deleting at the end of the second sentence “unless the provisions of section 601 are applicable.” Pub. L. No. 111-295, 124 Stat. 3180, 3181.

6. The Anticounterfeiting Consumer Protection Act of 1996 amended the last sentence of section 603(c) by deleting the semicolon and all text immediately following the words “as the case may be.” Pub. L. No. 104-153, 110 Stat. 1386, 1388.

# Chapter 7<sup>1</sup>

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## Copyright Office

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## §701 · The Copyright Office: General responsibilities and organization<sup>2</sup>

(a) All administrative functions and duties under this title, except as otherwise specified, are the responsibility of the Register of Copyrights as director of the Copyright Office of the Library of Congress. The Register of Copyrights, together with the subordinate officers and employees of the Copyright Office, shall be appointed by the Librarian of Congress, and shall act under the Librarian's general direction and supervision.

(b) In addition to the functions and duties set out elsewhere in this chapter, the Register of Copyrights shall perform the following functions:

(1) Advise Congress on national and international issues relating to copyright, other matters arising under this title, and related matters.

(2) Provide information and assistance to Federal departments and agencies and the Judiciary on national and international issues relating to copyright, other matters arising under this title, and related matters.

(3) Participate in meetings of international intergovernmental organizations and meetings with foreign government officials relating to copyright, other matters arising under this title, and related matters, including as a member of United States delegations as authorized by the appropriate Executive branch authority.

(4) Conduct studies and programs regarding copyright, other matters arising under this title, and related matters, the administration of the Copyright Office, or any function vested in the Copyright Office by law, including educational programs conducted cooperatively with foreign intellectual property offices and international intergovernmental organizations.

(5) Perform such other functions as Congress may direct, or as may be appropriate in furtherance of the functions and duties specifically set forth in this title.

(c) The Register of Copyrights shall adopt a seal to be used on and after January 1, 1978, to authenticate all certified documents issued by the Copyright Office.

(d) The Register of Copyrights shall make an annual report to the Librarian of Congress of the work and accomplishments of the Copyright Office during the previous fiscal year. The annual report of the Register of Copyrights shall be published separately and as a part of the annual report of the Librarian of Congress.

(e) Except as provided by section 706(b) and the regulations issued thereunder, all actions taken by the Register of Copyrights under this title are subject to the provisions of the Administrative Procedure Act of June 11, 1946, as amended (c. 324, 60 Stat. 237, title 5, United States Code, Chapter 5, Subchapter II and Chapter 7).

(f) The Register of Copyrights shall be compensated at the rate of pay in effect for level III of the Executive Schedule under section 5314 of title 5.<sup>3</sup> The Librarian of Congress shall establish not more than four positions for Associate

Registers of Copyrights, in accordance with the recommendations of the Register of Copyrights. The Librarian shall make appointments to such positions after consultation with the Register of Copyrights. Each Associate Register of Copyrights shall be paid at a rate not to exceed the maximum annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of title 5.

### **§702 · Copyright Office regulations<sup>4</sup>**

The Register of Copyrights is authorized to establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under this title. All regulations established by the Register under this title are subject to the approval of the Librarian of Congress.

### **§703 · Effective date of actions in Copyright Office**

In any case in which time limits are prescribed under this title for the performance of an action in the Copyright Office, and in which the last day of the prescribed period falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, the action may be taken on the next succeeding business day, and is effective as of the date when the period expired.

### **§704 · Retention and disposition of articles deposited in Copyright Office<sup>5</sup>**

(a) Upon their deposit in the Copyright Office under sections 407 and 408, all copies, phonorecords, and identifying material, including those deposited in connection with claims that have been refused registration, are the property of the United States Government.

(b) In the case of published works, all copies, phonorecords, and identifying material deposited are available to the Library of Congress for its collections, or for exchange or transfer to any other library. In the case of unpublished works, the Library is entitled, under regulations that the Register of Copyrights shall prescribe, to select any deposits for its collections or for transfer to the National Archives of the United States or to a Federal records center, as defined in section 2901 of title 44.

(c) The Register of Copyrights is authorized, for specific or general categories of works, to make a facsimile reproduction of all or any part of the material deposited under section 408, and to make such reproduction a part of the

Copyright Office records of the registration, before transferring such material to the Library of Congress as provided by subsection (b), or before destroying or otherwise disposing of such material as provided by subsection (d).

(d) Deposits not selected by the Library under subsection (b), or identifying portions or reproductions of them, shall be retained under the control of the Copyright Office, including retention in Government storage facilities, for the longest period considered practicable and desirable by the Register of Copyrights and the Librarian of Congress. After that period it is within the joint discretion of the Register and the Librarian to order their destruction or other disposition; but, in the case of unpublished works, no deposit shall be knowingly or intentionally destroyed or otherwise disposed of during its term of copyright unless a facsimile reproduction of the entire deposit has been made a part of the Copyright Office records as provided by subsection (c).

(e) The depositor of copies, phonorecords, or identifying material under section 408, or the copyright owner of record, may request retention, under the control of the Copyright Office, of one or more of such articles for the full term of copyright in the work. The Register of Copyrights shall prescribe, by regulation, the conditions under which such requests are to be made and granted, and shall fix the fee to be charged under section 708(a) if the request is granted.

### **§705 · Copyright Office records: Preparation, maintenance, public inspection, and searching<sup>6</sup>**

(a) The Register of Copyrights shall ensure that records of deposits, registrations, recordations, and other actions taken under this title are maintained, and that indexes of such records are prepared.

(b) Such records and indexes, as well as the articles deposited in connection with completed copyright registrations and retained under the control of the Copyright Office, shall be open to public inspection.

(c) Upon request and payment of the fee specified by section 708, the Copyright Office shall make a search of its public records, indexes, and deposits, and shall furnish a report of the information they disclose with respect to any particular deposits, registrations, or recorded documents.

### **§706 · Copies of Copyright Office records**

(a) Copies may be made of any public records or indexes of the Copyright Office; additional certificates of copyright registration and copies of any public records or indexes may be furnished upon request and payment of the fees specified by section 708.



(b) Copies or reproductions of deposited articles retained under the control of the Copyright Office shall be authorized or furnished only under the conditions specified by the Copyright Office regulations.

### §707 · Copyright Office forms and publications

(a) CATALOG OF COPYRIGHT ENTRIES. — The Register of Copyrights shall compile and publish at periodic intervals catalogs of all copyright registrations. These catalogs shall be divided into parts in accordance with the various classes of works, and the Register has discretion to determine, on the basis of practicality and usefulness, the form and frequency of publication of each particular part.

(b) OTHER PUBLICATIONS. — The Register shall furnish, free of charge upon request, application forms for copyright registration and general informational material in connection with the functions of the Copyright Office. The Register also has the authority to publish compilations of information, bibliographies, and other material he or she considers to be of value to the public.

(c) DISTRIBUTION OF PUBLICATIONS. — All publications of the Copyright Office shall be furnished to depository libraries as specified under section 1905 of title 44, and, aside from those furnished free of charge, shall be offered for sale to the public at prices based on the cost of reproduction and distribution.

### §708 · Copyright Office fees<sup>7</sup>

(a) FEES. — Fees shall be paid to the Register of Copyrights —

(1) on filing each application under section 408 for registration of a copyright claim or for a supplementary registration, including the issuance of a certificate of registration if registration is made;

(2) on filing each application for registration of a claim for renewal of a subsisting copyright under section 304(a), including the issuance of a certificate of registration if registration is made;

(3) for the issuance of a receipt for a deposit under section 407;

(4) for the recordation, as provided by section 205, of a transfer of copyright ownership or other document;

(5) for the filing, under section 115(b), of a notice of intention to obtain a compulsory license;

(6) for the recordation, under section 302(c), of a statement revealing the identity of an author of an anonymous or pseudonymous work, or for the recordation, under section 302(d), of a statement relating to the death of an author;

(7) for the issuance, under section 706, of an additional certificate of registration;

- (8) for the issuance of any other certification;
- (9) for the making and reporting of a search as provided by section 705, and for any related services;
- (10) on filing a statement of account based on secondary transmissions of primary transmissions pursuant to section 119 or 122; and
- (11) on filing a statement of account based on secondary transmissions of primary transmissions pursuant to section 111.

The Register is authorized to fix fees for other services, including the cost of preparing copies of Copyright Office records, whether or not such copies are certified, based on the cost of providing the service. Fees established under paragraphs (10) and (11) shall be reasonable and may not exceed one-half of the cost necessary to cover reasonable expenses incurred by the Copyright Office for the collection and administration of the statements of account and any royalty fees deposited with such statements.

(b) **ADJUSTMENT OF FEES.** — The Register of Copyrights may, by regulation, adjust the fees for the services specified in paragraphs (1) through (9) of subsection (a) in the following manner:<sup>8</sup>

(1) The Register shall conduct a study of the costs incurred by the Copyright Office for the registration of claims, the recordation of documents, and the provision of services. The study shall also consider the timing of any adjustment in fees and the authority to use such fees consistent with the budget.

(2) The Register may, on the basis of the study under paragraph (1), and subject to paragraph (5), adjust fees to not more than that necessary to cover the reasonable costs incurred by the Copyright Office for the services described in paragraph (1), plus a reasonable inflation adjustment to account for any estimated increase in costs.

(3) Any fee established under paragraph (2) shall be rounded off to the nearest dollar, or for a fee less than \$12, rounded off to the nearest 50 cents.

(4) Fees established under this subsection shall be fair and equitable and give due consideration to the objectives of the copyright system.

(5) If the Register determines under paragraph (2) that fees should be adjusted, the Register shall prepare a proposed fee schedule and submit the schedule with the accompanying economic analysis to the Congress. The fees proposed by the Register may be instituted after the end of 120 days after the schedule is submitted to the Congress unless, within that 120-day period, a law is enacted stating in substance that the Congress does not approve the schedule.

(c) The fees prescribed by or under this section are applicable to the United States Government and any of its agencies, employees, or officers, but the Register of Copyrights has discretion to waive the requirement of this subsection in occasional or isolated cases involving relatively small amounts.

(d) (1) Except as provided in paragraph (2), all fees received under this section shall be deposited by the Register of Copyrights in the Treasury of the United

States and shall be credited to the appropriations for necessary expenses of the Copyright Office. Such fees that are collected shall remain available until expended. The Register may, in accordance with regulations that he or she shall prescribe, refund any sum paid by mistake or in excess of the fee required by this section.

(2) In the case of fees deposited against future services, the Register of Copyrights shall request the Secretary of the Treasury to invest in interest-bearing securities in the United States Treasury any portion of the fees that, as determined by the Register, is not required to meet current deposit account demands. Funds from such portion of fees shall be invested in securities that permit funds to be available to the Copyright Office at all times if they are determined to be necessary to meet current deposit account demands. Such investments shall be in public debt securities with maturities suitable to the needs of the Copyright Office, as determined by the Register of Copyrights, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(3) The income on such investments shall be deposited in the Treasury of the United States and shall be credited to the appropriations for necessary expenses of the Copyright Office.

### **§709 · Delay in delivery caused by disruption of postal or other services**

In any case in which the Register of Copyrights determines, on the basis of such evidence as the Register may by regulation require, that a deposit, application, fee, or any other material to be delivered to the Copyright Office by a particular date, would have been received in the Copyright Office in due time except for a general disruption or suspension of postal or other transportation or communications services, the actual receipt of such material in the Copyright Office within one month after the date on which the Register determines that the disruption or suspension of such services has terminated, shall be considered timely.

### **Chapter 7 · Notes**

1. The Work Made for Hire and Copyright Corrections Act of 2000 amended the table of sections for chapter 7 by deleting section 710, entitled, "Reproduction for use of the blind and physically handicapped: Voluntary licensing forms and procedures." Pub. L. No. 106-379, 114 Stat. 1444, 1445.

2. The Copyright Fees and Technical Amendments Act of 1989 amended section 701 by adding subsection (e). Pub. L. No. 101-319, 104 Stat. 290. In 1998, the Digital Millennium Copyright Act amended section 701 by adding a new subsection (b), redesignating former subsections (b) through (e) as (c) through (f) respectively, and, in the new subsection (f), by substituting “III” for “IV” and “5314” for “5315.” Pub. L. No. 105-304, 112 Stat. 2860, 2887.

3. Title 5 of the *United States Code* is entitled “Government Organization and Employees.”

4. Copyright Office regulations are published in the *Federal Register* and in title 37, chapter II, of the *Code of Federal Regulations*.

5. The Copyright Cleanup, Clarification, and Corrections Act of 2010 amended the last sentence of section 704(e) to substitute “section 708(a)” for “section 708(a)(10).” Pub. L. No. 111-295, 124 Stat. 3180, 3181.

6. The Work Made for Hire and Copyright Corrections Act of 2000 amended section 705 by rewriting paragraph (a). Pub. L. No. 106-379, 114 Stat. 1444, 1445.

7. The Copyright Fees and Technical Amendments Act of 1989 amended section 708 by substituting a new subsection (a), by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by adding a new subsection (b). Pub. L. No. 101-318, 104 Stat. 287. The Act states that these amendments “shall take effect 6 months after the date of the enactment of this Act” and shall apply to:

(A) claims to original, supplementary, and renewal copyright received for registration, and to items received for recordation in the Copyright Office, on or after such effective date, and

(B) other requests for services received on or after such effective date, or received before such effective date for services not yet rendered as of such date.

With respect to prior claims, the Act states that claims to original, supplementary, and renewal copyright received for registration and items received for recordation in acceptable form in the Copyright Office before the above mentioned effective date, and requests for services which are rendered before such effective date “shall be governed by section 708 of title 17, United States Code, as in effect before such effective date.” Pub. L. No. 101-318, 104 Stat. 287, 288.

The Copyright Renewal Act of 1992 amended paragraph (2) of section 708(a) by striking the words “in its first term” and by substituting “\$20” in lieu of “\$12.” Pub. L. No. 102-307, 106 Stat. 264, 266.

In 1997, section 708 was amended by rewriting subsections (b) and (d) in their entirety. Pub. L. No. 105-80, 111 Stat. 1529, 1532.

The Work Made for Hire and Copyright Corrections Act of 2000 amended section 708 by rewriting subsection (a), by substituting new language for the first sentence in subsection (b) and by substituting “adjustment” for “increase” in paragraph (b)(1), the word “adjust” for “increase” in paragraph (b)(2) and the word “adjusted” for “increased” in paragraph (b)(5). Pub. L. No. 106-379, 114 Stat. 1444, 1445. The Act also stated that “The fees under section 708(a) of title 17, United States Code, on the date of the enactment of this Act shall be the fees in effect under section 708(a) of such title on the day before such date of enactment.”

The Satellite Television Extension and Localism Act of 2010 amended subsection 708(a) by adding new paragraphs (10) and (11) and by adding the last sentence. Pub. L. No. 111-175, 124 Stat. 1218, 1244-45.

8. The current fees may be found in the *Code of Federal Regulations*, at 37 CFR §201.3, as authorized by Pub. L. No. 105-80, 111 Stat. 1529, 1532. In Pub. L. No. 105-80, Congress amended section 708(b) to require that the Register of Copyrights establish fees by regulation rather than by codifying them in title 17, *United States Code*, as was previously done.

