

Copyright Cleanup Act Passes Congress and Awaits Signature by President

by Cydney A. Tune and Jenna F. Leavitt

On November 15, 2010, the House, by unanimous consent, passed S. 3689, the Copyright Cleanup, Clarification, and Corrections Act of 2010. There are three basic categories of changes, those that: (1) increase the efficiency of the Copyright Office, (2) clarify certain issues in the Copyright Act, and (3) fix technical matters. While many of the changes seem to be routine, a number of them are potentially significant in their effects.

On Increased Efficiency

The first two changes were made to increase the efficiency of the Copyright Office by transitioning to digital files and recordkeeping. First, the new act strikes a portion of the Digital Millennium Copyright Act (DMCA), Section 512(c)(2) of Title 17, which previously required the Copyright Office to maintain the directory of registered DMCA agents in *both* electronic and hard copy formats. Now, the hard copy requirement has been removed.

Second, the new act amends Section 205(a), which covers how transfers of copyrights are recorded at the Copyright Office. The new act adds a provision that allows for sworn or official certifications to be submitted "electronically."

Clarifications

Section 601, requiring that certain copies of a work in the English language be manufactured in the U.S. or Canada, thereby prohibiting foreign manufacturers from making such copies, is repealed, and all other provisions referring to this Section are stricken (Sections 409(10) and 602(b)). The title of Chapter 6 of the Copyright Act also changes to reflect this repeal by removing the words "Manufacturing Requirements" – the new title is simply "Importation and Exportation."

Section 303(b) regarding the distribution of phonorecords is amended to clarify a discrepancy in the publication date of such works. The revision changes "the musical work" to "any musical work, dramatic work, or literary work," which enlarges the protection for any such works distributed by phonorecords.

Section 803(b)(6)(A) is amended to provide for judicial review of all "regulations" issued by the Copyright Royalty Judges. This amendment clarifies an ambiguity as to whether such regulations could be subject to judicial review.

Section 114(f)(2)(A) and (B) cover how the Copyright Royalty Board issues royalty schedules for the use of sound recordings in digital broadcasts. The new act amends subsection (C), by clarifying the extension of the license (and royalty schedules) to both non-subscription and new subscription services. The amendment strikes "preexisting digital audio transmission services or preexisting satellite digital radio audio services," and replaces it with more universal and less specific terms – "eligible nonsubscription services and new subscription services."

Technical Corrections

The last few changes of the new act correct technical matters within the Copyright Act:

- Section 101, the definitions section, is corrected by moving several definitions around, mostly to put them into proper alphabetical order: the definition of "Copyright Royalty Judges" moves to after the definition of "Copyright owners"; the definition of "motion picture exhibit facility" moves to after the definition of "literary works"; and the definition of "food service or drinking establishment" moves to after the definition of "fixed."
- The amendment to Section 114(f)(2)(B), dealing with licenses for webcasting of sound recordings, corrects a grammatical error by changing "Judges shall base *its* decision" to "Judges shall base *their* decision."
- Section 119(g)(4)(B)(iv), referring to secondary transmissions of television stations changes "the examinations" to "an examination."
- Section 503(a)(1)(B), which deals with impounding infringing works as a remedy for infringement, is corrected to reflect the same language used in subsection (A) which allows for the impounding of "copies *or* phonorecords," instead of "copies *of* phonorecords."
- The provision that gives a copyright owner the right to request retention of deposits and records with the Copyright Office during the full term of the copyright, Section 704(e), is corrected to properly refer to the provision that sets the fees for such requests, Section 708(a).
- Several sections which attempted to refer to the definition of a "public broadcasting entity" as Section 118(g), were changed to the proper reference, Section 118(f).

There are also a few non-Copyright Act changes made by the new act: modification of the Pro-IP Act (Public Law 110-403) to refer to striking "*section 509*" of the Copyright Act, instead of just "509" without a section reference; amendment of the Trademark Technical Amendments Act (Public Law 111-146) to clarify the purpose of the study and report on the extent to which small businesses may be harmed by litigation tactics "the purpose of which is" to enforce trademark rights beyond the scope of a reasonable interpretation of such rights; and amendment to correct a missing word in the section of the U.S. Code which deals with trafficking in counterfeit goods and the limitations of actions for the same to properly refer to "under *this* section," rather than the grammatically challenged "under section."

The bill is expected to be signed by President Obama and will go into effect in due course. Copyright owners, licensees and other users of copyright works should familiarize themselves with these changes to the Copyright Act in order to obtain the benefits offered by them in some instances, and to avoid making inadvertent mistakes.

If you have any questions about the content of this publication, please contact the Pillsbury attorney with whom you regularly work, or the authors listed below.

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