(1) serves notice upon the infringer, not less than 48 hours before such fixation, identifying the work and the specific time and source of its first transmission, and declaring an intention to secure copyright in the work; and

(2) makes registration for the work, if required by subsection (a), within three months after its first transmission.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2583; Pub. L. 100–568, § 9(b)(1), Oct. 31, 1988, 102 Stat. 2859; Pub. L. 101–650, title VI, § 606(c)(1), Dec. 1, 1990, 104 Stat. 5131; Pub. L. 105–80, § 6, Nov. 13, 1997, 111 Stat. 1532; Pub. L. 105–304, title I, § 102(d), Oct. 28, 1998, 112 Stat. 2863; Pub. L. 109–9, title I, § 104(b), Apr. 27, 2005, 119 Stat. 222; Pub. L. 110–403, title I, § 101(a), title II, § 209(a)(6), Oct. 13, 2008, 122 Stat. 4257, 4264.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

The first sentence of section 411(a) restates the present statutory requirement that registration must be made before a suit for copyright infringement is instituted. Under the bill, as under the law now in effect, a copyright owner who has not registered his claim can have a valid cause of action against someone who has infringed his copyright, but he cannot enforce his rights in the courts until he has made registration.

The second and third sentences of section 411(a) would alter the present law as interpreted in *Vacheron & Constantin-Le Coultre Watches, Inc. v. Benrus Watch Co.*, 260 F.2d 637 (2d Cir. 1958). That case requires an applicant, who has sought registration and has been refused, to bring an action against the Register of Copyrights to compel the issuance of a certificate, before suit can be brought against an infringer. Under section 411, a rejected claimant who has properly applied for registration may maintain an infringement suit if notice of it is served on the Register of Copyrights. The Register is authorized, though not required, to enter the suit within 60 days; the Register would be a party on the issue of registrability only, and a failure by the Register to join the action would ''not deprive the court of jurisdiction to determine that issue.''

Section 411(b) is intended to deal with the special situation presented by works that are being transmitted ''live'' at the same time they are being fixed in tangible form for the first time. Under certain circumstances, where the infringer has been given advance notice, an injunction could be obtained to prevent the unauthorized use of the material included in the ''live'' transmission.

Editorial Notes

REFERENCES IN TEXT

Subsection (b), referred to in subsec. (a), was redesignated subsec. (c) of this section by Pub. L. 110–403, title I, § 101(a)(3), Oct. 13, 2008, 122 Stat. 4257.

AMENDMENTS

2008—Pub. L. 110–403, § 101(a)(1), inserted ''civil'' before ''infringement'' in section catchline.

Subsec. (a). Pub. L. 110–403, § 101(a)(2), substituted ''no civil action'' for ''no action'' in first sentence and ''a civil action'' for ''an action'' in second sentence.

Subsec. (b). Pub. L. 110–403, § 209(a)(6), which directed amendment of subsec. (b) by substituting ''section 510'' for ''sections 509 and 510'', could not be executed because of prior amendment by Pub. L. 110–403, § 101(a)(3), (4). See below.

Pub. L. 110–403, § 101(a)(5), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 110–403, § 101(a)(4), substituted ''505 and section'' for ''506 and sections 509 and'' in introductory provisions.

Pub. L. 110–403, § 101(a)(3), redesignated subsec. (b) as (c).

2005—Subsec. (a). Pub. L. 109–9 inserted ''preregistration or'' after ''shall be instituted until''.

1998—Subsec. (a). Pub. L. 105–304, in first sentence, struck out ''actions for infringement of copyright in Berne Convention works whose country of origin is not the United States and'' after ''Except for'' and inserted ''United States'' after ''copyright in any''.

1997—Subsec. (b)(1). Pub. L. 105–80 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''serves notice upon the infringer, not less than ten or more than thirty days before such fixation, identifying the work and the specific time and source of its first transmission, and declaring an intention to secure copyright in the work; and''.

1990—Subsec. (a). Pub. L. 101–650 inserted ''and an action brought for a violation of the rights of the author under section 106A(a)'' after ''United States''.

1988—Pub. L. 100–568, § 9(b)(1)(A), substituted ''Registration and infringement actions'' for ''Registration as prerequisite to infringement suit'' in section catchline.

Subsec. (a). Pub. L. 100–568, § 9(b)(1)(B), substituted ''Except for actions for infringement of copyright in Berne Convention works whose country of origin is not the United States, and subject'' for ''Subject''.

Subsec. (b)(2). Pub. L. 100–568, § 9(b)(1)(C), substituted ''work, if required by subsection (a),'' for ''work''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–650 effective 6 months after Dec. 1, 1990, see section 610 of Pub. L. 101–650, set out as an Effective Date note under section 106A 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.

§ 412. Registration as prerequisite to certain remedies for infringement

In any action under this title, other than an action brought for a violation of the rights of the author under section 106A(a), an action for infringement of the copyright of a work that has been preregistered under section 408(f) before the commencement of the infringement and that has an effective date of registration not later than the earlier of 3 months after the first publication of the work or 1 month after the copyright owner has learned of the infringement, or an action instituted under section 411(c), no award of statutory damages or of attorney's fees, as provided by sections 504 and 505, shall be made for—

(1) any infringement of copyright in an unpublished work commenced before the effective date of its registration; or

(2) any infringement of copyright commenced after first publication of the work and before the effective date of its registration, unless such registration is made within three months after the first publication of the work.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2583; Pub. L. 101–650, title VI, § 606(c)(2), Dec. 1, 1990, 104 Stat. 5131; Pub. L. 109–9, title I, § 104(c), Apr. 27, 2005, 119 Stat. 222; Pub. L. 110–403, title I, § 101(b)(1), Oct. 13, 2008, 122 Stat. 4258.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

The need for section 412 arises from two basic changes the bill will make in the present law.

(1) Copyright registration for published works, which is useful and important to users and the public at large, would no longer be compulsory, and should therefore be induced in some practical way.

(2) The great body of unpublished works now protected at common law would automatically be brought under copyright and given statutory protection. The remedies for infringement presently available at common law should continue to apply to these works under the statute, but they should not be given special statutory remedies unless the owner has, by registration, made a public record of his copyright claim.

Under the general scheme of the bill, a copyright owner whose work has been infringed before registration would be entitled to the remedies ordinarily available in infringement cases: an injunction on terms the court considers fair, and his actual damages plus any applicable profits not used as a measure of damages. However, section 412 would deny any award of the special or ''extraordinary'' remedies of statutory damages or attorney's fees where infringement of copyright in an unpublished work began before registration or where, in the case of a published work, infringement commenced after publication and before registration (unless registration has been made within a grace period of three months after publication). These provisions would be applicable to works of foreign and domestic origin alike.

In providing that statutory damages and attorney's fees are not recoverable for infringement of unpublished, unregistered works, clause (1) of section 412 in no way narrows the remedies available under the present law. With respect to published works, clause (2) would generally deny an award of those two special remedies where infringement takes place before registration. As an exception, however, the clause provides a grace period of three months after publication during which registration can be made without loss of remedies; full remedies could be recovered for any infringement begun during the three months after publication if registration is made before that period has ended. This exception is needed to take care of newsworthy or suddenly popular works which may be infringed almost as soon as they are published, before the copyright owner has had a reasonable opportunity to register his claim.

Editorial Notes

AMENDMENTS

2008—Pub. L. 110–403 substituted ''section 411(c)'' for ''section 411(b)'' in introductory provisions.

2005—Pub. L. 109–9 inserted '', an action for infringement of the copyright of a work that has been preregistered under section 408(f) before the commencement of the infringement and that has an effective date of registration not later than the earlier of 3 months after the first publication of the work or 1 month after the copyright owner has learned of the infringement,'' after ''section 106A(a)'' in introductory provisions.

1990—Pub. L. 101–650 inserted ''an action brought for a violation of the rights of the author under section 106A(a) or'' after ''other than'' in introductory provisions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–650 effective 6 months after Dec. 1, 1990, see section 610 of Pub. L. 101–650, set out as an Effective Date note under section 106A of this title.

CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

Sec.
501. Infringement of copyright.
502. Remedies for infringement: Injunctions.
503. Remedies for infringement: Impounding and disposition of infringing articles.
504. Remedies for infringement: Damages and profits.
505. Remedies for infringement: Costs and attorney's fees.
506. Criminal offenses.
507. Limitations on actions.
508. Notification of filing and determination of actions.
[509. Repealed.]
510. Remedies for alteration of programming by cable systems.
511. Liability of States, instrumentalities of States, and State officials for infringement of copyright.
512. Limitations on liability relating to material online.
513. Determination of reasonable license fees for individual proprietors.

Editorial Notes

AMENDMENTS

2008—Pub. L. 110–403, title II, §201(b)(2), Oct. 13, 2008, 122 Stat. 4260, struck out item 509 ''Seizure and forfeiture.''

1999—Pub. L. 106–113, div. B, §1000(a)(9) [title I, §1011(a)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–543, substituted ''programming'' for ''programing'' in item 510.

Pub. L. 106–44, §1(c)(2), Aug. 5, 1999, 113 Stat. 222, renumbered item 512 ''Determination of reasonable license fees for individual proprietors'' as 513.

1998—Pub. L. 105–304, title II, §202(b), Oct. 28, 1998, 112 Stat. 2886, added item 512 ''Limitations on liability relating to material online''.

Pub. L. 105–298, title II, §203(b), Oct. 27, 1998, 112 Stat. 2833, added item 512 ''Determination of reasonable license fees for individual proprietors''.

1997—Pub. L. 105–80, §12(a)(12), Nov. 13, 1997, 105 Stat. 1535, substituted ''Damages'' for ''Damage'' in item 504.

1990—Pub. L. 101–553, §2(a)(3), Nov. 15, 1990, 104 Stat. 2750, added item 511.

§ 501. Infringement of copyright

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 122 or of the author as provided in section 106A(a), or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a). As used in this subsection, the term ''anyone'' includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it. The court may require such owner