

M E M O R A N D U M

To: Jeff Cambell
From: Mary Ann Hook, Deputy General Counsel
Date: August 4, 1993
Re: Copyright of Report

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Per our conversation, I have attached the provision in U.S.C. Title 17, Copyrights, that applies to government publications and permits you to copy the report for your use. I would ask that you make sure the copies are correctly marked to attribute the report, i.e. the name of the report, date of issuance. If you have any further questions, please feel free to call me.



**DEFENSE BASE CLOSURE
AND REALIGNMENT COMMISSION**

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FAX COVER SHEET

DATE:

Aug 4

TO:

Mr. Campbell

FAX #:

512 939 8565

FROM:

Hook

NUMBER OF PAGES (including cover):

3

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*re: copyright Title XVII
memo*

17 § 104

COPYRIGHTS

Ch. 1

Note 12

The new proclamations may be retroactive in terms and effect. *Id.*

So long as a state of war existed between Spain and the United States Spanish subjects had no right to the privilege of copyright conferred upon Spanish citizens by proclamation prior to the declaration of war. 1898, 22 Op.Atty.Gen. 268.

13. Foreign copyrights

British copyright based on certification by acting Colonial Secretary of Trinidad to receipt of three copies of booklet was valid and would be protected against infringement, though copies were not delivered by printers directly but by copy-

right holder as their agent. *Khan v. Leo Felst, Inc.*, C.C.A.N.Y.1947, 185 F.2d 188.

A British copyright protects the author in England, but, unless he also copyrights the work in the United States, affords him no protection against any one who brings out in this country a piratical edition of the work. *American Code Co. v. Bensinger*, C.C.A.N.Y.1922, 282 F. 829.

Distribution by composer of stencil copies of his musical composition in Palestine, while Palestine was a British protectorate, would not forfeit any rights composer had under the British Copyright Act of 1911. *Mills Music v. Cromwell Music*, D.C.N.Y.1954, 126 F.Supp. 54.

§ 105. Subject matter of copyright: United States Government works

Copyright protection under this title is not available for any work of the United States Government, but the United States Government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise.

Pub.L. 94-553, Title I, § 101, Oct. 19, 1976, 90 Stat. 2546.

Historical Note

Notes of Committee on the Judiciary, House Report No. 94-1476. Scope of the Prohibition. The basic premise of section 105 of the bill [this section] is the same as that of section 8 of the present law [former section 8 of this title]—that works produced for the U.S. Government by its officers and employees should not be subject to copyright. The provision applies the principle equally to unpublished and published works.

The general prohibition against copyright in section 105 [this section] applies to "any work of the United States Government," which is defined in section 101 [section 101 of this title] as "a work prepared by an officer or employee of the United States Government as part of that person's official duties." Under this definition a Government official or employee would not be prevented from securing copyright in a work written at that person's own volition and outside his or her duties, even though the subject matter involves the Government work or professional field of the official or employee. Although the wording of the definition of "work of the United States Government" differs somewhat from that of the definition of "work made for hire," the con-

cepts are intended to be construed in the same way.

A more difficult and far-reaching problem is whether the definition should be broadened to prohibit copyright in works prepared under U.S. Government contract or grant. As the bill is written, the Government agency concerned could determine in each case whether to allow an independent contractor or grantee, to secure copyright in works prepared in whole or in part with the use of Government funds. The argument that has been made against allowing copyright in this situation is that the public should not be required to pay a "double subsidy," and that it is inconsistent to prohibit copyright in works by Government employees while permitting private copyrights in a growing body of works created by persons who are paid with Government funds. Those arguing in favor of potential copyright protection have stressed the importance of copyright as an incentive to creation and dissemination in this situation, and the basically different policy considerations, applicable to works written by Government employees and those applicable to works prepared by private organizations with the use of Federal funds.

Ch. 1

SUBJECT MATTER

The bill deliberately avoids making any sort of outright, unqualified prohibition against copyright in works prepared under Government contract or grant. There may well be cases where it would be in the public interest to deny copyright in the writings generated by Government research contracts and the like; it can be assumed that, where a Government agency commissions a work for its own use merely as an alternative to having one of its own employees prepare the work, the right to secure a private copyright would be withheld. However, there are almost certainly many other cases where the denial of copyright protection would be unfair or would hamper the production and publication of important works. Where, under the particular circumstances, Congress or the agency involved finds that the need to have a work freely available outweighs the need of the private author to secure copyright, the problem can be dealt with by specific legislation, agency regulations, or contractual restrictions.

The prohibition on copyright protection for United States Government works is not intended to have any effect on protection of these works abroad. Works of the governments of most other countries are copyrighted. There are no valid policy reasons for denying such protection to United States Government works in foreign countries, or for precluding the Government from making licenses for the use of its works abroad.

The effect of section 105 [this section] is intended to place all works of the United States Government, published or unpublished, in the public domain. This means that the individual Government official or employee who wrote the work could not secure copyright in it or restrain its dissemination by the Government or anyone else, but it also means that, as far as the copyright law is concerned, the Government could not restrain the employee or official from disseminating the work if he or she chooses to do so. The use of the term "work of the United States Government" does not mean that a work falling within the definition of that term is the property of the U.S. Government.

LIMITED EXCEPTION FOR NATIONAL TECHNICAL INFORMATION SERVICE

At the House hearings in 1975 the U.S. Department of Commerce called attention to its National Technical Information Service (NTIS), which has a statutory mandate, under Chapter 23 of Title 15 of the U.S. Code [chapter 23 (section 1151 et seq.) of Title 15, Commerce and Trade],