



90 JOHN STREET
SUITE #403
NEW YORK, NY
10038-3202



(212) 791-3400



(212) 791-0333



WWW.GAG.PRF

THE ISSUE

Amendment of Section 412, Title 17, US Code:

Copyright protection for an individual author making a contribution to a collective work requires that registration of the work be made within three months of publication or prior to infringement, and that the registration include two copies of the published work. We seek to amend Section 412 of the copyright law to allow individual authors to benefit temporarily from the copyright of the collective work held by the publisher, effectively extending the period of time that an individual can register his or her work, and thereby enabling increased copyright enforcement against infringers.

ELIMINATING BARRIERS THAT PREVENT AUTHORS FROM OBTAINING THEIR RIGHTFUL PROTECTIONS

While copyright subsists in a work once it is fixed in tangible form, copyright cannot be actively protected unless the work is registered. If artwork is registered within three months of first publication, or thereafter prior to infringement, the author may claim statutory damages and attorney's fees. If a registration is not made prior to infringement, the author's claim is limited to provable actual damages. The authors of words and images prepared for commercial use face ever-shorter deadlines, under which it is often not feasible to file registrations prior to publication. Nor, frequently, is it possible to obtain either

copies of published work, or the return of originals, from a client in time to take advantage of the post-publication registration grace period.

The intent of the copyright statute is to preserve the rights of the author. If that intent is to be preserved, Section 412 must be amended to increase individual authors' access to copyright protection through registration, and make enforcement of their copyrights more viable.

GUILD POLICY

Guild policy is to support and reinforce copyright protections for individual creators.

ACTIONS TAKEN

The Guild has drafted amended language for Section 412 of the Copyright Law in consultation with the Copyright Office. Joined in the effort by the National Writers Union, the Guild met in February with UAW lobbyists to strategize the introduction of the bill and identified several potential sponsors in Congress.

RESULTS

With the recent budget/tax cut battle in Congress concluded, introduction of the legislation is expected soon.



Proposed Language to Amend Section 412, Title 17, US Code

Section 412.

In any action under this title, other than an action brought for a violation of the rights of the author under section 106A(a) or an action instituted under section 411(b), 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
 - a. such registration is made within three months after the first publication of the work or
 - b. if the work is not a work made for hire, and was first published as a contribution to a collective work, registration of the collective work was made within three months after the first publication of the collective work, or prior to the infringement.*