

TITLE 35
COPYRIGHTS, PATENTS AND TRADEMARKS

CHAPTERS

1 Copyrights (§§ 101-126)

CHAPTER 1
Copyrights

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§ 101. Definitions.

As used in this chapter:

- (1) “Anonymous work” means a work on the copies or phonorecords of which no natural person is identified as the author.
- (2) “Attorney General’s Office” means the Office of the Attorney General of the National Government of the Federated States of Micronesia.
- (3) “Audiovisual works” means works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.
- (4) “Collective work” means a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

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(5) “Compilation” means a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. “Compilation” includes collective works.

(6) “Copies” means material objects, other than phonorecords, in which a work is fixed by any method and from which can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a device. “Copies” includes the material object, other than a phonorecord, in which the work is first fixed.

(7) “Court” means the trial or appellate division of the Supreme Court of the Federated States of Micronesia.

(8) “Created”: A work is “created” when it is fixed in a copy or phonorecord for the first time. Where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.

(9) “Derivative work” means a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be recasted, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a “derivative work.”

(10) “Display”: To “display” a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device.

(11) “Fixed”: A work is “fixed” in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

(12) “Literary works” means works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, or cards, in which they are embodied.

(13) “Perform”: To “perform” a work means to recite, render, play, dance, or act, either directly or by means of any device or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

(14) “Pictorial, graphic, and sculptural works” includes two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, technical drawings, diagrams, and models.

(15) “Publication” means the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons, for purposes of further distribution, public performance, or public display constitutes publication.

Source: PL 2-29 § 101.

Cross-reference: FSM Const., art. IX, § 2(g). The provisions of the Constitution are found in Part I of this code.

§ 102. Subject matter of copyright—Generally.

(1) Copyright protection subsists, in accordance with this chapter, in original works of authorship fixed in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a device. Works of authorship include the following categories:

- (a) literary works;
- (b) musical works, including any accompanying words;
- (c) dramatic works, including any accompanying music;
- (d) pantomimes and choreographic works;
- (e) pictorial, graphic, and sculptural works;
- (f) motion pictures and other audiovisual works; and
- (g) sound recordings.

(2) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

Source: PL 2-29 § 102.

§ 103. Subject matter of copyright—Compilations and derivative works.

(1) The subject matter of copyright as specified by section 102 of this chapter includes compilations and derivative works, but protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.

(2) The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of any copyright protection in the preexisting material.

Source: PL 2-29 § 103, modified.

§ 104. Subject matter of copyright—National origin.

(1) *Unpublished works.* The works specified by sections 102 and 103 of this chapter, while unpublished, are subject to protection under this chapter without regard to the nationality or citizenship of the author.

(2) *Published works.* The works specified by sections 102 and 103 of this chapter, when published, are subject to protection under this chapter if:

(a) on the date of first publication, one or more of the authors is a national or domiciliary of the Federated States of Micronesia or is a national or a domiciliary of a country that is a party to a copyright treaty to which the Federated States of Micronesia is also a party; or

(b) the work comes within the scope of a Presidential proclamation. Whenever the President of the Federated States of Micronesia finds that a particular foreign nation extends to works by authors who are nationals or domiciliaries of the Federated States of Micronesia or to works that are first published in the Federated States of Micronesia, copyright protection on substantially the same basis as that on which the

foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under this chapter to works of which one or more of the authors are, on the date of first publication, a national or domiciliary of that nation. The President may revise, suspend, or revoke any such proclamation, or impose any conditions or limitations on protection under a proclamation.

Source: PL 2-29 § 104.

Cross-reference: FSM Const., art. IX, § 2(g). The provisions of the Constitution are found in Part I of this code.

The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 105. Subject matter of copyright—FSM Government works.

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

Source: PL 2-29 § 105.

§ 106. Exclusive rights in copyrighted works.

Subject to sections 107, 108, and 109 of this chapter, the owner of copyright under this chapter has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

Source: PL 2-29 § 106.

Cross-reference: FSM Const., art. IX, § 2(g). The provisions of the Constitution are found in Part I of this code.

§ 107. Limitation on exclusive rights—Fair use.

Notwithstanding the provisions of section 106 of this chapter, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

Source: PL 2-29 § 107.

§ 108. Limitations on exclusive rights—Reproduction by libraries and archives.

Notwithstanding the provisions of section 106 of this chapter, it is not an infringement of copyright for a library or archives to reproduce no more than one copy or phonorecord, under the conditions specified by this section, if:

- (1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;
- (2) the collections of the library or archives are open to the public; and
- (3) the reproduction or distribution of the work includes a notice of copyright.

Source: PL 2-29 § 108.

Cross-reference: The statutory provisions on the Library of the Congress of the FSM are found in chapter 5 of title 40 (Education).

§ 109. Other limitations on exclusive rights of specific works.

Other limitations on exclusive rights of specific works or exemptions of certain performances and displays may be prescribed by the Attorney General in rules and regulations consistent with sections 107 and 108 of this chapter.

Source: PL 2-29 § 109.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 110. Ownership of copyright.

(1) *Initial ownership.* Copyright in a work protected under this chapter vests initially in the author or authors of the work. The authors of a joint work are co-owners of copyright in the work.

(2) *Works made for hire.* In the case of a work made for hire, the employer is considered the author for purposes of this chapter and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

(3) *Contributions to collective works.* Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only

the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.

(4) *Transfer of ownership.*

(a) The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law or may be bequeathed by will; provided, that in the absence of the aforesaid means of transfer, ownership of a copyright shall pass as personal property by the customs of the State where the owner is domiciled.

(b) Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by section 106 of this chapter, may be transferred as provided by paragraph (a) of this subsection and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this chapter.

Source: PL 2-29 § 201.

§ 111. Ownership of copyright as distinct from ownership of material object.

Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of any material object, including the copy or phonorecord in which the work is first fixed, does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does transfer of ownership of a copyright or of any exclusive rights under a copyright convey property rights in any material object.

Source: PL 2-29 § 202.

Cross-reference: FSM Const., art. IX, § 2(g). The provisions of the Constitution are found in Part I of this code.

§ 112. Recordation of transfer.

(1) Any transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Office of the Attorney General if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document.

(2) Recordation of a document in the Office of the Attorney General gives all persons constructive notice of the facts stated in the recorded document, but only if:

(a) the document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Office of the Attorney General, it would be revealed by a reasonable search under the title or registration number of the work; and

(b) registration has been made for the work.

Source: PL 2-29 § 203.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 113. Duration of copyright—Works created on or after effective date.

(1) Copyright in a work created on or after the effective date of the Act codified in this chapter subsists from its creation and, except as provided by the following subsections, endures for a term consisting of the life of the author and 50 years after the author's death.

(2) In the case of a joint work prepared by two or more authors who did not work for hire, the copyright endures for a term consisting of the life of the last surviving author and 50 years after such last surviving author's death.

(3) In the case of an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 75 years from the year of its first publication, or a term of 100 years from the year of its creation, whichever expires first. If, before the end of such term, the identity of one or more of the authors of an anonymous or pseudonymous work is revealed in the records of a registration made for that work, the copyright in the work endures for the term specified by subsections (1) and (2) of this section.

Source: PL 2-29 § 301.

§ 114. Duration of copyright—Works created but not published or copyrighted before effective date.

Copyright in a work created before the effective date of the Act codified in this chapter, but not theretofore in the public domain or copyrighted, subsists beginning on the effective date of the Act codified in this chapter and endures for the term provided by section 113 of this chapter.

Source: PL 2-29 § 302.

§ 115. Notice of copyright—Visually perceptible copies.

(1) Whenever a work protected under this chapter is published in the Federated States of Micronesia or elsewhere by authority of the copyright owner, a notice of copyright as provided by this section shall be placed on all publicly distributed copies from which the work can be visually perceived.

(2) The notice appearing on the copies shall consist of the following three elements:

(a) the symbol © (the letter C in a circle), or the word "Copyright," or the abbreviation "Copr.";

(b) the year of first publication of the work; in the case of compilations or derivative works incorporating previously published material, the year date of first publication of the compilations or derivative work is sufficient. The year date may be omitted where a pictorial, graphic, or sculptural work, with accompanying text matter, if any, is reproduced in or on greeting cards, postcards, or any useful articles; and

(c) the name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

(3) The notice shall be affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright.

Source: PL 2-29 § 401.

Cross-reference: FSM Const., art. IX, § 2(g). The provisions of the Constitution are found in Part I of this code.

§ 116. Notice of copyright--Phonorecords of sound recordings.

(1) Whenever a sound recording protected under this chapter is published in the Federated States of Micronesia or elsewhere by authority of the copyright owner, a notice of copyright as provided by this section shall be placed on all publicly distributed phonorecords of the sound recording.

(2) The notice appearing on the phonorecords shall consist of the following three elements:

- (a) the symbol (the letter P in a circle);
- (b) the year of first publication of the sound recording; and
- (c) the name of the owner of copyright in the sound recording.

(3) The notice shall be placed on the surface of the phonorecord, or on the phonorecord label or container, in such manner and location as to give reasonable notice of the claim of copyright.

Source: PL 2-29 § 402.

§ 117. Notice of copyright—Contributions to collective works.

A single notice applicable to the collective work as a whole is sufficient to satisfy the requirements of sections 115 and 116 of this chapter, regardless of the ownership of copyright in the contributions and whether or not they have been previously published; provided, that the copyright of the owner in a separate contribution that does not bear its own notice is not affected.

Source: PL 2-29 § 403.

Cross-reference: FSM Const., art. IX, § 2(g). The provisions of the Constitution are found in Part I of this code.

§ 118. Deposit of copies or phonorecords for Library of the Congress of the FSM.

(1) Subject to exception under this section, the owner of copyright or of the exclusive right of publication in a work published with notice of copyright in the Federated States of Micronesia shall deposit, within four months after the date of such publication:

- (a) two complete copies of the best edition; or
- (b) if the work is a sound recording, two complete phonorecords of the best edition.

(2) The required copies or phonorecords shall be deposited in the Attorney General's Office for the use or disposition of the Library of the Congress of the Federated States of Micronesia.

(3) The Attorney General may by regulation exempt any categories of material from the deposit requirements of this section or require deposit of only one copy or phonorecord with respect to any categories.

Source: PL 2-29 § 404.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Library of the Congress of FSM are found in chapter 5 of title 40 (Education).

§ 119. Copyright registration in general.

At any time during the subsistence of copyright in any published or unpublished work, the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim by delivering to the Attorney General's Office the deposit required and upon payment of fee as prescribed in regulations. The Attorney General shall by rules and regulations prescribe the material deposited for registration.

Source: PL 2-29 § 405.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 120. Application for copyright registration.

The application for copyright registration shall be made on a form prescribed by the Attorney General and shall include all information as prescribed by rules and regulations.

Source: PL 2-29 § 406.

Cross-reference: FSM Const., art. IX, § 2(g). The provisions of the Constitution are found in Part I of this code.

The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Administrative Procedure are found in title 17 of this code.

§ 121. Registration of claim and issuance of certificate.

(1) When, after examination, the Attorney General determines that, in accordance with the provisions of this chapter, the material deposited constitutes copyrightable subject matter and that the legal requirements of this chapter have been met, he shall register the claim and issue to the applicant a certificate of registration under the seal of the Attorney General's Office. The certificate shall contain the information given in the application, together with the number and effective date of the registration.

(2) In any case in which the Attorney General determines that, in accordance with the provisions of this chapter, the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, he shall refuse registration and notify the applicant in writing of the reasons for such refusal.

Source: PL 2-29 § 407.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 122. Infringement—Civil remedies.

Anyone who violates any of the exclusive rights of the copyright as provided under this chapter is an infringer of copyright and shall be liable:

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- (1) to an injunction restraining such infringement;
- (2) to pay the copyright owner the actual damages suffered by the owner and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages; and
- (3) to pay the copyright owner punitive damages, if imposed by the court.

Source: PL 2-29 § 501.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 123. Infringement—Criminal offense—Fraud.

- (1) Any person who infringes a copyright willfully and for purpose of commercial advantage or private gain shall be fined \$10,000 or imprisoned for not more than one year, or both.
- (2) When any person is convicted of any violation under subsection (1) of this section, the court in its judgment of conviction, in addition to the penalty therein prescribed, may order the forfeiture and destruction or other disposition of all infringing copies or phonorecords and devices used in the manufacture of such infringing copies or phonorecords.
- (3) Any person who, with fraudulent intent, places on any article a notice of copyright or words of the same purpose that such person knows to be false, or who, with fraudulent intent, publicly distributes or imports for public distribution any article bearing such notice or works that such person knows to be false, shall be fined not more than \$2,500.
- (4) Any person who, with fraudulent intent, removes or alters any notice of copyright appearing on a copy of a copyrighted work shall be fined not more than \$2,500.
- (5) Any person who knowingly makes a false representation of a material fact in the application for copyright registration or in any written statement filed in connection with the application shall be fined not more than \$2,500.

Source: PL 2-29 § 502.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

The statutory provisions on Crimes are found in title 11 of this code. The statutory provisions on Criminal Procedure are found in title 12 of this code.

Case annotations: The term "counterfeit" has a specific legal meaning: to forge; to copy or imitate, without authority or right, and with a view to deceive or defraud, by passing the copy or thing forged for that which is original or genuine. *Yang v. Western Sales Trading Co.*, 11 FSM R. 607, 616 (Pon. 2003).

Goods received through unauthorized distribution networks often are referred to as "gray market" goods, or parallel products. Gray market goods are genuine products possessing a brand name protected by trademark or copyright, which are typically manufactured abroad and then purchased and imported by third parties, bypassing authorized distribution channels. *Yang v. Western Sales Trading Co.*, 11 FSM R. 607, 617 (Pon. 2003).

§ 124. Responsibilities and duties of the Office of the Attorney General.

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(1) Until the President of the Federated States of Micronesia, through administrative directives, establishes a separate Copyright Office, within or without the Attorney General's Office, the Office of the Attorney General shall exercise all administrative functions and duties under this chapter.

(2) The Office of the Attorney General shall adopt a seal to be used to authenticate all certified documents issued by it.

(3) The Office of the Attorney General shall provide and keep records of all deposits, registration, recordation, and other activities as required by this chapter or rules and regulations later issued.

(4) The Office of the Attorney General shall compile and publish annually catalogs of all copyright registration.

Source: PL 2-29 § 601.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 125. Regulations.

The Attorney General is authorized to establish regulations not inconsistent with this chapter.

Source: PL 2-29 § 602.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Administrative Procedure are found in title 17 of this code.

§ 126. Fees.

(1) Fees for registration, recordation, issuance of certificate, and other services shall be prescribed in regulations issued by the Attorney General.

(2) The Attorney General shall deposit all fees in the General Fund of the Federated States of Micronesia.

Source: PL 2-29 § 603.

Cross-reference: FSM Const., art. IX, § 2(g). The provisions of the Constitution are found in Part I of this code.

The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Administrative Procedure are found in title 17 of this code.