

Restatement of Law, Copyright
Tentative Draft No. 2

Proposed Amendment to Chapter 3, §25. Transfer of Copyright, black letter
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Proposed amendment:

§25. Transfers of Copyright, black letter

Add a new subsection (f):

(f) Contributions to Collective Works.— 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. [17 USC sec. 201(c)]

Discussion:

The Reporters have – again – omitted a substantive provision of the copyright act from the black letter of TD2. 17 USC sec. 201(c) provides:

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.* (emphasis supplied)

The first sentence of this subsection appears in TD2 at black letter sec. 20(b), but the remainder of this provision has been excluded from the black letter and relegated to comment (j) in sec. 25. The Reporters have persisted in leaving out this part of the statute despite calls from the Advisers not to omit from the black letter portions of the full relevant provision of the Copyright Act. The second sentence of 17 U.S.C. sec. 201(c) is significant for authors who contribute to collective works but do not sign agreements transferring rights; without a written transfer, these authors retain copyright in their contributions, apart from the publisher’s “revision” privilege. The interpretation of section 201(c)’s privilege was at the heart of the Supreme Court’s decision in *New York Times Co.v. Tasini*, 533 U.S. 483 (2001). As a result of *Tasini*, publishers may be more likely to demand transfers of rights from collective works contributors, but section 201(c) remains relevant. It is not appropriate to leave out of the black letter a statutory provision that, moreover, was construed by the Supreme Court.