

EXHIBIT 1

CALIFORNIA LEGISLATURE—1981–82 REGULAR SESSION

ASSEMBLY BILL**No. 3483**

Introduced by Assemblyman Katz

March 12, 1982

An act to repeal Chapter 4 (commencing with Section 14700) of Division 6 of the Business and Professions Code, and to amend Sections 980, 981, 982, and 983 of the Civil Code, relating to copyright.

LEGISLATIVE COUNSEL'S DIGEST

AB 3483, as introduced, Katz. Copyright.

Existing state law relating to copyright has not been amended to reflect the enactment of the Federal Copyright Act of 1976, which became operative on January 1, 1978. The federal law contains a specific provision preempting any state law which grants or confers a legal or equitable right that is equivalent to any of the exclusive rights within the general scope of copyright in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright, whether created before or after January 1, 1978, and whether published or unpublished. Prior to January 1, 1978, state law regulated the copyright of unpublished works of authorship.

This bill would repeal existing provisions of state law (relating to the filing and recordation of original works of authorship, the performance of unpublished or undedicated operas without consent, the unauthorized distribution of works copyrighted under federal law or the common law or state copyright in unpublished works, joint ownership in unpublished works, the transfer of ownership in unpublished works, and the termination of common law copyright) which have become obsolete in view of the preemption thereof by the Federal Copyright Act of 1976.

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This bill would provide state copyright protection for works of authorship not protectable under federal law, including works of authorship that are not fixed in any tangible medium of expression, and sound recordings fixed prior to February 15, 1972, until February 15, 2047. (Some recordings fixed in a tangible medium of expression before February 15, 1972, are not affected by the preemptive provisions of federal law until February 15, 2047.) This bill also would grant exclusive ownership to the authors of such works of authorship and would provide for the joint ownership and transfer thereof.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 4 (commencing with Section
2 14700) of Division 6 of the Business and Professions Code
3 is repealed.
4 SEC. 2. Section 980 of the Civil Code is amended to
5 read:
6 980. (a) The author or proprietor of any composition
7 in letters or art has an exclusive ownership in the
8 representation or expression thereof as against all persons
9 except one who originally and independently creates the
10 same or a similar composition. (a) (1) The author of any
11 original work of authorship that is not fixed in any
12 tangible medium of expression has an exclusive
13 ownership in the representation or expression thereof as
14 against all persons except one who originally and
15 independently creates the same or similar work. A work

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1 shall be considered not fixed when it is not embodied in
 2 a tangible medium of expression or when its embodiment
 3 in a tangible medium of expression is not sufficiently
 4 permanent or stable to permit it to be perceived,
 5 reproduced, or otherwise communicated for a period of
 6 more than transitory duration, either directly or with the
 7 aid of a machine or device.

8 (2) The author of an original work of authorship
 9 consisting of a sound recording initially fixed prior to
 10 February 15, 1972, has an exclusive ownership therein
 11 until February 15, 2047, as against all persons except one
 12 who independently makes or duplicates another sound
 13 recording that does not directly or indirectly recapture
 14 the actual sounds fixed in such prior sound recording, but
 15 consists entirely of an independent fixation of other
 16 sounds, even though such sounds imitate or simulate the
 17 sounds contained in the prior sound recording.

18 (b) The inventor or proprietor of any invention or
 19 design, with or without delineation, or other graphical
 20 representation, has an exclusive ownership therein, and
 21 in the representation or expression thereof, which
 22 continues so long as the invention or design and the
 23 representations or expressions thereof made by him
 24 remain in his possession.

25 SEC. 3. Section 981 of the Civil Code is amended to
 26 read:

27 981. (a) Unless otherwise agreed, a composition in
 28 letters or art in the production of which several persons
 29 are jointly concerned, is owned by them as follows:

30 1. If the product is indivisible, in equal proportions.

31 2. If it is divisible, in proportion to the contribution of
 32 each. (a) Unless otherwise agreed, an original work of
 33 authorship not fixed in any tangible medium of
 34 expression and in the creation of which several persons
 35 are jointly concerned, is owned by them in equal
 36 proportion.

37 (b) Unless otherwise agreed, an invention or design in
 38 the production of which several persons are jointly
 39 concerned is owned by them as follows:

40 1.

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1 (1) If the invention or design is single, in equal
2 proportions.

3 ~~2.~~

4 (2) If it is not single, in proportion to the contribution
5 of each.

6 SEC. 4. Section 982 of the Civil Code is amended to
7 read:

8 982. ~~(a) The owner of any rights in any composition~~
9 ~~in letters or art, may transfer his ownership therein.~~

10 (a) The owner of any rights in any original works of
11 authorship not fixed in any tangible medium of
12 expression may transfer the ownership therein.

13 (b) The owner of any invention or design, or of any
14 representation or expression thereof, may transfer his or
15 her ~~property proprietary interest in the same it.~~

16 (c) Notwithstanding any other provision in this
17 section, whenever a work of fine art is transferred,
18 whether by sale or on commission or otherwise, by or on
19 behalf of the artist who created it, or that artist's heir,
20 legatee, or personal representative, the right of
21 reproduction thereof is reserved to such artist or such
22 heir, legatee, or personal representative until it passes
23 into the public domain by act or operation of law, unless
24 that right is expressly transferred by a document in
25 writing in which reference is made to the specific right
26 of reproduction, signed by the owner of the rights
27 conveyed or that person's duly authorized agent. If ~~such~~
28 ~~the~~ transfer is pursuant to an employment relationship,
29 the right of reproduction is transferred to the employer,
30 unless it is expressly reserved in writing. If ~~such the~~
31 transfer is pursuant to a legacy or inheritance, the right
32 of reproduction is transferred to the legatee or heir,
33 unless it is expressly reserved by will or codicil. Nothing
34 contained herein, however, shall be construed to prohibit
35 the fair use of such work of fine art.

36 (d) As used in subdivision (c):

37 (1) "Fine art" ~~shall mean means~~ any work of visual art,
38 including but not limited to, a drawing, painting,
39 sculpture, mosaic, or photograph, a work of calligraphy,
40 work of graphic art (including an etching, lithograph,

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1 offset print, silk screen, or a work of graphic art of like
2 nature), crafts (including crafts in clay, textile, fiber,
3 wood, metal, plastic, and like materials), or mixed media
4 (including a collage, assemblage, or any combination of
5 the foregoing art media).

6 (2) "Artist" ~~shall mean~~ means the creator of a work of
7 fine art.

8 (3) "Right of reproduction", at the present state of
9 commerce and technology shall be interpreted as
10 including, but shall not be limited to, the following:
11 reproduction of works of fine art as prints suitable for
12 framing; facsimile casts of sculpture; reproductions used
13 for greeting cards; reproductions in general books and
14 magazines not devoted primarily to art, and in
15 newspapers in other than art or news sections, when such
16 reproductions in books, magazines, and newspapers are
17 used for purposes similar to those of material for which
18 the publishers customarily pay; art films; television,
19 except from stations operated for educational purposes,
20 or on programs for educational purposes from all stations;
21 and reproductions used in any form of advertising,
22 including magazines, calendars, newspapers, posters,
23 billboards, films or television.

24 (e) The amendments to this section made at the
25 1975-76 Regular Session shall only apply to transfers
26 made on or after January 1, 1976.

27 SEC. 5. Section 983 of the Civil Code is amended to
28 read:

29 983. ~~(a) If the owner of a composition in letters or art~~
30 ~~publishes it the same may be used in any manner by any~~
31 ~~person, without responsibility to the owner, insofar as~~
32 ~~the law of this State is concerned.~~

33 ~~(b)~~ If the owner of any invention or design
34 intentionally makes it public, a copy or reproduction may
35 be made public by any person, without responsibility to
36 the owner, so far as the law of this State ~~state~~ is
37 concerned.

38 SEC. 6. No appropriation is made and no
39 reimbursement is required by this act pursuant to Section
40 6 of Article XIII B of the California Constitution or

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1 Section 2231 or 2234 of the Revenue and Taxation Code
 2 because the only costs which may be incurred by a local
 3 agency or school district will be incurred because this act
 4 creates a new crime or infraction, changes the definition
 5 of a crime or infraction, changes the penalty for a crime
 6 or infraction, or eliminates a crime or infraction.

[Faint, mostly illegible text from the reverse side of the page is visible through the paper.]

Assembly Bill No. 3483

CHAPTER 574

An act to repeal Chapter 4 (commencing with Section 14700) of Division 6 of the Business and Professions Code, and to amend Sections 980, 981, 982, and 983 of the Civil Code, relating to copyright.

[Approved by Governor August 24, 1982. Filed with
Secretary of State August 25, 1982.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3483, Katz. Copyright.

Existing state law relating to copyright has not been amended to reflect the enactment of the Federal Copyright Act of 1976, which became operative on January 1, 1978. The federal law contains a specific provision preempting any state law which grants or confers a legal or equitable right that is equivalent to any of the exclusive rights within the general scope of copyright in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright, whether created before or after January 1, 1978, and whether published or unpublished. Prior to January 1, 1978, state law regulated the copyright of unpublished works of authorship.

This bill would repeal existing provisions of state law (relating to the filing and recordination of original works of authorship, the performance of unpublished or undedicated operas without consent, the unauthorized distribution of works copyrighted under federal law or the common law or state copyright in unpublished works, joint ownership in unpublished works, the transfer of ownership in unpublished works, and the termination of common law copyright) which have become obsolete in view of the preemption thereof by the Federal Copyright Act of 1976.

This bill would provide state copyright protection for works of authorship not protectable under federal law, including works of authorship that are not fixed in any tangible medium of expression, and sound recordings fixed prior to February 15, 1972, until February 15, 2047. (Some recordings fixed in a tangible medium of expression before February 15, 1972, are not affected by the preemptive provisions of federal law until February 15, 2047.) This bill also would grant exclusive ownership to the authors of such works of authorship and would provide for the joint ownership and transfer thereof.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for



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— 2 —

reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Chapter 4 (commencing with Section 14700) of Division 6 of the Business and Professions Code is repealed.

SEC. 2. Section 980 of the Civil Code is amended to read:

980. (a) (1) The author of any original work of authorship that is not fixed in any tangible medium of expression has an exclusive ownership in the representation or expression thereof as against all persons except one who originally and independently creates the same or similar work. A work shall be considered not fixed when it is not embodied in a tangible medium of expression or when its embodiment in a tangible medium of expression is not sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration, either directly or with the aid of a machine or device.

(2) The author of an original work of authorship consisting of a sound recording initially fixed prior to February 15, 1972, has an exclusive ownership therein until February 15, 2047, as against all persons except one who independently makes or duplicates another sound recording that does not directly or indirectly recapture the actual sounds fixed in such prior sound recording, but consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate the sounds contained in the prior sound recording.

(b) The inventor or proprietor of any invention or design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the invention or design and the representations or expressions thereof made by him remain in his possession.

SEC. 3. Section 981 of the Civil Code is amended to read:

981. (a) Unless otherwise agreed, an original work of authorship not fixed in any tangible medium of expression and in the creation of which several persons are jointly concerned, is owned by them in equal proportion.

(b) Unless otherwise agreed, an invention or design in the production of which several persons are jointly concerned is owned by them as follows:

(1) If the invention or design is single, in equal proportions.

(2) If it is not single, in proportion to the contribution of each.

SEC. 4. Section 982 of the Civil Code is amended to read:

982. (a) The owner of any rights in any original works of authorship not fixed in any tangible medium of expression may transfer the ownership therein.

(b) The owner of any invention or design, or of any representation or expression thereof, may transfer his or her proprietary interest in it.

(c) Notwithstanding any other provision in this section, whenever a work of fine art is transferred, whether by sale or on commission or otherwise, by or on behalf of the artist who created it, or that artist's heir, legatee, or personal representative, the right of reproduction thereof is reserved to such artist or such heir, legatee, or personal representative until it passes into the public domain by act or operation of law, unless that right is expressly transferred by a document in writing in which reference is made to the specific right of reproduction, signed by the owner of the rights conveyed or that person's duly authorized agent. If the transfer is pursuant to an employment relationship, the right of reproduction is transferred to the employer, unless it is expressly reserved in writing. If the transfer is pursuant to a legacy or inheritance, the right of reproduction is transferred to the legatee or heir, unless it is expressly reserved by will or codicil. Nothing contained herein, however, shall be construed to prohibit the fair use of such work of fine art.

(d) As used in subdivision (c):

(1) "Fine art" means any work of visual art, including but not limited to, a drawing, painting, sculpture, mosaic, or photograph, a work of calligraphy, work of graphic art (including an etching, lithograph, offset print, silk screen, or a work of graphic art of like nature), crafts (including crafts in clay, textile, fiber, wood, metal, plastic, and like materials), or mixed media (including a collage, assemblage, or any combination of the foregoing art media).

(2) "Artist" means the creator of a work of fine art.

(3) "Right of reproduction", at the present state of commerce and technology shall be interpreted as including, but shall not be limited to, the following: reproduction of works of fine art as prints suitable for framing; facsimile casts of sculpture; reproductions used for greeting cards; reproductions in general books and magazines not devoted primarily to art, and in newspapers in other than art or news sections, when such reproductions in books, magazines, and newspapers are used for purposes similar to those of material for which the publishers customarily pay; art films; television, except from stations operated for educational purposes, or on programs for educational purposes from all stations; and reproductions used in any form of advertising, including magazines, calendars, newspapers, posters, billboards, films or television.

(e) The amendments to this section made at the 1975-76 Regular Session shall only apply to transfers made on or after January 1, 1976.

SEC. 5. Section 983 of the Civil Code is amended to read:

983. If the owner of any invention or design intentionally makes it public, a copy or reproduction may be made public by any person, without responsibility to the owner, so far as the law of this state is concerned.



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SEC. 6. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

SEC. 7. The act shall not be construed to require any local agency or school district to incur any costs or expenses for the purpose of implementing the provisions of this act. The act shall not be construed to require any local agency or school district to incur any costs or expenses for the purpose of implementing the provisions of this act. The act shall not be construed to require any local agency or school district to incur any costs or expenses for the purpose of implementing the provisions of this act.

SEC. 8. The act shall not be construed to require any local agency or school district to incur any costs or expenses for the purpose of implementing the provisions of this act. The act shall not be construed to require any local agency or school district to incur any costs or expenses for the purpose of implementing the provisions of this act. The act shall not be construed to require any local agency or school district to incur any costs or expenses for the purpose of implementing the provisions of this act.

SEC. 9. The act shall not be construed to require any local agency or school district to incur any costs or expenses for the purpose of implementing the provisions of this act. The act shall not be construed to require any local agency or school district to incur any costs or expenses for the purpose of implementing the provisions of this act. The act shall not be construed to require any local agency or school district to incur any costs or expenses for the purpose of implementing the provisions of this act.

SEC. 10. The act shall not be construed to require any local agency or school district to incur any costs or expenses for the purpose of implementing the provisions of this act. The act shall not be construed to require any local agency or school district to incur any costs or expenses for the purpose of implementing the provisions of this act. The act shall not be construed to require any local agency or school district to incur any costs or expenses for the purpose of implementing the provisions of this act.

SEC. 11. The act shall not be construed to require any local agency or school district to incur any costs or expenses for the purpose of implementing the provisions of this act. The act shall not be construed to require any local agency or school district to incur any costs or expenses for the purpose of implementing the provisions of this act. The act shall not be construed to require any local agency or school district to incur any costs or expenses for the purpose of implementing the provisions of this act.

VOLUME 2
CALIFORNIA LEGISLATURE
AT SACRAMENTO

KELLER & STALLARD
P. O. BOX 1817
WOODLAND, CA 95695

1981-82 REGULAR SESSION
1981-82 FIRST EXTRAORDINARY SESSION

ASSEMBLY FINAL HISTORY

SYNOPSIS OF
ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT,
JOINT, AND HOUSE RESOLUTIONS

Assembly Convened December 1, 1980
Recessed December 2, 1980
Recessed April 9, 1981
Recessed July 7, 1981
Recessed July 10, 1981
Recessed September 15, 1981
Recessed April 1, 1982
Recessed June 30, 1982
Reconvened January 5, 1981
Reconvened April 20, 1981
Reconvened July 10, 1981
Reconvened August 10, 1981
Reconvened January 4, 1982
Reconvened April 12, 1982
Reconvened August 2, 1982
Adjourned September 1, 1982
Adjourned Sine Die November 30, 1982
Legislative Days..... 248

HON. WILLIE L. BROWN, JR.
Speaker

HON. LEO T. MCCARTHY
Speaker pro Tempore
HON. MIKE ROOS
Majority Floor Leader

HON. TOM BANE
Assistant Speaker pro Tempore
HON. ROBERT W. NAYLOR
Minority Floor Leader

Compiled Under the Direction of
JAMES D. DRISCOLL
Chief Clerk

GUNVOR ENGLE
History Clerk



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ASSEMBLY FINAL HISTORY

A.B. No. 3482—Ingalls.

An act to amend Sections 2551.3, 2557, 2558, 14002, 14020, 23401, 41301, 42238, 49536, 56713, 56723, and 60246 of, the Education Code, to repeal and add Sections 16113 and 68203 of, and to repeal Sections 13887.5 and 16113.1 of, the Government Code, to repeal and add Section 255.3 of the Health and Safety Code, to repeal and add Sections 7102 and 20385 of the Revenue and Taxation Code, and to amend Sections 11450, 11452, 12200, 12203, 12303.5, 12304, 13920, 13921, 14106, and 16702 of, to add Section 14105.8 to, and to repeal Sections 11453 and 12201 of, the Welfare and Institutions Code, relating to fiscal affairs, and declaring the urgency thereof, to take effect immediately.

1992

- Mar. 12—Introduced. To print.
- Mar. 13—From printer. May be heard in committee April 12.
- Mar. 15—Read first time.
- Mar. 23—Referred to Com. on W. & M.
- June 3—Joint Rule 61 suspended.
- June 9—In committee: Set, first hearing. Failed passage.
- Nov. 30—From committee without further action.

A.B. No. 3483—Katz.

An act to repeal Chapter 4 (commencing with Section 14700) of Division 6 of the Business and Professions Code, and to amend Sections 980, 981, 982, and 983 of the Civil Code, relating to copyright.

1982

- Mar. 12—Introduced. To print.
- Mar. 13—From printer. May be heard in committee April 12.
- Mar. 15—Read first time.
- Mar. 23—Referred to Com. on JUD.
- April 15—From committee: Do pass, and re-refer to Com. on W. & M. with recommendation: To Consent Calendar. Re-referred to Com. on W. & M. (Ayes 12. Noes 0.) (April 14.)
- May 28—From committee: Do pass. To Consent Calendar. (May 27.)
- June 1—Read second time. To Consent Calendar.
- June 3—Read third time, passed, and to Senate. (Ayes 66. Noes 0. Page 14067.)
- June 3—In Senate. Read first time. To Com. on RLS. for assignment.
- June 11—Referred to Com. on JUD.
- Aug. 2—From committee: Do pass, and re-refer to Com. on FIN. with recommendation: To Consent Calendar. Re-referred to Com. on FIN. (Ayes 6. Noes 0.)
- Aug. 4—From committee: Be placed on second reading file pursuant to Senate Rule 28.8 and to Consent Calendar.
- Aug. 5—Read second time. To Consent Calendar.
- Aug. 10—Read third time, passed, and to Assembly. (Ayes 38. Noes 0. Page 12709.)
- Aug. 11—In Assembly. To enrollment.
- Aug. 13—Enrolled and to the Governor at 4 p.m.
- Aug. 24—Approved by the Governor.
- Aug. 25—Chaptered by Secretary of State—Chapter 574, Statutes of 1982.

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



ASSEMBLY COMMITTEE ON JUDICIARY

ELIHU M. HARRIS, Chairman

AB 3483

AB 3483 (Katz) As introduced 3/12/82

SUBJECT

This bill would conform California copyright law to the provisions of the Federal Copyright Act of 1976.

DIGEST

Existing federal law preempts the common law or statutes of any state that grant rights equivalent to any of the exclusive rights of copyright (reproduction, adaptation, distribution, public performance, or public display) in original works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright. It provides for statutory preemption whether the work is created before or after January 1, 1978 and whether the work is published or unpublished. (17 USC Section 301) The Federal Copyright Act of 1976 took effect on January 1, 1978. (17 USC Section 101 et seq.)

This bill would make several changes in California copyright law:

1. It would repeal California copyright statutes made obsolete by federal preemption.
2. It would provide state copyright protection for works of authorship left unprotected under federal law. State copyright would be provided only in original works of authorship that are not fixed in any tangible medium of expression, and exclusive ownership would be granted to authors. The bill would specify when a work shall be considered "not fixed."

Unless otherwise agreed, an original work of authorship not fixed in a tangible medium of expression, which is jointly created by several persons, would be owned by them equally.

The owner of any rights in an original work of authorship not fixed in a tangible medium of expression could transfer his or her ownership.

(CONTINUED)

3. It would maintain rights and remedies in sound recordings fixed prior to February 15, 1972 until February 15, 2047 (the designated time for their preemption under 17 USC Section 301).

STAFF COMMENTS

1. The source of this bill, the State Bar of California, recommends repeal or modification of certain California copyright statutes because of the Federal Copyright Act of 1976. The bill was proposed by the State Bar's Patent, Trademark, and Copyright Section.

Prior to the Act's effective date of January 1, 1978, the fact of publication was the dividing line between common (state) law and statutory (federal) copyright. Unpublished works were the province of the common law while published works were protected by the statutory copyright, if at all. Once the work was published (i.e., reproduced in copies for sale), it was protectable only by a statutory copyright. The Act eliminates this distinction by extending to all works of authorship that are fixed in a tangible medium of expression, regardless of whether it is published or unpublished.

The Congressional intent of 17 USC Section 301 is to preempt and abolish any rights under state laws that are equivalent to copyright and that extend to works within the scope of federal law. Also, Congress wanted to avoid vague borderline areas between state and federal protection.

However, the Act does not preempt works of authorship that are not fixed in any tangible medium of expression and unfixed works that do not come within the subject matter of copyright. Examples of works that have not been fixed in any tangible medium of expression include choreography that has never been filmed or notated; an extemporaneous speech; "original works of authorship" communicated solely through conversations or live broadcasts; and a dramatic sketch or musical composition improvised or developed from memory and without being recorded or written down.

2. This bill would repeal California copyright statutory law which:
 - (a) relates to the filing and recordation of original works of authorship.

(CONTINUED)

- (b) prohibits the unauthorized performance or sale of an unpublished or undedicated opera without consent.
- (c) prohibits the unauthorized distribution of works copyrighted under federal law.
- (d) recognizes common law copyright in unpublished works and grants exclusive ownership therein to authors or proprietors.
- (e) provides for joint ownership in unpublished works.
- (f) provides for the transfer of ownership in unpublished works.
- (g) terminates common law copyright upon publication of the work.



AB 3483

HEARING DATE: 4/14/82

SOURCE

State Bar of California

SUPPORT

Unknown

OPPOSITION

Unknown



STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL

COPY

April 13, 1982

Assemblyman Richard Katz

AB 3483 - Conflict

The above measure, introduced by you, which is now
set for hearing in the Assembly Judiciary Committee
appears to be in conflict with the following other measure(s):

AB 685 - Cramer

ENACTMENT OF THESE MEASURES IN THEIR PRESENT FORM MAY
GIVE RISE TO A SERIOUS LEGAL PROBLEM WHICH PROBABLY CAN BE
AVOIDED BY APPROPRIATE AMENDMENTS.

WE URGE YOU TO CONSULT OUR OFFICE IN THIS REGARD AT YOUR
EARLIEST CONVENIENCE.

Very truly yours,
BION M. GREGORY
LEGISLATIVE COUNSEL

cc: Committee
named above
Each lead author
concerned

LIS - 4

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APPROPRIATION:	<u>NO</u>	AMENDED:	<u>as introduced</u>
LOCAL MANDATE:	<u>YES</u>	AUTHOR:	<u>Katz</u>
URGENCY:	<u>NO</u>	CONSULTANT:	<u>Prosser</u>

COMMENTS: Existing federal law preempts the common law or statutes of any state that grant rights equivalent to any of the exclusive rights of copyright (reproduction, adaptation, distribution, public performance, or public display) in original works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright. 1 provides for statutory preemption whether the work is created before or after Jan. 1, 1978 and whether the work is published or unpublished.

This bill would conform California copyright law to the provisions of the Federal Copyright Act of 1976 (effective 1978).

The source of the bill is the State Bar of California as is the result of work done by its Section on Patent, Trademark, and Copyright Law.

The specifics of the bill are described in the committee analysis.

SUPPORT- State Bar

OPPOSITION- unknown

Recommendation- Consent

AP-3

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WIVED:

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Chapter 1

WAYS AND MEANS SUMMARY

AUTHOR Katz AMENDED -0- BILL NO. AB 3483

POLICY COMMITTEE Judiciary VOTE 12-0 (Consent)

Urgency: Yes / / No /xx/

Hearing Date: May 27, 1982

State Mandated Local Program:
Yes /xx/ No / /

Staff Comments By: J. Sharpless

No Staff Comments /xx/

Disclaimed: Yes /xx/ No / /

mr1:BA43:25A

(800) 666-1917

LEGISLATIVE INTENT SERVICE



APPROPRIATION: NO
 LOCAL MANDATE: YES
 URGENCY: NO

AMENDED: as introduced
 AUTHOR: Katz
 CONSULTANT: Prosser

COMMENTS: Existing federal law preempts the common law or statutes of any state that grant rights equivalent to any of the exclusive rights of copyright (reproduction, adaptation, distribution, public performance, or public display) in original works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright. I provides for statutory preemption whether the work is created before or after Jan. 1, 1978 and whether the work is published or unpublished.

This bill would conform California copyright law to the provisions of the Federal Copyright Act of 1976 (effective 1978).

The source of the bill is the State Bar of California as is the result of work done by its Section on Patent, Trademark, and Copyright Law.

The specifics of the bill are described in the committee analysis.

SUPPORT- State Bar

OPPOSITION- unknown

Recommendation- Consent

LEGISLATIVE INTENT SERVICE (800) 666-1917

SENATE COMMITTEE ON JUDICIARY

1981-82 Regular Session

AB 3483 (Katz)
As introduced
Civil Code/Business & Professions Code
RT

A
B
3
4
8
3

COPYRIGHT
-CONFORMITY TO FEDERAL LAW-

HISTORY

Source: State Bar

Prior Legislation: None

Support: Unknown

Opposition: No Know

Assembly floor vote: Ayes 66 - Noes 0.

KEY ISSUE

SHOULD CALIFORNIA COPYRIGHT LAW BE CONFORMED TO THE
PROVISIONS OF THE FEDERAL COPYRIGHT ACT OF 1976?

PURPOSE

Existing California copyright law protects original works of authorship, prohibits unauthorized performances of operas and distribution of copyrighted works, and generally provides a full spectrum of statutory protections for authors. Much of this has been preempted by the Federal Copyright Act of 1976.

This bill would conform California law to the new federal law.

The purpose of the bill is to remove preempted and thus ineffectual laws from the codes.

(More)

AB 3483 (Katz)
Page 2

COMMENT

1. Drafted by State Bar section

This bill was drafted by the Copyright Committee of the Patent, Trademark and Copyright Section of the State Bar.

2. Changes in California copyright law

The bill would make the following changes in California copyright law:

- (a) It would repeal those statutes preempted by federal law.
- (b) It would provide state copyright protection for works of authorship left unprotected under federal law - those original works that are not "fixed in any tangible medium of expression." Examples might include choreography that has never been filmed or notated, an extemporaneous speech, or a dramatic sketch or musical composition improvised or developed from memory and without being recorded or written down.
- (c) It would maintain rights and remedies in sound recordings fixed prior to February 15, 1972, until February 15, 2047, on which date they would be preempted by the federal law.

3. Statutory provisions to be repealed

The bill would repeal Chapter 4 of Division 6 of the Business and Professions Code which includes provisions:

(More)

A
B
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3

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AB 3483 (Katz)
Page 3.

- (a) relating to the filing and recordation of original works of authorship,
- (b) prohibiting the unauthorized performance or sale of an unpublished or undedicated opera,
- (c) prohibiting the unauthorized distribution of works copyrighted under federal law,
- (d) recognizing common law copyright in unpublished works,
- (e) providing for joint ownership and for the transfer of ownership in unpublished work, and
- (f) terminating common law copyright upon publication of the work.

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~~SENATE COMMITTEE ON JUDICIARY~~

BACKGROUND INFORMATION

AB 3483

1. Source

- (a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill? Please list the requestor's telephone number or, if unavailable, his address.

California State Bar
Terry Flanagan 444-2762

- (b) Which groups, organizations, or governmental agencies have contacted you in support of, or in opposition to, your bill?

None

- (c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

None known.

2. Purpose

What problem or deficiency under existing law does the bill seek to remedy?

Conform California copyright law with federal law.

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

See attached memorandum from Executive Committee of the Patent, Trademark and Copyright Section of the State Bar.

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2187 AS SOON AS POSSIBLE. THE COMMITTEE STAFF CANNOT SET THE BILL FOR A HEARING UNTIL THIS FORM HAS BEEN RETURNED.

PATENT, TRADEMARK AND
COPYRIGHT SECTION
OF THE STATE BAR OF CALIFORNIA

THOMAS E. CIOTTI, Chair
SAN FRANCISCO
F. A. UTECHT, JR., Vice-Chair
LONG BEACH
DONALD C. FEIX, Secretary
BURLINGAME



555 FRANKLIN STREET
SAN FRANCISCO 94102-4498
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AREA CODE 415

EXECUTIVE COMMITTEE

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ALDO J. TEXT, SAN FRANCISCO
F. A. UTECHT, JR., LONG BEACH
RICHARD A. WALLIN, LOS ANGELES

DATE: October 27, 1981
TO: MEMBERS, BOARD OF GOVERNORS
FROM: EXECUTIVE COMMITTEE OF THE PATENT, TRADEMARK AND
COPYRIGHT SECTION
RE: REPORT AND RECOMMENDATION FOR REPEAL OF BUSINESS AND
PROFESSIONS CODE SECTIONS 14700, 14701, 14702, 14703,
14720, and 14740, REPEAL AND ADDITION OF OF CIVIL CODE
SECTIONS 980(a), 981(a), 982(a) and REPEAL OF CIVIL
CODE SECTION 983(a).

HISTORY

The Patent, Trademark and Copyright Section recommends that certain California copyright statutes be modified because of the Federal Copyright Act of 1976, which calls for preemption of common (or state) law copyright statutes (17 USC Sec. 301(a)).

Last fall, this project was referred to the Section's Copyright Committee, chaired by Neil Boorstyn. The Committee drafted a proposal which was reviewed by Professor Melville Nimmer of the University of California at Los Angeles School of Law. The Committee and Professor Nimmer agreed on the recommendation which is contained in this report.

The Copyright Committee's recommendation was reviewed and accepted by the Section's Executive Committee at its meeting of October 15, 1981. The recommendation was for repeal of Business and Professions Code Sections 14700, 14701, 14702, 14703, 14720, and 14740, repeal and addition of Civil Code Sections 980(a), 981(a) and 982(a), and repeal of Civil Code Section 983(a).

SUMMARY OF EXISTING LAW

Sections 14700, 14701, 14702, 14703, 14720 and 14740 of the Business and Professions Code and Sections 980, 981, 982 and 983 of the Civil Code embody most of the copyright laws of the State of California. Business and Professions Code Sections 14700, 14701, 14702 and 14703 relate to the filing of original works of authorship with the Secretary of State. Business and Professions Code Section 14720 prohibits the unauthorized performance or sale of an unpublished dramatic or dramatic musical composition known as an opera. Business and Professions Code Section 14740 prohibits the unauthorized distribution of a musical composition copyrighted under federal law.

SUMMARY OF PROPOSED LEGISLATION

The Patent, Trademark and Copyright Section Executive Committee has unanimously agreed on the following statutory amendments. The specific proposed statutory language is attached to this report (see Appendix A).

- A. Business and Professions Code Sections 14700, 14701, 14702 and 14703 would be repealed in their entirety. There would be no California Law relating to the filing and recordation of original works of authorship.
- B. Business and Professions Code Section 14720 would be repealed in its entirety. There would be no California law prohibiting the unauthorized performance or sale of an unpublished dramatic or dramatic-musical composition known as an opera.
- C. Business and Professions Code Section 14740 would be repealed in its entirety. There would be no California law prohibiting the unauthorized distribution of works copyrighted under federal laws.

- D. Civil Code Section 980(a), recognizing common law copyright in unpublished works and granting exclusive ownership therein to authors or proprietors, would be repealed. It would be replaced with Section 980(a)(1), (2). New Section 980(a)(1) would provide copyright only in original works of authorship that are not fixed in any tangible medium of expression (e.g. an extemporaneous speech) and grant exclusive ownership to the authors. Section 980(a)(2) would maintain rights and remedies in sound recordings fixed prior to February 15, 1972 until February 15, 2047, which is the designated time for their preemption under 17 USC Sec. 301.

980(b), relating to exclusive ownership of inventions or designs, would not be altered.

Therefore, California law would govern copyright for works not fixed in any tangible medium of expression and sound recordings fixed prior to February 15, 1972. There would be no California law relating to copyright in unpublished works.

- E. Civil Code Section 981(a), providing for joint ownership in unpublished works, would be repealed. It would be replaced by a new Section 981(a), which would provide for the joint ownership of works not fixed in a tangible medium of expression. Therefore, California law would not provide for joint ownership in unpublished works, but it would govern joint ownership of works not fixed in any tangible medium of expression. In addition, California law would continue to govern jointly owned inventions or designs (Civil Code Section 981(b)).
- F. Civil Code Section 982(a), providing for the transfer of ownership in unpublished works, would be repealed. It would be replaced by a new Section 982(a), which provides for the transfer of ownership in works not fixed in any tangible medium of expression. Civil Code Section 982(b)-(e), dealing with transfers of ownership in inventions, designs, and fine art, would not be altered.
- G. Civil Code Section 983(a), terminating common law copyright upon publication of the work, would be repealed. There would be no California law relating to the publication of an original work of authorship.

Civil Code Section 983(b), relating to copies of inventions or designs, would be renumbered and become the new Section 983.

RATIONALE FOR PROPOSAL

Before January 1, 1978, the effective date of the Federal Copyright Act of 1976, the fact of publication was the dividing line between common (state) law and statutory (federal) copyright. Unpublished works were the province of the common law while published works were protected by the statutory copyright, if at all.

The effect of this dicotomy was that manuscripts, the unpublished forms of books and pamphlets, for example, were protected only by state law. At the same time, however, every other type of protectable unpublished work could come under either state or federal law. Once the work was published (i.e. reproduced in copies for sale) it was protected only by a statutory copyright, if at all. The Copyright Act of 1976 eliminates the distinction by extending to all works of authorship that are fixed in an tangible medium of expression, regardless of whether it is published or unpublished. Furthermore, Section 301 of the Act specifically preempts any state rights in such works (17 USC Sec. 301, see Appendix B).

Section 301(a) abolishes a former distinction between state protection for unpublished works and federal protection for published works. It preempts the common law or statutes of any state that purport to grant rights that are equivalent to any of the exclusive rights of copyright (reproduction, adaptation, distribution, public performance, or public display) on original works of authorship fixed in any tangible medium of expression that come within the subject matter of copyright. It provides for federal statutory preemption whether the work is created before or after January 1, 1978 (the effective date of the new Act) and whether the work is published or unpublished.

The House Committee Reports state that the intention of Section 301 is to preempt and abolish any rights under state laws that are equivalent to copyright and that extend to works within the scope of the federal Copyright law. It is also Congressional intent to act preemptively, and to avoid the development of any vague borderline areas between state and federal protection. Under Section 301(a), the exclusive rights within the general

scope of copyright are governed exclusively by the federal Copyright law if the works involved are "works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright." All corresponding state laws are preempted and abrogated. Regardless of when the work was created and whether it is published or unpublished, disseminated or undissemminated, in the public domain or copyrighted under the federal statute, the states cannot offer it protection equivalent to copyright. The preemption of rights under state law is complete with respect to any work coming within the scope of the bill, even though the scope of exclusive rights given the work under the bill is narrower than the scope of common law rights in the work might have been (House Report, Judiciary Committee, No. 94-1476, pp.130,131 (1976)).

Therefore, it is submitted that Business and Professions Code Sections 14700, 14701, 14702, 14702, 14720 and 14740 are preempted and should be repealed.

Section 301(b) of the Act specifically does not preempt works of authorship that are not fixed in any tangible medium of expression. Section 301(b) also does not preempt works that do not come within the subject matter of copyright.

The House Committee Report on Section 301(b) says that this Section explicitly preserves common law copyright protection for one important class of works: works that have not been fixed in any tangible medium of expression. Examples would include choreography that has never been filmed or notated, an extemporaneous speech, 'original works of authorship' communicated solely through conversations or live broadcasts, and a dramatic sketch or musical composition improvised or developed from memory and without being recorded or written down. Unfixed works not included in the specified "subject matter of copyright" are not affected by the preemption of Section 301, and would continue to be subject to protection under state statute or common law until fixed in tangible form (House Report, Judiciary Committee, No. 94-1476, pp. 130,131 (1976)).

Therefore, it is recommended that Civil Code Sections 980(a), 981(a), and 982(a) should be repealed and that the proposed new language for these Sections be accepted. Also, Civil Code Section 983(a) should be repealed.

Under Section 301(c) of the Act, sound recordings fixed before February 15, 1972 are not affected by the preemptive provisions

of the Act until February 15, 2047. Thus, any rights or remedies under of state statutes remain effective until the year 2047. Therefore, Civil Code Section 980(a)(2) is recommended for addition as drafted.

ARGUMENTS FOR THE PROPOSAL

1. The proposal would conform state law to the federal Copyright Act of 1976.
2. Preempted, ineffectual laws should be removed from the Codes.

ARGUMENTS AGAINST THE PROPOSAL

No known arguments against the proposal.

RECOMMENDED BOARD ACTION

It is recommended that the Board of Governors approve the proposals of the Patent, Trademark and Copyright Section contained herein and include the proposals on the State Bar's 1982 Legislative Program.

FISCAL IMPACT

This proposal would have no fiscal impact on the State Bar.

Report prepared by

Mary A Tan Yen

Mary A. Tan Yen
Staff Attorney

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APPENDIX A

PROPOSED LEGISLATION

Business & Professions Code

Section 14700 ~~Any person may file with the Secretary of State a printed or typewritten copy of any lecture, sermon, address, dramatic composition, story, radio script, radio program, or motion picture scenarios together with an affidavit attached thereto setting forth that the person is the author of the printed or typewritten matter, and is entitled to all the rights and benefits accruing therefrom.~~

Business & Professions Code

Section 14701 ~~Upon receipt of the printed or typewritten matter and accompanying affidavit, the Secretary of State shall file them in his office, keeping a record thereof showing the date of filing, name of the claimant, and the title of the lecture or other printed typewritten matter.~~

~~The Secretary of State shall at the time of filing, issue to the claimant a certificate of filing under the Great Seal of State, which certificate shall set forth the facts recorded.~~

Business & Professions

Section 14702 ~~The certificate of filing or a certified copy together with a certified copy of the document filed shall be admitted in any court as prima facie evidence of the facts recited therein.~~

Business and Professions Code

Section 14720 ~~Any person who causes publicly to be performed or represented for profit an unpublished or undedicated dramatic composition or dramatic musical composition known as an opera, without the consent of its owner or proprietor, or who knowing that such dramatic or musical composition is unpublished or undedicated, and without the consent of its owner or proprietor, permits, aides, or takes part in such a performance or representation, or who sells a copy or a substantial copy of any unpublished, undedicated or copyrighted dramatic composition or musical or dramatic-musical composition, known as an opera, without the consent of the author or proprietor of such dramatic or~~

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LEGISLATIVE INTENT SERVICE



Appendix A
Page 2

~~drumatic musical composition is guilty of a misdemeanor and upon conviction, he shall be punished by a fine of not less than fifty dollars--(\$50), and not more than three hundred (\$300), or by imprisonment for not less than 30 days or more than three months, or by both such fine and imprisonment.~~

Business and Professions Code

Section 14740

~~Whoever wilfully prints, publishes, sells, distributes or circulates, or causes to be printed, published, sold, distributed or circulated for profit any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper, or other document containing the works or musical score of any musical composition which or any part of which is copyrighted under the laws of the United States, without first having obtained the consent of the owner or proprietor of such copyrighted musical composition is guilty of a misdemeanor.~~

Civil Code

Section 980

~~(a) The author or proprietor of any composition in letters or art has an exclusive ownership in the representation or expression thereof as against all persons except one who originally and independently creates the same or similar composition.~~

(a) (1) The author of any original work of authorship that is not fixed in any tangible medium of expression has an exclusive ownership in the representation or expression thereof as against all persons except one who originally and independently creates the same or similar work. A work shall be considered not fixed when it is not embodied in a tangible medium of expression or when its embodiment in a tangible medium of expression is

Appendix A-
Page 3

not sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period or more than transitory duration, either directly or with the aide of a machine or device.

(2) The author of an original work of authorship consisting of a sound recording initially fixed prior to February 15, 1972 has an exclusive ownership therein until February 15, 2047 as against all persons except one who independently makes or duplicates another sound recording that does not directly or indirectly recapture the actual sounds fixed in such prior sound recording, but consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate the sounds contained in such prior sound recordings.

(b) The inventor or proprietor of any invention or design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the invention or design and the representations or expressions thereof made by him remain in this possession.

Civic Code
Section 981

~~(a) Unless otherwise agreed, a composition in letters or art in the production of which several persons are jointly concerned, is owner by them as follows:~~

- ~~1. If the product is indivisible, in equal portions.~~
- ~~2. If it is divisible, in proportion to the contribution of each.~~

(a) Unless otherwise agreed, an unfixed original work of authorship in the

Appendix A
Page 4

creation of which several persons are jointly concerned, is owned by them in equal proportion.

- (b) Unless otherwise agreed, an invention or design in the production of which several persons are jointly concerned is owned by them as follows:
1. If the invention or design is single, in equal portions.
 2. If it is not single, in proportion to the contribution of each.

Civil Code
Section 982

- ~~(a) The owner of any rights in any composition in letters or art may transfer his ownership therein...~~
- (a) The owner of any rights in any unfixed original work of authorship may transfer such ownership therein.
- (b) The owner of any invention or design, or of any representation or expression thereof, may transfer his property in the same.
- (c) Notwithstanding any other provisions in this section, wherever a work of fine art is transferred, whether by sale or on commission or otherwise, by or on behalf of the artist who created it, or that artist's heir, legatee, or personal representative, the right of reproduction thereof is reserved to such artist or such heir, legatee, or personal representative until it passes into the public domain by act or operation of law, unless that right is expressly transferred by a document in writing in which reference is made to the specific right of reproduction, signed by the owner of the rights conveyed or that person's duly authorized agent. If such transfer is pursuant to an employment relationship, the right of reproduction is transferred to the employer, unless it is expressly reserved in writing. If such

Appendix A
Page 5

transfer is pursuant to a legacy or inheritance, the right of reproduction is reserved by will or codicil. Nothing contained herein, however, shall be construed to prohibit the fair use of such work of fine art.

(d) As used in subdivision (c):

- (1) "Fine art" shall mean any work of visual art, including but not limited to, a drawing, painting, sculpture, mosaic, or photograph, a work of calligraphy, a work of graphic art (including an etching, lithograph, offset print, silk screen, or a work of graphic art of like nature), crafts (including crafts in clay, textile, fiber, wood, metal, plastic and like materials), or mixed media (including a collage, assemblage, or any combination of the foregoing art media).
- (2) "Artist" shall mean the creator of a work of fine art.
- (3) "Right of reproduction," at the present state of commerce and technology shall be interpreted as reproduction of works of fine art as prints suitable for framing; facsimile casts of sculpture; reproductions used for greeting cards; reproductions in general books and magazines not devoted primarily to art, and in newspapers in other than art of news sections, when such reproductions in books, magazines, and newspapers are used for purposes similar to those of material for which the publishers customarily pay; art films; television, except from stations operated for education purposes, and reproductions used in any form of advertising, including magazines, calendars, newspapers, posters, billboards, films or television.

Appendix A
Page 6

- (e) The amendments to this Section made at the 1976-76 Regular Session shall only apply to transfers made on or after January 1, 1976.

Civil Code
Section 983

- ~~(a)~~ ~~If the owner of a composition in letters or art publishes it the same may be used in any manner by any person, without responsibility to the owner insofar as the law of this state is concerned.~~
- ~~(b)~~ If the owner of any invention or design intentionally makes it public, a copy or reproduction may be made public by any person, without responsibility to the owner so far as the law of this state is concerned.

APPENDIX B

(17 USC Sec. 301)

Section 301. Preemption with respect to other laws

- (a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by Section 106 (compilations and derivative works) in works of authorship that are fixed in tangible medium of expression and come within the subject matter of copyright as specified by Sections 102 (all work, fixed in tangible medium of expression) and 103 (all work fixed in tangible medium of expression) whether created before or after that date and whether published or unpublished are governed exclusively by this title. Thereafter, no person, is entitled to any such right or equivalent right in any such work in the common law or statutes of any state.
- (b) Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any state with respect to--
1. subject matter that does not come within the subject matter of copyright as specified by Sections 102 and 103, including works of authorship not fixed in any tangible means of expression; or
 2. any cause of action arising from undertakings commenced before January 1, 1978; or
 3. activities violating legal or equitable rights that are not equivalent to any of the exclusive rights within the general scope of copyright as specified by Section 106.
- (c) With respect to sound recording fixed before February 15, 1972, any rights or remedies under the common law or statutes of any state shall not be annulled or limited by this title until February 15, 2047. The preemptive provisions of subsection(a) shall apply to any such rights



Appendix B
Page 2

and remedies pertaining to any cause of action arising from undertakings commenced on and after February 15, 2047. Notwithstanding the provisions of Section 303, no sound recording fixed before February 15, 1972 shall be subject to copyright under this title before, on, or after February 15, 2047.

- (d) Nothing in this title annuls or limits any right or remedies under any other federal statute.

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4153

AB 3483

Legislative Analyst
May 24, 1982

ANALYSIS OF ASSEMBLY BILL NO. 3483 (Katz)

1981-82 Session

Fiscal Effect:

Cost: Mandated Local Program. No costs.
Reimbursement disclaimed.

Revenue: Negligible General Fund revenue loss.

Analysis:

This bill modifies laws regarding copyright and authorship to conform with federal law. Violations of these laws are subject to civil penalties.

The bill also repeals a provision permitting an author to file a copy of a written work by paying a \$5 filing fee to the Secretary of State.

The Secretary of State's office estimates that approximately 12 filings were made in the current year.

Mandated Local Program. This bill would not affect local government costs. It contains a crimes and infractions disclaimer.

43

AB 3483

LEGISLATIVE INTENT SERVICE (800) 666-1917



CONSENT

<p style="text-align: center;">SENATE DEMOCRATIC CAUCUS</p> <p style="text-align: center;">SENATOR PAUL B. CARPENTER Chairman</p>	<p>Bill No.: AB 3483 Amended: Original</p> <p>Author: Katz (D)</p> <p>Vote Required: Majority</p> <p>Assembly Floor Vote: 66 - 0</p>
--	--

SUBJECT: Copyright

POLICY COMMITTEE: Judiciary

AYES: (6) Doolittle, Presley, Sieroty, Watson, Davis, Rains

NOES: (0)

FINANCE COMMITTEE:

Be placed on Second Reading File pursuant to Senate Rule 28.8.

SUMMARY OF LEGISLATION:

Existing state law relating to copyright has not been amended to reflect the enactment of the Federal Copyright Act of 1976, which became operative on January 1, 1978. The federal law contains a specific provision preempting any state law which grants or confers a legal or equitable right that is equivalent to any of the exclusive rights within the general scope of copyright in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright, whether created before or after January 1, 1978, and whether published or unpublished. Prior to January 1, 1978, state law regulated the copyright of unpublished works of authorship.

This bill would repeal existing provisions of state law (relating to the filing and recordation of original works of authorship, the performance of unpublished or undedicated operas without consent, the unauthorized distribution of works copyrighted under federal law or the common law or state copyright in unpublished works, joint ownership in works, the transfer of ownership in unpublished works, and the termination of common law copyright) which have become obsolete in view of the preemption thereof by the Federal Copyright Act of 1976.

This bill would provide state copyright protection for works of authorship not protectable under federal law, including works of authorship that are not fixed in any tangible medium of expression, and sound recordings fixed prior to February 15, 1972, until February 15, 2047. (Some recordings fixed in a tangible medium of expression before February 15, 1972, are not affected by the preemptive provisions of federal law until February 15, 2047.) This bill also would grant exclusive ownership to the authors of such works of authorship and would provide for the joint ownership and transfer thereof.

CONTINUED

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FISCAL EFFECT: According to the Legislative Analyst:

Mandated local program. No costs. Reimbursement disclaimed. Negligible General Fund revenue loss.

PROPOSERS: (Verified by author 7-2-82)

State Bar (sponsor)

OPPOSERS:

--

ARGUMENTS IN SUPPORT:

Proponents state that this bill is necessary to conform California law to the new federal law by removing preempted and thus ineffectual laws from the codes.

Roll Call

The roll was called and the bill was passed by the following vote:

AYES (38)—Senators Alquist, Ayala, Beverly, Boatwright, Campbell, Carpenter, Craven, Davis, Dills, Doolittle, Ellis, Foran, Garamendi, Alex Garcia, Marz Garcia, Greene, Holmdahl, Johnson, Keene, Maddy, Marks, Mello, Mills, Montoya, Nielsen, O'Keefe, Petris, Presley, Rains, Robbins, Roberti, Russell, Schmitz, Seymour, Sieroty, Stiern, Vuich, and Watson.

NOES (0)—None.

Bill ordered transmitted to the Assembly.

8-10-82

P. 12709

SENATE REPUBLICAN CAUCUS

SENATOR KENNETH L. MADDY, Chairman

POSITIONS:

SOURCE: State Bar

BILL NUMBER: AB 3483

AUTHOR: Katz

AMENDED COPY: Original
MAJORITY VOTE
CONSENT CALENDAR**Committee Votes:****Senate Floor Vote:**

COMMITTEE: JUDICIARY		
BILL NO.:	AB 3483	
DATE OF HEARING:	6-29-82	
SENATORS:	AYE	NO
Doelittle	✓	
Petris	✓	
Prebley	✓	
Robbins		
Robert		
Sieroty	✓	
Watson	✓	
Davis (V.Chair.)	✓	
Mains (Chairman)	✓	
TOTAL:	6	0

PLACED ON FILE AS
A RESULT OF SENATE
RULE 28.8

Assembly Floor Vote: 66-0, P. 14067, 6/3/82

DIGEST

- 1 The bill makes the following changes in California copyright law:
- 2
- 3 a. It repeals those statutes preempted by federal law.
- 4
- 5 b. It provides state copyright protection for works of authorship
- 6 left unprotected under federal law - those original works that
- 7 are not "fixed in any tangible medium of expression." Examples
- 8 might include choreography that has never been filmed or notated,
- 9 an extemporaneous speech, or a dramatic sketch or musical com-
- 10 position improvised or developed from memory and without being
- 11 recorded or written down.
- 12
- 13 c. It maintains rights and remedies in sound recordings fixed prior
- 14 to February 15, 1972, until February 15, 2047, on which date
- 15 they would be preempted by the federal law.
- 16

17 **FISCAL EFFECT:** Appropriation, no. Fiscal Committee, yes. Local, yes.

18 No costs. SB 90 CRIMES AND INFRACTIONS DISCLAIMER.

20 **COMMENTS:**

21

22

23 Existing California copyright law protects original works of author-

24 ship, prohibits unauthorized performances of operas and distribution

25 of copyrighted works, and generally provides a full spectrum of

26 statutory protections for authors. Much of this has been preempted

27 by the Federal Copyright Act of 1976.

28

29 This bill would conform California law to the new federal law.

30 LIS - 12 Page 44

31 7/12/82:gk

32

ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE August 19, 1982
BILL NO. AB 3483	AUTHOR Katz

Vote—Senate _____ Unanimous

Ayes— 38
Noes— 0

Vote—Assembly _____ Unanimous

Ayes— 66
Noes— 0

AB 3483 - Katz

This bill would repeal existing provisions of state copyright law which have become obsolete in view of the preemption thereof by the Federal Copyright Act of 1976.

This bill would also provide state copyright protection for works of authorship not protectable under federal law.

SPONSOR

State Bar Patent, Trademark and Copyright Section

SUPPORT

Legal Affairs Unit
Department of Finance

OPPOSITION

No expressed opposition

FISCAL IMPACT

None

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Recommendation

APPROVE

LIS - 13

Page 45 ^{PE-1}

OWEN K. KUNS
RAY H. WHITAKER
CHIEF DEPUTIES

JERRY L. BASSETT
KENT L. DECHAMBEAU
STANLEY M. LOURIMORE
EDWARD K. PURCELL
JOHN T. STUDEBAKER

JOHN CORZINE
ROBERT CULLEN DUFFY
ROBERT O. GRONKE
SHERWIN C. MACKENZIE, JR.
ANN M. MACKAY
TRACY O. POWELL, II
RUSSELL L. SPARLING
JIMMIE WING
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Legislative Counsel of California

BION M. GREGORY

Sacramento, California
August 16, 1982

Honorable Edmund G. Brown Jr.
Governor of California
Sacramento, CA


Assembly Bill No. 3483

Dear Governor Brown:

Pursuant to your request we have reviewed the
above-numbered bill authored by Assemblyman Katz
and, in our opinion, the title and form are sufficient and
the bill, if chaptered, will be constitutional. The digest
on the printed bill as adopted correctly reflects the views
of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
John T. Studebaker
Principal Deputy

JTS:AB

Two copies to Honorable Richard Katz,
pursuant to Joint Rule 34.

GERALD ROSS ADAMS
DAVID D. ALVES
MARTIN L. ANDERSON
PAUL ANTILLA
CHARLES C. ASBILL
JAMES L. ASHFORD
SHARON G. BIRENBAUM
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DEPUTIES

LEGISLATIVE INTENT SERVICE (800) 666-1917

Finance

Yes _____ No X

Katz

AB 3483

SUBJECT:

DATE LAST AMENDED

Original

AB 3484 would repeal existing provisions of State copyright law which have been pre-empted by Federal law. The bill would also provide protection for works not protected by Federal law and grant exclusive ownership to authors of specified works created prior to February 15, 1982.

SUMMARY OF REASONS FOR SIGNATURE:

1. This bill makes technical and minor policy changes in the State copyright laws in order to conform with Federal laws.
2. There is no fiscal impact to the State General or Special funds as a result of this bill.

FISCAL SUMMARY

Department/Agency	FC 1981-82	FC 1982-83	FC 1983-84	FC 1984-85	Fund
State Government	-----	None-----	-----	-----	GF
Local Government	-----	None-----	-----	-----	GF

ANALYSIS

A. Specific Findings

This bill repeals existing misdemeanor provisions of State law relating to the filing and recordation of original works of authorship, the performance of unpublished or undedicated operas without consent, the unauthorized distribution of works copyrighted under Federal law, common law, or State copyright, et al, which have become obsolete by the Federal Copyright Action of 1976, and provides State copyright protection for works of authorship not protected under Federal law.

No local law enforcement agency is presently staffed to detect all crimes and infractions or to apprehend all violators. It is assumed that current legislative practice which allows local entities to determine their own priorities and emphasis with regard to the enforcement of code violations will apply to the violations or infractions provided for in this act. In addition, Section 2253.2(c)2 of the Revenue and Taxation Code prohibits the Board of Control from considering any claim for reimbursement of local costs based on legislation which created a new crime or infraction. The bill contains a "crimes and infractions" disclaimer.

(continued)

RECOMMENDATION

Sign the bill.

PRINCIPAL ANALYST

John X. Boyd

PROGRAM BUDGET MANAGER

B. Cutting 8/17/82

DEPARTMENT REPRESENTATIVE

DATE

DIRECTOR

DATE

C. D. Miller

8/17/82

Page 47

PE-3

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(2)

BILL--(continued)

Form DF-44

DATE LAST AMENDED

BILL NUMBER

Original

AB 3483

B. Fiscal Analysis

Legislation which eliminates a new crime or infraction does not constitute a "State-mandated local program," and any costs incurred by local governmental entities pursuant to this act do not require reimbursement under Section 2231 of the Revenue and Taxation Code. A "crimes and infractions" disclaimer is appropriate and is contained in the bill.

There will be no increased costs to State or local government as a result of passage of this bill.

6195G

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PE-4

Mandated Cost

NO. 1
ISSUE DATE MAY 26 1982BILL NUMBER
AB 3483

ESTIMATE

AUTHOR

DATE LAST AMENDED

Department of Finance
CRIMES AND INFRACTIONS

Katz

Original

A. SUBJECT: COPYRIGHT

B. STATE MANDATE: None

C. STATE-MANDATED COST ESTIMATE: 1981-82 1982-83 1983-84 1984-85

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D. ANALYSIS:

This bill repeals existing misdemeanor provisions of State law relating to the filing and recordation of original works of authorship, the performance of unpublished or undedicated operas without consent, the unauthorized distribution of works copyrighted under Federal law, common law, or State copyright, et al, which have become obsolete by the Federal Copyright Action of 1976, and provides State copyright protection for works of authorship not protected under Federal law.

No local law enforcement agency is presently staffed to detect all crimes and infractions or to apprehend all violators. It is assumed that current legislative practice which allows local entities to determine their own priorities and emphasis with regard to the enforcement of code violations will apply to the violations or infractions provided for in this act. In addition, Section 2253.2(c)2 of the Revenue and Taxation Code prohibits the Board of Control from considering any claim for reimbursement of local costs based on legislation which eliminated a new crime or infraction. The bill contains a "crimes and infractions" disclaimer.

E. CONCLUSION:

Legislation which eliminates a new crime or infraction does not constitute a "State-mandated local program," and any costs incurred by local governmental entities pursuant to this act do not require reimbursement under Section 2231 of the Revenue and Taxation Code. A "crimes and infractions" disclaimer is appropriate.

PE-5

PREPARED

Date * REVIEWED

Date * APPROVED

Date

Julie A. Crane *5/21/82* *Director* *Mr. Katz* *5/21/82* *Staff* *5/21/82*

Page 49

ENROLLED BILL REPORT

AGENCY GOVERNOR'S OFFICE		BILL NUMBER Ab 3483	
DEPARTMENT, BOARD OR COMMISSION LEGAL AFFAIRS		AUTHOR Katz	
<p>This bill, sponsored by the State Bar's Patient, Trademark and Copyright Section, amends California law to conform to the Federal Copyright Act of 1976. There is no known opposition to the bill.</p>			
RECOMMENDATION: SIGN			
ANALYST Allen Sumner		DATE 8/13/82	LEGAL AFFAIRS SECRETARY <i>Byron S. Georgiou</i> Byron S. Georgiou
		DATE 8/13/82	PE-6 Page 50

THE STATE BAR OF CALIFORNIA



555 FRANKLIN STREET
SAN FRANCISCO 94102-4498
TELEPHONE 561-8200
AREA CODE 415

October 8, 1982

The Honorable Richard Katz
Assemblyman, 39th District
State Capitol, Room 4153
Sacramento, CA 95814

Dear Assemblyman Katz:

On behalf of the Board of Governors of the State Bar of California, thank you for sponsoring Assembly Bill 3483 and successfully securing its passage during the past Legislative Session. We believe that this change in the law is consistent with the State Bar Act's mandate to aid in "the improvement of the administration of justice" by bringing California's Copyright Law into conformity with the Federal Copyright Act of 1976.

We appreciate and commend your efforts, and look forward to continuing our relationship. Please feel free to contact the Bar whenever we can assist you.

Sincerely,

Anthony Murray, President
State Bar of California

Dale E. Hanst, Chairman
State Bar Board of Governors
Committee on Legislation



PATENT, TRADEMARK AND
COPYRIGHT SECTION
OF THE STATE BAR OF CALIFORNIA

THOMAS E. CIOTTI, *Chair*
SAN FRANCISCO
F. A. UTECHT, JR., *Vice-Chair*
LONG BEACH
DONALD C. FEIX, *Secretary*
BURLINGAME



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ALDO J. TEXT, SAN FRANCISCO
F. A. UTECHT, JR., LONG BEACH
RICHARD A. WALLEN, LOS ANGELES

DATE: October 27, 1981
TO: MEMBERS, BOARD OF GOVERNORS
FROM: EXECUTIVE COMMITTEE OF THE PATENT, TRADEMARK AND
COPYRIGHT SECTION
RE: REPORT AND RECOMMENDATION FOR REPEAL OF BUSINESS AND
PROFESSIONS CODE SECTIONS 14700, 14701, 14702, 14703,
14720, and 14740, REPEAL AND ADDITION OF OF CIVIL CODE
SECTIONS 980(a), 981(a), 982(a) and REPEAL OF CIVIL
CODE SECTION 983(a).

HISTORY

The Patent, Trademark and Copyright Section recommends that certain California copyright statutes be modified because of the Federal Copyright Act of 1976, which calls for preemption of common (or state) law copyright statutes (17 USC Sec. 301(a)).

Last fall, this project was referred to the Section's Copyright Committee, chaired by Neil Boorstyn. The Committee drafted a proposal which was reviewed by Professor Melville Nimmer of the University of California at Los Angeles School of Law. The Committee and Professor Nimmer agreed on the recommendation which is contained in this report.

The Copyright Committee's recommendation was reviewed and accepted by the Section's Executive Committee at its meeting of October 15, 1981. The recommendation was for repeal of Business and Professions Code Sections 14700, 14701, 14702, 14703, 14720, and 14740, repeal and addition of Civil Code Sections 980(a), 981(a) and 982(a), and repeal of Civil Code Section 983(a).

SUMMARY OF EXISTING LAW

Sections 14700, 14701, 14702, 14703, 14720 and 14740 of the Business and Professions Code and Sections 980, 981, 982 and 983 of the Civil Code embody most of the copyright laws of the State of California. Business and Professions Code Sections 14700, 14701, 14702 and 14703 relate to the filing of original works of authorship with the Secretary of State. Business and Professions Code Section 14720 prohibits the unauthorized performance or sale of an unpublished dramatic or dramatic musical composition known as an opera. Business and Professions Code Section 14740 prohibits the unauthorized distribution of a musical composition copyrighted under federal law.

SUMMARY OF PROPOSED LEGISLATION

The Patent, Trademark and Copyright Section Executive Committee has unanimously agreed on the following statutory amendments. The specific proposed statutory language is attached to this report (see Appendix A).

- A. Business and Professions Code Sections 14700, 14701, 14702 and 14703 would be repealed in their entirety. There would be no California Law relating to the filing and recordation of original works of authorship.
- B. Business and Professions Code Section 14720 would be repealed in its entirety. There would be no California law prohibiting the unauthorized performance or sale of an unpublished dramatic or dramatic-musical composition known as an opera.
- C. Business and Professions Code Section 14740 would be repealed in its entirety. There would be no California law prohibiting the unauthorized distribution of works copyrighted under federal laws.

- D. Civil Code Section 980(a), recognizing common law copyright in unpublished works and granting exclusive ownership therein to authors or proprietors, would be repealed. It would be replaced with Section 980(a)(1), (2). New Section 980(a)(1) would provide copyright only in original works of authorship that are not fixed in any tangible medium of expression (e.g. an extemporaneous speech) and grant exclusive ownership to the authors. Section 980(a)(2) would maintain rights and remedies in sound recordings fixed prior to February 15, 1972 until February 15, 2047, which is the designated time for their preemption under 17 USC Sec. 301.

980(b), relating to exclusive ownership of inventions or designs, would not be altered.

Therefore, California law would govern copyright for works not fixed in any tangible medium of expression and sound recordings fixed prior to February 15, 1972. There would be no California law relating to copyright in unpublished works.

- E. Civil Code Section 981(a), providing for joint ownership in unpublished works, would be repealed. It would be replaced by a new Section 981(a), which would provide for the joint ownership of works not fixed in a tangible medium of expression. Therefore, California law would not provide for joint ownership in unpublished works, but it would govern joint ownership of works not fixed in any tangible medium of expression. In addition, California law would continue to govern jointly owned inventions or designs (Civil Code Section 981(b)).
- F. Civil Code Section 982(a), providing for the transfer of ownership in unpublished works, would be repealed. It would be replaced by a new Section 982(a), which provides for the transfer of ownership in works not fixed in any tangible medium of expression. Civil Code Section 982(b)-(e), dealing with transfers of ownership in inventions, designs, and fine art, would not be altered.
- G. Civil Code Section 983(a), terminating common law copyright upon publication of the work, would be repealed. There would be no California law relating to the publication of an original work of authorship.

Civil Code Section 983(b), relating to copies of inventions or designs, would be renumbered and become the new Section 983.

RATIONALE FOR PROPOSAL

Before January 1, 1978, the effective date of the Federal Copyright Act of 1976, the fact of publication was the dividing line between common (state) law and statutory (federal) copyright. Unpublished works were the province of the common law while published works were protected by the statutory copyright, if at all.

The effect of this dichotomy was that manuscripts, the unpublished forms of books and pamphlets, for example, were protected only by state law. At the same time, however, every other type of protectable unpublished work could come under either state or federal law. Once the work was published (i.e. reproduced in copies for sale) it was protected only by a statutory copyright, if at all. The Copyright Act of 1976 eliminates the distinction by extending to all works of authorship that are fixed in a tangible medium of expression, regardless of whether it is published or unpublished. Furthermore, Section 301 of the Act specifically preempts any state rights in such works (17 USC Sec. 301, see Appendix B).

Section 301(a) abolishes a former distinction between state protection for unpublished works and federal protection for published works. It preempts the common law or statutes of any state that purport to grant rights that are equivalent to any of the exclusive rights of copyright (reproduction, adaptation, distribution, public performance, or public display) on original works of authorship fixed in any tangible medium of expression that come within the subject matter of copyright. It provides for federal statutory preemption whether the work is created before or after January 1, 1978 (the effective date of the new Act) and whether the work is published or unpublished.

The House Committee Reports state that the intention of Section 301 is to preempt and abolish any rights under state laws that are equivalent to copyright and that extend to works within the scope of the federal Copyright law. It is also Congressional intent to act preemptively, and to avoid the development of any vague borderline areas between state and federal protection. Under Section 301(a), the exclusive rights within the general

scope of copyright are governed exclusively by the federal Copyright law if the works involved are "works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright." All corresponding state laws are preempted and abrogated. Regardless of when the work was created and whether it is published or unpublished, disseminated or undissemminated, in the public domain or copyrighted under the federal statute, the states cannot offer it protection equivalent to copyright. The preemption of rights under state law is complete with respect to any work coming within the scope of the bill, even though the scope of exclusive rights given the work under the bill is narrower than the scope of common law rights in the work might have been (House Report, Judiciary Committee, No. 94-1476, pp.130,131 (1976)).

Therefore, it is submitted that Business and Professions Code Sections 14700, 14701, 14702, 14702, 14720 and 14740 are preempted and should be repealed.

Section 301(b) of the Act specifically does not preempt works of authorship that are not fixed in any tangible medium of expression. Section 301(b) also does not preempt works that do not come within the subject matter of copyright.

The House Committee Report on Section 301(b) says that this Section explicitly preserves common law copyright protection for one important class of works: works that have not been fixed in any tangible medium of expression. Examples would include choreography that has never been filmed or notated, an extemporaneous speech, 'original works of authorship' communicated solely through conversations or live broadcasts, and a dramatic sketch or musical composition improvised or developed from memory and without being recorded or written down. Unfixed works not included in the specified "subject matter of copyright" are not affected by the preemption of Section 301, and would continue to be subject to protection under state statute or common law until fixed in tangible form (House Report, Judiciary Committee, No. 94-1476, pp. 130,131 (1976)).

Therefore, it is recommended that Civil Code Sections 980(a), 981(a), and 982(a) should be repealed and that the proposed new language for these Sections be accepted. Also, Civil Code Section 983(a) should be repealed.

Under Section 301(c) of the Act, sound recordings fixed before February 15, 1972 are not affected by the preemptive provisions

of the Act until February 15, 2047. Thus, any rights or remedies under of state statutes remain effective until the year 2047. Therefore, Civil Code Section 980(a)(2) is recommended for addition as drafted.

ARGUMENTS FOR THE PROPOSAL

1. The proposal would conform state law to the federal Copyright Act of 1976.
2. Preempted, ineffectual laws should be removed from the Codes.

ARGUMENTS AGAINST THE PROPOSAL

No known arguments against the proposal.

RECOMMENDED BOARD ACTION

It is recommended that the Board of Governors approve the proposals of the Patent, Trademark and Copyright Section contained herein and include the proposals on the State Bar's 1982 Legislative Program.

FISCAL IMPACT

This proposal would have no fiscal impact on the State Bar.

Report prepared by

Mary A Tan Yen

Mary A. Tan Yen
Staff Attorney

APPENDIX A

PROPOSED LEGISLATION

Business & Professions Code

~~Section 14700~~ Any person may file with the Secretary of State a printed or typewritten copy of any lecture, sermon, address, dramatic composition, story, radio script, radio program, or motion picture scenarios together with an affidavit attached thereto setting forth that the person is the author of the printed or typewritten matter, and is entitled to all the rights and benefits accruing therefrom.

Business & Professions Code

~~Section 14701~~ Upon receipt of the printed or typewritten matter and accompanying affidavit, the Secretary of State shall file them in his office, keeping a record thereof showing the date of filing, name of the claimant, and the title of the lecture or other printed typewritten matter.

The Secretary of State shall at the time of filing, issue to the claimant a certificate of filing under the Great Seal of State, which certificate shall set forth the facts recorded.

Business & Professions

~~Section 14702~~ The certificate of filing or a certified copy together with a certified copy of the document filed shall be admitted in any court as prima facie evidence of the facts recited therein.

Business and Professions Code

~~Section 14720~~ Any person who causes publicly to be performed or represented for profit an unpublished or undedicated dramatic composition or dramatic musical composition known as an opera, without the consent of its owner or proprietor, or who knowing that such dramatic or musical composition is unpublished or undedicated, and without the consent of its owner or proprietor, permits, aides, or takes part in such a performance or representation, or who sells a copy or a substantial copy of any unpublished, undedicated or copyrighted dramatic composition or musical or dramatic-musical composition, known as an opera, without the consent of the author or proprietor of such dramatic or

Appendix A
Page 2

~~gramatic-musical composition is guilty of a misdemeanor and upon conviction, he shall be punished by a fine of not less than fifty dollars (\$50), and not more than three hundred (\$300), or by imprisonment for not less than 30 days or more than three months, or by both such fine and imprisonment.~~

Business and Professions Code

Section 14740

~~Whoever wilfully prints, publishes, sells, distributes or circulates, or causes to be printed, published, sold, distributed or circulated for profit any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper, or other document containing the works or musical score of any musical composition which or any part of which is copyrighted under the laws of the United States, without first having obtained the consent of the owner or proprietor of such copyrighted musical composition is guilty of a misdemeanor.~~

Civil Code

Section 980

(a) ~~The author or proprietor of any composition in letters or art has an exclusive ownership in the representation or expression thereof as against all persons except one who originally and independently creates the same or similar composition.~~

(a)(1) The author of any original work of authorship that is not fixed in any tangible medium of expression has an exclusive ownership in the representation or expression thereof as against all persons except one who originally and independently creates the same or similar work. A work shall be considered not fixed when it is not embodied in a tangible medium of expression or when its embodiment in a tangible medium of expression is

Appendix A
Page 3

not sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period or more than transitory duration, either directly or with the aide of a machine or device.

(2) The author of an original work of authorship consisting of a sound recording initially fixed prior to February 15, 1972 has an exclusive ownership therein until February 15, 2047 as against all persons except one who independently makes or duplicates another sound recording that does not directly or indirectly recapture the actual sounds fixed in such prior sound recording, but consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate the sounds contained in such prior sound recordings.

(b) The inventor or proprietor of any invention or design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the invention or design and the representations or expressions thereof made by him remain in this possession.

Civic Code
Section 981

~~(a) Unless otherwise agreed, a composition in letters or art in the production of which several persons are jointly concerned, is owner by them as follows:~~

- ~~1. If the product is indivisible, in equal portions.~~
- ~~2. If it is divisible, in proportion to the contribution of each.~~

(a) Unless otherwise agreed, an unfixed original work of authorship in the

Appendix A
Page 4

creation of which several persons are jointly concerned, is owned by them in equal proportion.

- (b) Unless otherwise agreed, an invention or design in the production of which several persons are jointly concerned is owned by them as follows:
1. If the invention or design is single, in equal portions.
 2. If it is not single, in proportion to the contribution of each.

Civil Code
Section 982

- ~~.(a) The owner of any rights in any composition in letters or art may transfer his ownership therein.~~
- (a) The owner of any rights in any unfixed original work of authorship may transfer such ownership therein.
- (b) The owner of any invention or design, or of any representation or expression thereof, may transfer his property in the same.
- (c) Notwithstanding any other provisions in this section, wherver a work of fine art is transferred, whether by sale or on commission or otherwise, by or on behalf of the artist who created it, or that artist's heir, legatee, or personal representative, the right of reproduction thereof is reserved to such artist or such heir, legatee, or personal representative until it passes into the public domain by act or operation of law, unless that right is expressly transferred by a document in writing in which reference is made to the specific right of reproduction, signed by the owner of the rights conveyed or that person's duly authorized agent. If such transfer is pursuant to an employment relationship, the right of reproduction is transferred to the employer, unless it is expressly reserved in writing. If such

Appendix A
Page 5

transfer is pursuant to a legacy or inheritance, the right of reproduction is reserved by will or codicil. Nothing contained herein, however, shall be construed to prohibit the fair use of such work of fine art.

(d) As used in subdivision (c):

- (1) "Fine art" shall mean any work of visual art, including but not limited to, a drawing, painting, sculpture, mosaic, or photograph, a work of calligraphy, a work of graphic art (including an etching, lithograph, offset print, silk screen, or a work of graphic art of like nature), crafts (including crafts in clay, textile, fiber, wood, metal, plastic and like materials), or mixed media (including a collage, assemblage, or any combination of the foregoing art media).
- (2) "Artist" shall mean the creator of a work of fine art.
- (3) "Right of reproduction," at the present state of commerce and technology shall be interpreted as reproduction of works of fine art as prints suitable for framing; facsimile casts of sculpture; reproductions used for greeting cards; reproductions in general books and magazines not devoted primarily to art, and in newspapers in other than art of news sections, when such reproductions in books, magazines, and newspapers are used for purposes similar to those of material for which the publishers customarily pay; art films; television, except from stations operated for education purposes, and reproductions used in any form of advertising, including magazines, calendars, newspapers, posters, billboards, films or television.

Appendix A
Page 6

- (e) The amendments to this Section made at the 1976-76 Regular Session shall only apply to transfers made on or after January 1, 1976.

Civil Code
Section 983

- ~~(a)~~ ~~If the owner of a composition in letters or art publishes it the same may be used in any manner by any person, without responsibility to the owner insofar as the law of this state is concerned.~~
- ~~(b)~~ If the owner of any invention or design intentionally makes it public, a copy or reproduction may be made public by any person, without responsibility to the owner so far as the law of this state is concerned.

APPENDIX B

(17 USC Sec. 301)

Section 301. Preemption with respect to other laws

- (a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by Section 106 (compilations and derivative works) in works of authorship that are fixed in tangible medium of expression and come within the subject matter of copyright as specified by Sections 102 (all work, fixed in tangible medium of expression) and 103 (all work fixed in tangible medium of expression) whether created before or after that date and whether published or unpublished are governed exclusively by this title. Thereafter, no person, is entitled to any such right or equivalent right in any such work in the common law or statutes of any state.
- (b) Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any state with respect to--
1. subject matter that does not come within the subject matter of copyright as specified by Sections 102 and 103, including works of authorship not fixed in any tangible means of expression; or
 2. any cause of action arising from undertakings commenced before January 1, 1978; or
 3. activities violating legal or equitable rights that are not equivalent to any of the exclusive rights within the general scope of copyright as specified by Section 106.
- (c) With respect to sound recording fixed before February 15, 1972, any rights or remedies under the common law or statutes of any state shall not be annulled or limited by this title until February 15, 2047. The preemptive provisions of subsection(a) shall apply to any such rights

Appendix B
Page 2

and remedies pertaining to any cause of action arising from undertakings commenced on and after February 15, 2047. Notwithstanding the provisions of Section 303, no sound recording fixed before February 15, 1972 shall be subject to copyright under this title before, on, or after February 15, 2047.

- (d) Nothing in this title annuls or limits any right or remedies under any other federal statute.

STATEMENT BY ASSEMBLYMAN RICHARD KATZ
FOR PRESENTATION OF AB 3483
BEFORE THE ASSEMBLY JUDICIARY COMMITTEE
APRIL 14, 1982

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

THE BILL WHICH I PRESENT TO YOU TODAY, AB 3483, SEEKS TO MODIFY CERTAIN CALIFORNIA COPYRIGHT STATUTES IN CONFORMITY WITH THE FEDERAL COPYRIGHT ACT OF 1976, CALLING FOR PREEMPTION OF COMMON (OR STATE) LAW COPYRIGHT STATUTES.

LAST FALL THIS PROJECT WAS REFERRED TO THE COPYRIGHT COMMITTEE OF THE PATENT, TRADEMARK AND COPYRIGHT SECTION OF THE STATE BAR OF CALIFORNIA BY THE SECTION'S CHAIR, MR. NEIL BOORSTYN, WHO IS WITH US TODAY. THE COMMITTEE DRAFTED A PROPOSAL WHICH WAS REVIEWED BY PROFESSOR MELVILLE NIMMER OF THE UNIVERSITY OF CALIFORNIA AT LOS ANGELES SCHOOL OF LAW. THE COMMITTEE, PROFESSOR NIMMER, AND THE STATE BAR OF CALIFORNIA RECOMMEND THE LEGISLATIVE CHANGES ENCOMPASSED WITHIN MY BILL.

WITH ME TODAY ARE TERRANCE FLANIGAN OF THE STATE BAR OF CALIFORNIA AND, AS PREVIOUSLY MENTIONED, MR. NEIL BOORSTYN, CHAIR OF THE STATE BAR'S PATENT, TRADEMARK AND COPYRIGHT SECTION, TO MORE SPECIFICALLY ADDRESS THE ELEMENTS OF AB 3483.



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MAR 7 - 1982

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RN 82 003067 PAGE NO. 1

AUTHOR'S COPY

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, Katz.

General Subject: Copyright.

Existing state law relating to copyright has not been amended to reflect the enactment of the Federal Copyright Act of 1976, which became operative on January 1, 1978. The federal law contains a specific provision preempting any state law which grants or confers a legal or equitable right that is equivalent to any of the exclusive rights within the general scope of copyright in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright, whether created before or after January 1, 1978, and whether published or unpublished. Prior to January 1, 1978, state law regulated the copyright of unpublished works of authorship.

This bill would repeal existing provisions of

RECORD # 30 BF:

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state law (relating to the filing and recordation of original works of authorship, the performance of unpublished or undedicated operas without consent, the unauthorized distribution of works copyrighted under federal law or the common law or state copyright in unpublished works, joint ownership in unpublished works, the transfer of ownership in unpublished works, and the termination of common law copyright) which have become obsolete in view of the preemption thereof by the Federal Copyright Act of 1976.

This bill would provide state copyright protection for works of authorship not protectable under federal law, including works of authorship that are not fixed in any tangible medium of expression, and sound recordings fixed prior to February 15, 1972, until February 15, 2047. (Some recordings fixed in a tangible medium of expression before February 15, 1972, are not affected by the preemptive provisions of federal law until February 15, 2047.) This bill also would grant exclusive ownership to the authors of such works of authorship and would provide for the joint ownership and transfer thereof.

Article XIII B of the California Constitution
and Sections 2231 and 2234 of the Revenue and Taxation

RECORD #

50 BF:

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Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

However, this bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



COR

SUBJECT: _____ DATE LAST AMENDED: _____
 Original _____

AB 3484 would repeal existing provisions of State copyright law which have been pre-empted by Federal law. The bill would also provide protection for works not protected by Federal law and grant exclusive ownership to authors of specified works created prior to February 15, 1982.

SUMMARY OF REASONS FOR SIGNATURE:

1. This bill makes technical and minor policy changes in the State copyright laws in order to conform with Federal laws.
2. There is no fiscal impact to the State General or Special funds as a result of this bill.

FISCAL SUMMARY

Department/Agency	FC 1981-82	FC 1982-83	FC 1983-84	FC 1984-85	Fund
State Government	-----	None-----	-----	-----	GF
Local Government	-----	None-----	-----	-----	GF

ANALYSIS

A. Specific Findings

This bill repeals existing misdemeanor provisions of State law relating to the filing and recordation of original works of authorship, the performance of unpublished or undedicated operas without consent, the unauthorized distribution of works copyrighted under Federal law, common law, or State copyright, et al, which have become obsolete by the Federal Copyright Action of 1976, and provides State copyright protection for works of authorship not protected under Federal law.

No local law enforcement agency is presently staffed to detect all crimes and infractions or to apprehend all violators. It is assumed that current legislative practice which allows local entities to determine their own priorities and emphasis with regard to the enforcement of code violations will apply to the violations or infractions provided for in this act. In addition, Section 2253.2(c)2 of the Revenue and Taxation Code prohibits the Board of Control from considering any claim for reimbursement of local costs based on legislation which created a new crime or infraction. The bill contains a "crimes and infractions" disclaimer.

(continued)

RECOMMENDATION	PRINCIPAL ANALYST	PROGRAM BUDGET MANAGER
Sign the bill.	<i>John G. Doyle</i>	<i>B. Cutting</i> 8/17/84
DEPARTMENT REPRESENTATIVE	DATE	DIRECTOR
		DATE AUG 17 1982
	Original signed by	
	LIS - 15	Page 70

AUTHOR	DATE LAST AMENDED	BILL NUMBER
Katz	Original	AB 3483

B. Fiscal Analysis

Legislation which eliminates a new crime or infraction does not constitute a "State-mandated local program," and any costs incurred by local governmental entities pursuant to this act do not require reimbursement under Section 2231 of the Revenue and Taxation Code. A "crimes and infractions" disclaimer is appropriate and is contained in the bill.

There will be no increased costs to State or local government as a result of passage of this bill.

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