# § 103. Subject matter of copyright: Compilations and derivative works

**(a)** The subject matter of copyright as specified by section 102 [*17 USCS § 102*] includes compilations and derivative works, but protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.

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

## History

(Oct. 19, 1976,*P.L. 94-553*, Title I, § 101, *90 Stat 2545*.)

**Prior law and revision:**

House Report No. 94-1476

Section 103 complements section 102: A compilation or derivative work is copyrightable if it represents an ″original work of authorship″ and falls within one or more of the categories listed in section 102. Read together, the two sections make plain that the criteria of copyrightable subject matter stated in section 102 apply with full force to works that are entirely original and to those containing preexisting material. Section 103(b) is also intended to define, more sharply and clearly than does section 7 of the present law, the important interrelationship and correlation between protection of preexisting and of ″new″ material in a particular work. The most important point here is one that is commonly misunderstood today: copyright in a ″new version″ covers only the material added by the later author, and has no effect one way or the other on the copyright or public domain status of the preexisting material.

Between them the terms ″compilations″ and ″derivative works″ which are defined in section 101, comprehend every copyrightable work that employs preexisting material or data of any kind. There is necessarily some overlapping between the two, but they basically represent different concepts. A ″compilation″ results from a process of selecting, bringing together, organizing, and arranging previously existing material of all kinds, regardless of whether the individual items in the material have been or ever could have been subject to copyright. A ″derivative work,″ on the other hand, requires a process of recasting, transforming, or adapting ″one or more preexisting works″; the ″preexisting work″ must come within the general subject matter of copyright set forth in section 102, regardless of whether it is or was ever copyrighted.

The second part of the sentence that makes up section 103(a) deals with the status of a compilation or derivative work unlawfully employing preexisting copyrighted material. In providing that protection

does not extend to ″any part of the work in which such material has been used unlawfully,″ the bill prevents an infringer from benefiting, through copyright protection, from committing an unlawful act, but preserves protection for those parts of the work that do not employ the preexisting work. Thus, an unauthorized translation of a novel could not be copyrighted at all, but the owner of copyright in an anthology of poetry could sue someone who infringed the whole anthology, even though the infringer proves that publication of one of the poems was unauthorized. Under this provision, copyright could be obtained as long as the use of the preexisting work was not ″unlawful,″ even though the consent of the copyright owner had not been obtained. For instance, the unauthorized reproduction of a work might be ″lawful″ under the doctrine of fair use or an applicable foreign law, and if so the work incorporating it could be copyrighted.