

LEG. FINANCE - BILLS 1983 - 1984 1989

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SUBJECT MATTER AND SCOPE 17 § 106

Note 21

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The right of public performance in connection with copyrighted musical compositions includes separate and distinct rights among others the right of publication, motion picture rights, stage recording rights, and radio reproduction rights. Remick Music Corp. v. Interstate Hotel Co. of Neb., D.C.Neb., 157 F.Supp. 523, affirmed 157 F.2d 622, 329 U.S. 622, 61 L.Ed. 691, rehearing denied 67 S.Ct. 330 U.S. 854, 91 L.Ed. 1290. See, also, Buck v. Swanson, D.C.Neb., 1939, 33 F.2d 377, reversed on other grounds 61 S.Ct. 313 U.S. 406, 85 L.Ed. 1426, 130 L.Ed. 1431.  
Musical compositions were copied and published as individual units out of musical shows copyrighted and published separately, the copyrights of the entire shows of which they were parts, did not prevent them to be performed publicly for profit without the license or consent of the copyright owners. Remick Music Corp. v. Interstate Hotel Co. of Neb., D.C.Neb., 157 F.Supp. 523, affirmed 157 F.2d 622, 329 U.S. 622, 61 L.Ed. 691, rehearing denied 67 S.Ct. 330 U.S. 854, 91 L.Ed. 1290.  
A radio station was not free to use a copyrighted musical composition merely because it was taken from a phonograph record. Associated Music Publishers v. Memorial Radio Fund, D.C.N.Y., 1942, 141 F.2d 852, affirmed 141 F.2d 852, certiorari denied 65 S.Ct. 120, 323 U.S. 769, 13 L.Ed. 613.  
The copyright owner may exclude all others from performing musical composition for profit. Buck v. Hillsgrove Club, D.C.Iowa, 1937, 17 F.Supp. 103.  
Former section 1 of this title gave to the copyright proprietor the exclusive right to perform copyrighted musical compositions in public for profit. Gay v. Music Corporation, 1942, 38 N.Y. 211.  
— Dramatic works  
Under former section 1 of this title the holder of a copyright in a dramatic work had the exclusive right to perform or represent the copyrighted work publicly. If a dramatic work gave the exclusive right to perform the copyrighted work publicly for profit and it was a musical composition, the holder of the copyright of a song claiming a part of a dramatic sketch, had the exclusive right to present it publicly. Luby v. Luby, C.C.N.Y., 1909, 177 F. 257.

This title secures to an author the exclusive right to dramatize which includes the right to produce the drama as a spoken play or as a picture play. Underhill v. Scheuck, 1921, 187 N.Y.S. 589, 114 Misc. 520.

The representation of a dramatic work, which has never been printed nor copyrighted, if made without license of the proprietor, is a violation of his right, and may be restrained by injunction, although such representation is from a copy obtained by a spectator attending a public representation by the proprietor for money, and afterwards writing it from memory. Tompkins v. Halleck, 1882, 133 Mass. 32, 43 Am.Rep. 480.

21. — Motion pictures and other audiovisual works

Importation of "distant signals" from one community into another does not constitute a "performance" under this title; thus, a community antenna television system does not lose its status as a nonbroadcaster and thus a non "performer" for copyright purposes when the signals it carries are those from distant rather than local sources. Teleprompter Corp. v. Columbia Broadcasting System, Inc., N.Y., 1974, 94 S.Ct. 1120, 415 U.S. 394, 39 L.Ed.2d 415.

One who manually or by human agency merely actuated electrical instrumentalities, whereby inaudible elements that were omnipresent in air were made audible to persons who were within hearing, did not "perform" within meaning of former section 1 of this title. Fortnightly Corp. v. United Artists Television, Inc., N.Y., 1968, 85 S.Ct. 2034, 392 U.S. 390, 20 L.Ed.2d 1176, rehearing denied 89 S.Ct. 65, 393 U.S. 602, 21 L.Ed.2d 190.

Defendant, which by community antenna television systems received, reproduced, and transmitted by cables to paying subscribers television programs received from television stations, which had licenses from plaintiff to telecast copyrighted moving pictures, did not "perform", within purview of former section 1(c) and (d) of this title copyrighted motion pictures. Id.

Under former section 1 of this title, the owners of copyright of motion picture film acquire the right to exhibit the picture and to grant an exclusive or restrictive license to others to exhibit it. Interstate Circuit v. U. S., Tex., 1930, 50 S.Ct. 407, 306 U.S. 203, 83 L.Ed. 610.

Relay importation of distant signals did not constitute "performance" for purposes of determining infringement under former section 1 of this title. Twentieth

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Century Music Corp. v. Aiken, C.A.Pa. 1974, 500 F.2d 127, affirmed 65 S.Ct. 2040, 422 U.S. 151, 45 L.Ed.2d 54.

Motion picture photoplay was a "dramatic work" within former section 1(d) of this title. Universal Pictures Co. v. Harold Lloyd Corp., C.C.A.Cal.1947, 162 F.2d 351.

Copyright of motion picture photoplay gave monopoly of remake rights to owner of copyright. *Id.*

The copyright of a dramatization covers a photoplay presentation of the same subject. U. S. v. Motion Picture Patents Co., D.C.Pa.1915, 225 F. 800, appeal dismissed 38 S.Ct. 578, 247 U.S. 524, 62 L.Ed. 1248.

Moving picture rights are rights to form of dramatization. G. Ricordi & Co. v. Paramount Pictures, D.C.N.Y.1950, 92 F.Supp. 537, modified on other grounds 159 F.2d 469, certiorari denied 72 S.Ct. 77, 342 U.S. 849, 96 L.Ed. 641.

Term "motion picture rights" means silent, sound, talking and all motion picture rights of every type and nature. *Id.*

Moving picture "shorts," consisting of comedy material with meager plot, used to fill in between longer features, were within this title so as to render unauthorized use of such "shorts" infringement, since reduction even of meager plot to motion picture was "dramatization". Vitaphone Corporation v. Hutchinson Amusement Co., D.C.Mass.1937, 19 F.Supp. 359, remanded on other grounds 63 F.2d 170, mandate conformed to 25 F.Supp. 520.

## 22. Public display

An exhibition of a series of photographs of persons and things, arranged on films as moving pictures and so depicting the principal scenes of an author's work as to tell the story, is a dramatization of such work, and the person producing the films and offering them for sale for exhibitions, even if not himself exhibiting them, infringes the

copyright of the author. Kalem Co. v. Harper Bros., N.Y.1911, 32 S.Ct. 20, 222 U.S. 55, 50 L.Ed. 92, Ann.Cas.1013A, 1285.

## 23. Antitrust violations

Where motion picture film exhibitor by force of its monopoly of "first-run theaters" in principal cities of Texas and threat to use its monopoly position against owner of copyright of motion picture film induced the owner to impose restrictions regarding admission price and against double feature programs, on subsequent-run exhibitors, the copyright owner's protection under former section 1 of this title did not relieve the contract from illegality under section 1 of Title 15. Interstate Circuit v. U. S., Tex.1939, 59 S.Ct. 467, 306 U.S. 208, 53 L.Ed. 610.

Owners may not use their copyrights to deter competition or to extend monopoly or to break down competition in other areas. Lawlor v. National Screen Service Corp., C.A.Pa.1959, 270 F.2d 146, certiorari denied 80 S.Ct. 670, 362 U.S. 922, 4 L.Ed.2d 742.

The rights acquired by publishers of copyrighted books under this title did not justify them in combining and agreeing that no member of the association should sell any books to a blacklisted purchaser who was known to cut prices. Mines v. Scribner, C.C.N.Y.1906, 147 F. 927.

Owners of a number of copyrighted works may not combine their copyrights by agreement or arrangement, even for purpose of preserving property rights. Alden-Rochelle, Inc., v. American Society of Composers, Authors and Publishers, D.C.N.Y.1948, 80 F.Supp. 889.

Necessities or conveniences of patentee or copyright owner do not justify use of the monopoly of the patent or copyright to create another monopoly. *Id.*

This title does not grant to copyright owners the privilege of combining in violation of otherwise valid state or federal laws. Alfred Bell & Co. v. Catalda Fine Arts, D.C.N.Y.1947, 74 F.Supp. 973.

## § 107. Limitations on exclusive rights: Fair use

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

use made of a work in any particular case shall include—

(1) the purpose and character of the use, such as whether the use is of a commercial nature or for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion copied in relation to the copyrighted work as a whole;

(4) the effect of the use upon the market for or value of the copyrighted work.

Pub.L. 94-553, Title I, § 101, Oct. 1976

## Historic

Notes of Committee on the Judiciary, House Report No. 94-1470. General Background of the Problem. The judicial doctrine of fair use, one of the most important and well-established limitations on the exclusive right of copyright owners, would be given express statutory recognition for the first time in section 107 [this section]. The claim that a defendant's acts constituted a fair use rather than an infringement has been raised as a defense in innumerable copyright actions over the years, and there is ample case law recognizing the existence of the doctrine and applying it. The examples enumerated at page 24 of the Register's 1961 Report, while by no means exhaustive, give some idea of the sort of activities the courts might regard as fair use under the circumstances: "quotation of excerpts in a review or criticism for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author's observations; use in a parody of some of the content of the work parodied; summary of an address or article, with brief quotations in a news report; reproduction by a library of a portion of a work to replace part of a damaged copy; reproduction by a teacher or student of a small part of a work to illustrate a lesson; reproduction of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a news reel or broadcast, of a work located at the scene of an event being reported."

Although the courts have considered and ruled upon the fair use doctrine over and over again, no real definition of the concept has ever emerged. Indeed, since the doctrine is an equitable rule of reason, no generally applicable definition

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# Arts Alaska, Inc.

619 Warehouse Avenue • Suite 220  
Anchorage, Alaska 99501 • (907)279-1558

## SERVICE CONTRACT

This contract, effective as of the 23rd day of December, 1976, between Arts Alaska, Inc. (hereinafter called the "Corporation"), and Robert Murry (hereinafter called the "Artist").

WITNESSETH THAT: Whereas the Corporation is entering into this contract for professional services; and Whereas, the Corporation has the authority to enter into this contract by the approval of the Board of Directors of Arts Alaska, Inc.;

NOW THEREFORE, the parties hereto agree as follows:

Article I. The Services to be Performed.

The Artist is hereby commissioned to undertake and complete a metal sculpture for the Juneau courthouse plaza per the design to be submitted to the Alaska State Council on the Arts and reviewed by the judging panel. The work of art will be delivered and installed at the site at the expense of the Artist.

All materials used shall be selected, applied and treated in order to be reasonably protected against damage. Full instructions will be provided for the continued maintenance of the work of art.

The Artist will view the site of the planned space for the work of art at his own expense, prior to beginning the project.

The artist will be invited to participate in the unveiling ceremony. All

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Robert Murry  
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costs for such participation will be the responsibility of the Artist should he choose to participate.

Article II. The Period of Performance.

The period of performance under this contract shall commence on January 1, 1977, and expire on September 1, 1978. Performance may be extended for additional periods by the mutual written agreement of the parties.

Article III. Consideration.

In full consideration of the Artist's performance hereunder, the Corporation shall pay the Artist a total amount for the completed and accepted Work of Art of FORTY THOUSAND AND NO/100 DOLLARS (\$40,000), and not more.

From the above amount, the Artist shall arrange and pay, or otherwise provide for all services, supplies and equipment for services, labor, materials, travel, hotel and subsistence, transportation, storage, fees, rentals, insurances, taxes, and all other cost and expenses required to complete the Project to the satisfaction of the Corporation.

Payment on account of the Cost of the Project shall be made as follows:

\$4,000 at the signing of the contract.

\$16,000 when the proposal submitted by the Artist is approved by the selected panel.

\$16,000 when notified that the piece is fabricated and ready for shipment.

\$4,000 upon final installation and acceptance by the State of Alaska.

Article IV. Additional Contract Provisions.

Appendix A attached hereto and made a part hereof sets forth special

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Robert Murry  
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conditions for the project.

Appendix B attached hereto and made a part hereof sets forth additional general provisions of this contract.

Article V. Changes.

Appendix C attached hereto and made a part hereof, sets forth any changes or additions that were made in this contract prior to its execution. (If appendix C is not attached hereto, there have been no such changes or additions).

Article VI. Special and General Conditions for the Project.

All articles of the attached General Conditions for the project shall be part of this agreement as if written herein in full.

By signing, the Artist declares that he has read and is in accord with the agreement and the terms identified in the General Conditions. If countersigned, this contract shall serve as an instrument of agreement.

IN WITNESS WHEREOF, the parties have executed this contract.

ARTIST

By: Robert Murry  
DATE: 18 Jan. 77

ARTS ALASKA, INC.

By: Roy H. Nelson  
Executive Director  
DATE: 12/23/76

Permanent address of Artist

First floor  
66 Grand St.  
New York, N.Y. 10013  
Social Security # 092-42-3051

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APPENDIX A

Special Conditions for the Project

- A. The Artist will visit the project site to survey and evaluate its visual, environmental and background characteristics.
- B. After consideration of the desires, views and expectations of the selection committee a written outline description of the work-of-art as you envision it along with drawings and/or maquettes showing the intended form, shall be prepared and submitted with a site plan noting the proposed location of the sculpture.
- x C. Site preparation specifications will be provided at such time as the proposal is accepted by the committee.
- D. The Selection Committee will review the proposal and recommend acceptance and/or modifications. Upon their acceptance the project will proceed as outlined. Should agreement not be accomplished this contract can be terminated by the Board of Directors of Arts Alaska, Inc. In such event the total compensation to the Artist will be the initial payment of \$4,000.
- E. The Artist is required to meet with the Selection Committee at the time of the review of the proposal. All expenses for travel and per diem related to this meeting will be paid by the Corporation or the Alaska State Court System.
- F. The Artist will obtain and pay, or otherwise provide for the services of professional consultants to assist in the preparation and documentation of data related to stress, climatic and organic damage, and firm and secure mounting.
- G. The Artist will provide all required facilities, equipment and labor to transport and to install the sculpture. After the installation all debris shall be removed from the site and all damage to the surrounding areas shall be repaired and rendered invisible.

APPENDIX B

General Conditions for the Project

- From Art*
- A. In the performance of the Project, the Artist shall be obligated to observe and conform to all applicable codes, ordinances, regulations, statutes and laws. *The Corporation will provide the Artist with copies of any such restrictive codes, etc.*
- B. Portions of the Project may be sublet by the Artist at his expense, subject to prior written approval by the Corporation. Approval shall not be unreasonably withheld. All work shall be undertaken by the Artist personally or under his personal supervision.
- C. The Work on the Project shall commence immediately after signing of the agreement by all parties concerned and shall be pursued with reasonable dispatch and without interruptions, except when caused by forces beyond the Artist's control. It shall be so organized as to assure completion of the Project on or before the date stated in the agreement.
- D. All payments on account of the Project shall be subject to the receipt of a signed request for payment from the Artist, certifying that the work under this agreement is progressing as planned and in accordance with the agreement.
- E. Final payment will be made only when the completed work of art has been accepted by the Corporation with the concurrence of the Project Selection Committee.
- F. Actual payment process may take up to two weeks before transmittal of payment to the Artist.
- From Art*
- G. The Corporation reserves the right to suspend at any time and for any reason for any given or indefinite time the services to be rendered under this agreement upon written notice to the Artist. *The Corporation will be responsible for storage charges incurred during such delay.*
- From Art*
- H. The work under this agreement may be terminated by either party, subject to a written notice submitted fourteen (14) days before termination, provided that attempts to reconcile the reason for cancellation have been undertaken but have failed. Upon termination, payment on account of the Project shall be made in proportion to the work completed, ~~provided the Artist will submit to the Corporation all work performed up to the effective date of cancellation in an orderly manner, and every effort will be considered for completing the work per the original design.~~
- I. The Corporation shall not be liable for payment for any additional services, unless such services and the cost thereof have been previously approved in writing. Any term of this agreement may be amended by a written Amendment to the Agreement, signed by both parties, subject to the authorization of the Board of Directors where required.

J. All drawings, models or maquettes shall remain the Artist's property. The copyright in the Work of Art, however, belongs to the Corporation, and no more copies than are required in the Project may be made ~~or caused to be made by anyone without prior written approval from the Corporation.~~

*RM RBH*

K. All aspects of the Project shall be guaranteed by the Artist against faulty execution or defective or inferior materials, equipment or workmanship for one (1) calendar year after completion and acceptance of the Project by the Corporation, during which period the Work of Art shall be repaired, restored or replaced at the Artist's expense, *with the exception of the painted surface.*

*RM RBH*

L. It is understood that under the terms of the Contract, the Artist is an "Independent Contractor" who shall indemnify and save harmless the Corporation and the State of Alaska from and against any and all manner of actions, liabilities, and claims of any person arising out of or in connection with the performance of the services to be performed by the Artist under this Contract. Any work under this Agreement shall not be construed as employment with the State of Alaska or Arts Alaska, Inc. The Artist will be required to obtain and pay for his gross income license and be responsible for payment of income, social security, and other taxes.

M. The artist shall not assign or transfer any interest in this Agreement without the prior written consent of the Corporation; provided, however, that claims for money due or to become due from The Corporation under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Corporation.

N. In the event that the Artist dies before the date fixed for completion or becomes permanently incapacitated and/or unable to complete the work on the Project, ~~the Corporation may within thirty (30) days after notice thereof, elect in writing to pay a proportionate share of the agreed price for work completed to the satisfaction of the Corporation, and acquire the unfinished work. This Agreement shall then be cancelled and the Corporation be entitled to the return of such part of the price above the proportionate share, as the Artist has already been paid.~~

*RM RBH*

*the heirs or executors will make every effort to complete the project per the original design.*

O. A program of regular maintenance will be planned by the Corporation for the State of Alaska that is acceptable to the artist.

*RM RBH*

D.I.

WASHINGTON  
DC 20506



Agency advised by the  
National Council on the Arts

October 10, 1978

John B. Chenoweth  
Legislative Counsel  
Legislative Affairs Agency  
Pouch Y  
Juneau, Alaska

Dear Mr. Chenoweth:

The controversy surrounding the Juneau Art in Public Places project entitled "Nimbus" has come to our attention.

As you may already be aware, there do not presently exist any restrictions or conditions in Endowment grant provisions relating to removal or relocation of commissioned works from their proposed sites. However, reference should be made to the copyright laws of the United States, which indicate that the creator of a work retains rights regarding the manner and location of public exhibition of his work. (See Title 17, §106(5) of the United States Code Annotated.)

In any event, the proposed disposition of the piece in question is of concern to us, since the project was made possible by a Federal grant program. Any action, especially destruction of the piece, which would undermine the purposes and intent behind the Federal Art in Public Places program could not be viewed with indifference by the Endowment.

Of course, we at the Endowment are sensitive to local concerns. We therefore hope an equitable resolution of this matter can be effected, hopefully one which takes into account the rights and interests of all involved parties, including the creator of the work.

Sincerely,

Robert Wade  
General Counsel

cc: Roy Helms

*As a veteran and numerous -sculptor, I understand you  
I thought you might be interested in my effort in this regard.  
Maybe we could try re-selling it to some Eastern gallery.*

Dear Governor Sheffield,

I was gratified to hear that you have accepted the resignations of the entire State Council for the Arts. As an individual Alaskan, I would like to make a suggestion to you which could correct two injustices, beautify Juneau and win the gratitude of the vast majority of Juneau-ites -- at no cost to the State.

As you may know, "Nimbus" -- the misshapen piece of bluish metal in our court building's plaza -- may have been the old Art Council's worst error of judgement. A big-name Eastern "sculptor" was (lavishly) commissioned, and the resulting "Nimbus" outrage filled the EMPIRE's "Letters to the Editor" section longer than anything else since. (My own letter read, "A piece of junk is a piece of junk is a ....") Maybe most galling was the stipulation that "Nimbus" had to be re-sold rather than simply scrapped if found to be unacceptable. There was even a petition against Nimbus -- ignored by the Arts Council, of course. Even now "a Nimbus" means a snob-appeal boondoggle.

A local resident, Ed Way, did the "Hard Rock Miners" bronze sculpture for the new *Marine Park*. It is a brilliant and moving tribute to those men whose honest sweat originally built this town. Ed is an acquaintance of mine, and his business sense has never kept pace with his artistic skill and vision. Forging the sculpture in California, Ed "went over" his original bid (by more than \$20,000!), believing Juneau-ites would support (and expecting our Borough Assembly would compensate) his commitment.

When Ed petitioned the Assembly for compensation last week, Bill Overstreet led the (unpopular) vote against it. Bill's opposition was basically out of a sense of fiscal duty, not wanting to set a dangerous precedent for other contractors.

COULD YOU, AS ALASKA'S GOVERNOR, INTERCEDE IN THIS UNFORTUNATE SITUATION AND OFFER TO SELL "NIMBUS" SO THAT THE PROCEEDS COULD BE USED TO HELP FULLY RECOMPENSE ED WAY FOR HIS/OUR "HARD ROCK MINERS"? --ASSUMING SOMEONE MIGHT BUY SUCH SCRAP, OF COURSE.

I do not know the legal status of Nimbus, but such an action could be a beautiful and appreciated gesture appropriate to the new beginning you intend for Alaska.

Thank you for your time and for your consideration of my idea.

Respectfully,

ov. Sheffield,

I discussed this with Bill last night. He instead prefers a private fundraising, wanting to leave government out of it. However, a private effort may not raise much "after the fact", and a good excuse to get rid of Nimbus should be used. More importantly, this situation is a bronzen opportunity to re-emphasize that Alaskan art should be.

"publication by the government" within meaning of former section 8 of this title which provided that "publication by the government" of a copyrighted document did not abridge or annul the copyright. *Hell v. Combined Registry Co.*, C.A. III, 1976, 536 F.2d 161, certiorari denied 97 S. Ct. 530, 420 U.S. 1001, 50 L.Ed.2d 612.

Speeches, which contained copyright notice, which were made by vice admiral in United States Navy to private organizations on vice admiral's own time and

which concerned matters removed from official duties of vice admiral who prepared speeches on his own time and only used government facilities for purpose of duplicating the same to obtain security clearance and to distribute copies thereof to press and others, did not form a part of his official duties and were private property of vice admiral who was entitled to copyright therein. *Public Affairs Associates, Inc. v. Rickover*, D.C.D.C. 1967, 268 F.Supp. 444.

## § 106. Exclusive rights in copyrighted works

Subject to sections 107 through 118, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

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

Pub.L. 94-553, Title I, § 101, Oct. 19, 1976, 90 Stat. 2546.

### Historical Note

Notes of Committee on the Judiciary, House Report No. 94-1476, *General Scope of Copyright*. The five fundamental rights that the bill gives to copyright owners—the exclusive rights of reproduction, adaptation, publication, performance, and display—are stated generally in section 106 (this section). These exclusive rights, which comprise the so-called "bundle of rights" that is a copyright, are cumulative and may overlap in some cases. Each of the five enumerated rights may be subdivided indefinitely and, as discussed below in connection with section 201 [section 201 of this title], each subdivision of an exclusive right may be owned and enforced separately.

The approach of the bill is to set forth the copyright owner's exclusive rights in broad terms in section 106 (this section), and then to provide various limitations, qualifications, or exemptions in the 12 sections that follow. Thus, everything in section 106 (this section) is made "subject to sections 107 through 118 [sections 107 through 118 of this title]," and must be read in conjunction with those provisions.

The exclusive rights accorded to a copyright owner under section 106 (this section) are "to do and to authorize" any of the activities specified in the five numbered clauses. Use of the phrase "to authorize" is intended to avoid any ques-

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tions as to the liability of copyright infringers. For example, a person who lawfully acquires an authorized motion picture would be an infringer if he or she engages in the renting of it to others for purposes of an authorized public performance.

**Rights of Reproduction, Adaptation, and Publication.** The first three clauses of section 106 (this section), which all rights under a copyright cover: reproduction, performance and display, every kind of copyrighted work whose exclusive rights encompassed these clauses, though closely related, are independent; they can generally be characterized as rights of copying, adaptation, and publishing. A single act of infringement may violate all three rights at once, as where a person produces, adapts, and sells a person's copyrighted work as a publishing venture. Infringement occurs when any one of the rights is violated: where, for example, a person produces copies without selling them, or a retailer sells copies without the permission of the copyright owner to do with their reproduction references to "copies or phonorecords" although in the plural, are included and throughout the bill to singular (1 U.S.C. § 1 [section 1, General Provisions]).

**Reproduction.**—Read together relevant definitions in section 101 of this title, the phrase "to reproduce the copyrighted work in copies or phonorecords" means the production of a material object in which the work is duplicated, transcribed, or simulated in a fixed form if it can be "perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." Under the present law, a work would be infringed by its reproduction in whole or in any substantial part, or by duplicating it exactly or by imitating or simulating it. Works or variations from the original work would still be an infringement as long as the author's "expressions" are taken. An exception to this principle, applicable to the reproduction of copyrighted sound recordings, is found in section 114 [section 114 of this title].

"Reproduction" under clause (1) of section 106 (this section) is distinguished from "display" under clause (5). For a work to be "displayed," its fixation in a tangible medium must be "sufficiently permanent."

tions as to the liability of contributory infringers. For example, a person who lawfully acquires an authorized copy of a motion picture would be an infringer if he or she engages in the business of renting it to others for purposes of unauthorized public performance.

**Rights of Reproduction, Adaptation, and Publication.** The first three clauses of section 106 (this section), which cover all rights under a copyright except those of performance and display, extend to every kind of copyrighted work. The exclusive rights encompassed by these clauses, though closely related, are independent; they can generally be characterized as rights of copying, recording, adaptation, and publishing. A single act of infringement may violate all of these rights at once, as where a publisher reproduces, adapts, and sells copies of a person's copyrighted work as part of a publishing venture. Infringement takes place when any one of the rights is violated: where, for example, a printer reproduces copies without selling them or a retailer sells copies without having anything to do with their reproduction. The references to "copies or phonorecords," although in the plural, are intended here and throughout the bill to include the singular (1 U.S.C. § 1 [section 1 of Title 1, General Provisions]).

**Reproduction.**—Read together with the relevant definitions in section 101 [section 101 of this title], the right "to reproduce the copyrighted work in copies or phonorecords" means the right to produce a material object in which the work is duplicated, transcribed, imitated, or simulated in a fixed form from which it can be "perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." As under the present law, a copyrighted work would be infringed by reproducing it in whole or in any substantial part, and by duplicating it exactly or by imitation or simulation. Wide departures or variations from the copyrighted work would still be an infringement as long as the author's "expression" rather than merely the author's "ideas" are taken. An exception to this general principle, applicable to the reproduction of copyrighted sound recordings, is specified in section 114 [section 114 of this title].

"Reproduction" under clause (1) of section 106 [cl. (1) of this section] is to be distinguished from "display" under clause (5). For a work to be "reproduced," its fixation in tangible form must be "sufficiently permanent or stable

to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration." Thus, the showing of images on a screen or tube would not be a violation of clause (1), although it might come within the scope of clause (5).

**Preparation of Derivative Works.**—The exclusive right to prepare derivative works, specified separately in clause (2) of section 106 [cl. (2) of this section], overlaps the exclusive right of reproduction to some extent. It is broader than that right, however, in the sense that reproduction requires fixation in copies or phonorecords, whereas the preparation of a derivative work, such as a ballet, pantomime, or improvised performance, may be an infringement even though nothing is ever fixed in tangible form.

To be an infringement the "derivative work" must be "based upon the copyrighted work," and the definition in section 101 [section 101 of this title] refers to "a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted." Thus, to constitute a violation of section 106(2) [cl. (2) of this section], the infringing work must incorporate a portion of the copyrighted work in some form; for example, a detailed commentary on a work or a programmatic musical composition inspired by a novel would not normally constitute infringements under this clause.

**Use in Information Storage and Retrieval Systems.**—As section 117 [section 117 of this title] declares explicitly, the bill is not intended to alter the present law with respect to the use of copyrighted works in computer systems.

**Public Distribution.**—Clause (3) of section 106 [cl. (3) of this section] establishes the exclusive right of publication: The right "to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending." Under this provision the copyright owner would have the right to control the first public distribution of an authorized copy or phonorecord of his work, whether by sale, gift, loan, or some rental or lease arrangement. Likewise, any unauthorized public distribution of copies or phonorecords that were unlawfully made would be an infringement. As section 106 [section 106 of this title] makes clear, however, the copyright owner's rights under section 106(3) [cl. (3) of

this section] cease with respect to a particular copy or phonorecord once he has parted with ownership of it.

**Rights of Public Performance and Display. Performing Rights and the "For Profit" Limitation.**—The right of public performance under section 106(4) [cl. (4) of this section] extends to "literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works and sound recordings" and, unlike the equivalent provisions now in effect, is not limited by any "for profit" requirement. The approach of the bill, as in many foreign laws, is first to state the public performance right in broad terms, and then to provide specific exemptions for educational and other non-profit uses.

This approach is more reasonable than the outright exemption of the 1909 statute. The line between commercial and "nonprofit" organizations is increasingly difficult to draw. Many "non-profit" organizations are highly subsidized and capable of paying royalties, and the widespread public exploitation of copyrighted works by public broadcasters and other noncommercial organizations is likely to grow. In addition to these trends, it is worth noting that performances and displays are continuing to supplant markets for printed copies and that in the future a broad "not for profit" exemption could not only hurt authors but could dry up their incentive to write.

The exclusive right of public performance is expanded to include not only motion pictures, including works recorded on film, video tape, and video disks, but also audiovisual works such as filmstrips and sets of slides. This provision of section 106(4) [cl. (4) of this section], which is consistent with the assimilation of motion pictures to audiovisual works throughout the bill, is also related to amendments of the definitions of "display" and "perform" discussed below. The important issue of performing rights in sound recordings is discussed in connection with section 114 [section 114 of this title].

**Right of Public Display.**—Clause (5) of section 106 [cl. (5) of this section] represents the first explicit statutory recognition in American copyright law of an exclusive right to show a copyrighted work, or an image of it, to the public. The existence or extent of this right under the present statute is uncertain and subject to challenge. The bill would give the owners of copyright in "literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graph-

ic, or sculptural works", including the individual images of a motion picture or other audiovisual work, the exclusive right "to display the copyrighted work publicly."

**Definitions.** Under the definitions of "perform," "display," "publicly," and "transmit" in section 101 [section 101 of this title], the concepts of public performance and public display cover not only the initial rendition or showing, but also any further act by which that rendition or showing is transmitted or communicated to the public. Thus, for example: a singer is performing when he or she sings a song; a broadcasting network is performing when it transmits his or her performance (whether simultaneously or from records); a local broadcaster is performing when it transmits the network broadcast; a cable television system is performing when it retransmits the broadcast to its subscribers; and any individual is performing whenever he or she plays a phonorecord embodying the performance or communicates the performance by turning on a receiving set. Although any act by which the initial performance or display is transmitted, repeated, or made to recur would itself be a "performance" or "display" under the bill, it would not be actionable as an infringement unless it were done "publicly," as defined in section 101 [section 101 of this title]. Certain other performances and displays, in addition to those that are "private," are exempted or given qualified copyright control under sections 107 through 118 [sections 107 through 118 of this title].

To "perform" a work, under the definition in section 101 [section 101 of this title], includes reading a literary work aloud, singing or playing music, dancing a ballet or other choreographic work, and acting out a dramatic work or pantomime. A performance may be accomplished "either directly or by means of any device or process," including all kinds of equipment for reproducing or amplifying sounds or visual images, any sort of transmitting apparatus, any type of electronic retrieval system, and any other techniques and systems not yet in use or even invented.

The definition of "perform" in relation to "a motion picture or other audio visual work" is "to show its images in any sequence or to make the sounds accompanying it audible." The showing of portions of a motion picture, filmstrip, or slide set must therefore be sequential to constitute a "performance" rather than a "display", but no particular order need

be maintained. The purely aural performance of a motion picture track, or of the sound portions of a audiovisual work, would constitute a performance of the "motion picture or audiovisual work"; but, where so the sounds have been reproduced separately on phonorecords, a performer from the phonorecord would not constitute performance of the motion picture audiovisual work.

The corresponding definition of "display" covers any showing of a "copy" of the work, "either directly or by means of a film, slide, television image, or other device or process." Since "copies" are defined as including the material "in which the work is first embodied," the right of public display applies to original works of art as well as to reproductions of them. With respect to motion pictures and other audiovisual works, it is a "display" (rather than "performance") to show their "individual images nonsequentially." In addition to the direct showings of a copy of a "work," "display" would include the projection of an image on a screen or other surface by any method, the transmission of an image by electronic or other means, showing of an image on a cathode tube, or similar viewing apparatus connected with any sort of information and retrieval system.

Under clause (1) of the definition "publicly" in section 101 [section 101 of this title], a performance or display is "public" if it takes place "in an open to the public or at any place where a substantial number of persons of a normal circle of a family or social acquaintances is gathered." The principal purposes of the definition was to make clear that, contrary to the decision in *Metro-Goldwyn-May Distributing Corp. v. Wyatt*, 21 Md. 203 (D.Md.1932), performances in public places such as clubs, hotels, summer camps, and schools are "public performances" subject to copyright control. The term "a normal circle" in this context would include an individual living alone, so that a gathering to the individual's social acquaintances would normally be regarded as "public." Routine meetings of businesses

Amount of fines for certain violations, see section 503 of the Copyright Act of 1909 and the Copyright Code.

Construction of words denoting "public" in the Copyright Code.

cluding the picture or exclusive copyrighted work

Definitions of "publicly" and "public performance" cover not only showing, but also that rendered or communicated, for example, when being transmitted by simultaneous broadcast or television retransmission; and whenever the embodying medium transmits the "display" would be actionable under section 101 [section 101] in other performance or control under sections 107

er the definition of this literary work, music, dancing, dramatic work, and or pantomime accomplished by any means of all kinds of or amplifying any sort of type of electrical any other yet in use or

" in relation to audio-visual images in any form accompanying or sequential to rather than a order need

maintained. The purely aural performance of a motion picture sound track, or of the sound portions of an audiovisual work, would constitute a performance of the "motion picture or other audiovisual work"; but, where some of the sounds have been reproduced separately on phonorecords, a performance from the phonorecord would not constitute performance of the motion picture or audiovisual work.

The corresponding definition of "display" covers any showing of a "copy" of the work, "either directly or by means of a film, slide, television image, or any other device or process." Since "copies" are defined as including the material object "in which the work is first fixed," the right of public display applies to original works of art as well as to reproductions of them. With respect to motion pictures and other audiovisual works, it is a "display" (rather than a "performance") to show their "individual images nonsequentially." In addition to the direct showings of a copy of a work, "display" would include the projection of an image on a screen or other surface by any method, the transmission of an image by electronic or other means, and the showing of an image on a cathode ray tube, or similar viewing apparatus connected with any sort of information storage and retrieval system.

Under clause (1) of the definition of "publicly" in section 101 [section 101 of this title], a performance or display is "public" if it takes place "at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered." One of the principal purposes of the definition was to make clear that, contrary to the decision in *Metro-Goldwyn-Mayer Distributing Corp. v. Wyatt*, 21 C.O.Bull. 24 (D.Md.1932), performances in "semi-public" places such as clubs, lodges, factories, summer camps, and schools are "public performances" subject to copyright control. The term "a family" in this context would include an individual living alone, so that a gathering confined to the individual's social acquaintances would normally be regarded as private. Routine meetings of businesses and gov-

ernmental personnel would be excluded because they do not represent the gathering of a "substantial number of persons."

Clause (2) of the definition of "publicly" in section 101 [section 101 of this title] makes clear that the concepts of public performance and public display include not only performances and displays that occur initially in a public place, but also acts that transmit or otherwise communicate a performance or display of the work to the public by means of any device or process. The definition of "transmit"—to communicate a performance or display "by any device or process whereby images or sound are received beyond the place from which they are sent"—is broad enough to include all conceivable forms and combinations of wired or wireless communications media, including but by no means limited to radio and television broadcasting as we know them. Each and every method by which the images or sounds comprising a performance or display are picked up and conveyed is a "transmission," and if the transmission reaches the public in any form, the case comes within the scope of clauses (4) or (5) of section 106 [cls. (4) or (5) of this section].

Under the bill, as under the present law, a performance made available by transmission to the public at large is "public" even though the recipients are not gathered in a single place, and even if there is no proof that any of the potential recipients was operating his receiving apparatus at the time of the transmission. The same principles apply whenever the potential recipients of the transmission represent a limited segment of the public, such as the occupants of hotel rooms or the subscribers of a cable television service. Clause (2) of the definition of "publicly" is applicable "whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times."

**Effective Date.** Section effective Jan. 1, 1978, except as otherwise expressly provided, see section 102 of Pub.L. 94-533, set out as a note preceding section 101 of this title.

#### Cross References

- Account of fines for certain willful infringements of sound recordings or motion pictures, see section 506 of this title.
- Capital asset as not including copyright, see section 1221 of Title 26, Internal Revenue Code.
- Construction of words denoting number, gender, etc., see section 1 of Title 1, General Provisions.

## Note 1

- Copyright royalties as personal holding company income, see section 513 of Title 26, Internal Revenue Code.
- Importation of copies or phonorecords as infringement of exclusive right to distribute, see section 602 of this title.
- Preemption of other laws relating to exclusive rights within general scope of copyright, see section 301 of this title.
- Reproduction, compilation, and distribution for research of regularly scheduled newscasts or on-the-spot coverage of news events by Librarian of Congress, see section 170 of Title 2, The Congress.
- Transfer of exclusive rights comprised in copyright, see section 201 of this title.
- Violator of exclusive rights guaranteed by this section as infringer of copyright, see section 501 of this title.

## Library References

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## 1. Common law

The common law right to a monopoly in the publication of an author's productions was superseded by statute in this country as well as in England. *Holmes v. Hurst*, N.Y.1899, 19 S.Ct. 606, 607, 174 U.S. 82, 43 L.Ed. 904.

— Common law copyright protects against unauthorized copying, publishing, vending, performing and recording. *Letter Edged in Black Press, Inc. v. Public Bldg. Commission of Chicago*, D.C.Ill. 1970, 320 F.Supp. 1303.

The common law of copyright protected author only until first publication, whereas peculiar right conferred by statutory copyright is to multiply copies after publication to exclusion of others. *Carew v. Melrose Music*, D.C.N.Y.1950, 92 F.Supp. 971.

Property rights in a literary production before publication were exclusively in the author, both at common law and under this title. *Berry v. Hoffman*, 1935, 189 A. 516, 125 Pa.Super. 261.

## 2. Constitutionality

Constructing the exclusive right given to authors to dramatize their works, as extending to the public exhibition of moving pictures of the incidents of a copyrighted work did not render former section 1 of this title invalid as exceeding the power given to Congress by U.S. Const. Art. 1, § 8, cl. 8, to secure to authors for a limited time the exclusive right to their writings. *Kalem Co. v. Harper Bros.*, N.Y.1911, 32 S.Ct. 20, 222 U.S. 55, 56 L.Ed. 92.

## 3. Construction

Court did not permit general policy of former section 1 of this title to be obscured by drastic technological changes that have arisen since its enactment. *Edward B. Marks Music Corp. v. Colorado Magnetics, Inc.*, C.A.Orl.1974, 427 F.2d 265, certiorari denied 95 S.Ct. 801, 349 U.S. 1120, 42 L.Ed.2d 810.

Former section 1 of this title granted valuable rights to persons who created

subject matter which was copyrighted and useless technicalities were not to be allowed to cut down benefits conferred. *U. S. v. Backer*, C.C.A.N.Y.1943, 134 F.2d 533.

Former section 1 of this title should have been reasonably construed, in view to effecting purpose intended, not unduly extended to include private view not intended nor so narrowly construed as to destroy rights Congress intended to grant. *Metro-Goldwyn-Mayer Distributing Corporation v. Hjou Theatre Co.*, C.A.Mass.1932, 59 F.2d 70.

Former section 1 of this title, which granted exclusive rights in copyrighted publications, might have applied to situations, not anticipated by Congress and when fairly construed, such situations came within its intent and meaning. *Remick v. American Automobile Accessories Co.*, C.C.A.Ohio 1925, 5 F.2d 411, A.L.R. 1511, certiorari denied 46 S.Ct. 269 U.S. 550, 70 L.Ed. 22.

## 4. Purpose

A fundamental purpose of the exclusive right of public performance granted by former section 1 of this title was to protect copyright proprietors against invasion of the market for their works. *United Artists Television, Inc. v. Rightly Corp.*, C.A.N.Y.1967, 377 F.2d 100, reversed on other grounds 88 S.Ct. 392 U.S. 390, 20 L.Ed.2d 1170, rehearing denied 89 S.Ct. 65, 303 U.S. 902, 21 L.Ed. 190.

Purpose of this title is to protect original designs from copying, not to confer to the proprietor any right to exclude others from the market place for similar items. *Herbert Rosenthal Jewelry v. Honora Jewelry Co., Inc.*, D.C.N.Y. 378 F.Supp. 485, affirmed 569 F.2d 65.

The purpose and effect of former section 1 of this title was to secure to the right owner the exclusive right to multiply copies. *Fawcett Publications v. Hot Pub. Co.*, D.C.N.Y.1942, 46 F.2d 717.

## 5. Law governing

An author's right to monopoly in publications is measured and determined by this title. *American Code Co. v. Singer*, C.C.A.N.Y.1922, 282 F. 820, also, *Bentley v. Tibbals*, N.Y.1915, 247, 138 C.C.A. 48; *Loew's Inc. v. Superior Court of Los Angeles County*, 7 F.2d 983, 18 Cal.2d 410.

The measure of the rights and remedies of a copyright proprietor are

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Subject matter which was copyrightable, and unless technicalities were not to be allowed to cut down benefits conferred. *C. S. v. Backer*, C.C.A.N.Y.1913, 131 F.2d 111.

Former section 1 of this title should have been reasonably construed, with view to effecting purpose intended, and not unduly extended to include privileges not intended nor so narrowly construed as to destroy rights Congress intended to grant. *Metro-Goldwyn-Mayer Distributing Corporation v. Bijou Theatre Co.*, C.C.A.Mass.1932, 59 F.2d 70.

Former section 1 of this title, which created exclusive rights in copyrighted publications, might have applied to new situations, not anticipated by Congress and when fairly construed, such situations came within its intent and meaning. *Benick v. American Automobile Accessories Co.*, C.C.A. Ohio 1925, 5 F.2d 411, 40 A.L.R. 1511, certiorari denied 46 S.Ct. 19, 22 U.S. 556, 70 L.Ed. 22.

#### c. Purpose

A fundamental purpose of the exclusive right of public performance granted by former section 1 of this title was to protect copyright proprietors against dilution of the market for their works. *United Artists Television, Inc. v. Fortnightly Corp.*, C.A.N.Y.1967, 377 F.2d 872, reversed on other grounds 88 S.Ct. 2081, 22 U.S. 390, 20 L.Ed.2d 1170, rehearing denied 89 S.Ct. 67, 303 U.S. 992, 21 L.Ed. 24 150.

Purpose of this title is to protect original designs from copying, not to convey to the proprietor any right to exclude others from the market place for similar items. *Herbert Rosenthal Jewelry Corp. v. Honora Jewelry Co., Inc.*, D.C.N.Y.1974, 75 F.Supp. 485, affirmed 568 F.2d 61.

The purpose and effect of former section 1 of this title was to secure to copyright owner the exclusive right to multiple copies. *Fawcett Publications v. Elletts Pub. Co.*, D.C.N.Y.1912, 40 F.Supp. 777.

#### d. Law governing

An author's right to monopoly of his publications is measured and determined by this title. *American Code Co. v. Beninger*, C.C.A.N.Y.1922, 282 F. 829. See, also, *Bentley v. Tibbals*, N.Y.1915, 223 F. 247, 138 C.C.A. 48; *Loew's Inc. v. Superior Court of Los Angeles County*, 1941, 115 P.2d 983, 18 Cal.2d 419.

The measure of the rights and liabilities of a copyright proprietor must be

found in language of this title. *Miller v. Goody*, D.C.N.Y.1951, 125 F.Supp. 318.

#### 6. Power of Congress

Congress has the power to prescribe the conditions on which an exclusive right in an author shall be enjoyed. *Wheaton v. Peters*, Pa.1834, 33 U.S. 591, 8 Pet. 591, 8 L.Ed. 1055.

Unlike owner of patent, owner of copyright is not given by statute any exclusive right to use the work, though he does have exclusive right to "print, reprint, publish, copy and vend the copyrighted work". *Time, Inc. v. Bernard Gels Associates*, D.C.N.Y.1968, 293 F.Supp. 130.

#### 7. Patent rights distinguished

A copyright of a book merely secures to author exclusive right of printing and publishing book and does not give author exclusive property of art described therein, but author, if he desire to acquire exclusive right to art recited, must attain patent therefor. *Alfred Bell & Co. v. Catalda Fine Arts*, C.A.N.Y.1951, 191 F.2d 99.

#### 8. Absolute nature of rights

Composer's copyright is absolute right to prevent others from copying his work. *Granite Music Corp. v. United Artists Corp.*, C.A.Cal.1976, 532 F.2d 718.

#### b. Exclusiveness of rights

"Literary property" is in essence a right to exclude to a greater or lesser extent, others from making some or all use of the expressed thoughts of an author. *Capital Records v. Mercury Records Corp.*, C.A.N.Y.1955, 221 F.2d 657.

Copyright is not identical with copyrighted work, but exists separately from it as intangible right to exclude all others from printing, publishing, copying or vending the work. *Lantern Press, Inc. v. American Publishers Co.*, D.C.N.Y.1976, 419 F.Supp. 1267.

Copyright proprietor has exclusive right to publish, copy and vend compositions. *Anstlin v. Steiner*, D.C.Ill.1962, 207 F.Supp. 770.

A copyright monopoly merely gives the copyright possessor the exclusive right to exploit the form of his expression. *Greenble v. Noble*, D.C.N.Y.1957, 151 F. Supp. 45.

#### 10. Separate and independent nature of rights

The printing and publishing rights, mechanical reproduction rights, and pub-

lic performance for profit rights acquired by writer of a musical composition upon compliance with former section 10 of this title were separate and independent and they could have been retained by the owner or disposed of by him to others either singly or in their entirety. *Schwartz v. Broadcast Music, Inc.*, D.C. N.Y.1050, 150 F.Supp. 322.

#### 11. Statutory nature of rights

Copyrights and the rights flowing therefrom are entirely creatures of statute. *Loew's Inc. v. Columbia Broadcasting System*, D.C.Cal.1055, 131 F.Supp. 105, affirmed 230 F.2d 532, affirmed 78 S.Ct. 607, 350 U.S. 43, 2 L.Ed.2d 583, rehearing denied 78 S.Ct. 770, 350 U.S. 934, 2 L.Ed. 2d 764. See, also, *Mura v. Columbia Broadcasting System, Inc.*, D.C.N.Y.1005, 245 F.Supp. 587; *Miller v. Goody*, D.C.N.Y.1954, 125 F.Supp. 348.

#### 12. Reproduction

Reception of radio broadcast and its translation into sound constitutes reproduction, not mere audition, of original program. *Buck v. Jewell-La Salle Realty Co.*, Mo.1031, 51 S.Ct. 410, 283 U.S. 191, 75 L.Ed. 971.

This title created a new property right giving to the author after publication the exclusive right to multiply copies for a limited period. *Callga v. Inter Ocean Newspaper Co.*, Ill.1000, 30 S.Ct. 38, 215 U.S. 182, 51 L.Ed. 150.

Statutory copyright does not give monopoly over idea or musical phrase, but merely protects against unlawful reproduction of original work. *Granite Music Corp. v. United Artists Corp.*, C.A.Cal. 1970, 532 F.2d 718.

The exclusive right to copy copyrighted architectural plans belongs to the architect, even though the plans give him no unique claim on any feature of the structure they detail. *Imperial Homes Corp. v. Lamont*, C.A.Fla.1972, 458 F.2d 805.

A copyright confers the exclusive right to copy the copyrighted work and right not to have others copy it. *Alfred Bell & Co. v. Catalda Fine Arts*, C.A.N.Y.1951, 191 F.2d 99.

A copyright in any form, whether statutory or at common law, is a monopoly consisting only in the power to prevent others from reproducing the copyrighted work. *RCA Mfg. Co. v. Whiteman*, C.C.A.N.Y.1940, 114 F.2d 80, certiorari denied 61 S.Ct. 303, 311 U.S. 712, 85 L.Ed. 403.

The exclusive right to multiply or control copies of a literary work or composi-

tion is only derived from the copyright statute of different governments. *Atlas Mfg. Co. v. Street & Smith*, Mo.1913, 201 F. 398, 122 C.C.A. 598, 47 L.R.A.,N.S., 1002, appeal dismissed 31 S.Ct. 73, 231 U.S. 345, 59 L.Ed. 202, certiorari denied 34 S.Ct. 323, 231 U.S. 755, 58 L.Ed. 408.

Reproductions of copyrighted article cannot be made without consent of creator. *Grove Press, Inc. v. Greenleaf Pub. Co.*, D.C.N.Y.1005, 247 F.Supp. 518.

A copyright grants an author the exclusive right of multiplying copies of what he has written or printed. *Richards v. Columbia Broadcasting System, Inc.*, D.C.D.C.1058, 161 F.Supp. 510. See, also, *Mazer v. Stein*, Md.1951, 74 S.Ct. 400, 347 U.S. 201, 98 L.Ed. 630, rehearing denied 74 S.Ct. 637, 347 U.S. 949, 98 L.Ed. 1000; *Independent Film Distributors, Limited v. Chesapeake Industries, Inc.*, C.A.N.Y.1059, 250 F.2d 951; *Leon v. Pacific Telephone & Telegraph Co.*, C.C.A.Cal. 1937, 91 F.2d 484; *Jeweler's Circular Pub. Co. v. Keystone Pub. Co.*, C.C.A.N.Y.1922, 281 F. 83, certiorari denied 42 S.Ct. 401, 259 U.S. 591, 60 L.Ed. 1074; *Bobbs-Merrill Co. v. Strauss*, N.Y.1900, 117 F. 15, 77 C.C.A. 607, 15 L.R.A.,N.S. 700, affirmed 28 S.Ct. 722, 210 U.S. 330, 52 L.Ed. 1080; *Munson v. New York*, C.C.N.Y.1880, 3 F. 338, reversed on other grounds 8 S.Ct. 622, 124 U.S. 601, 31 L.Ed. 586; *Dorran v. Sunset House Distributing Corp.*, D.C.Cal.1961, 197 F.Supp. 940, affirmed 304 F.2d 251; *Lawrence v. Dunn*, C.C.Mass.1809, Fed. Cas.No.8,130.

Copyright proprietor's right is limited to right to make or use copies of protected material, and such protection is absolute and copyrighted art under protection of valid copyright cannot be copied for any purpose without consent of proprietor. *Stein v. Rosenthal*, D.C.Cal.1952, 103 F.Supp. 227, affirmed 205 F.2d 633.

#### 13. Creation of other works

A copyright owner's sole liberty of printing, publishing and vending copyrighted work means liberty to make use of corporeal object by means of which author expressed himself, not the sole liberty to create other works, though identical, especially works on same period in history. *Oxford Book Co. v. College Entrance Book Co.*, C.C.A.N.Y.1938, 98 F.2d 688.

#### 14. Preparation of derivative copies

A manufacturer of a phonograph record comprising poem set to music was not making another "version" of the poem within former section 1(5) of this title.

*Corcoran v. Montgomery Ward & Co.*, C.C.A.Cal.1941, 121 F.2d 572, certiorari denied 62 S.Ct. 300, 314 U.S. 687, 80 L.Ed. 550.

Memoranda sheets prepared by a teacher for the use of his students from a copyrighted work constituted "copies" or "other versions" of the work and an infringement. *Macmillan Co. v. King*, D.C. Mass.1914, 223 F. 862.

A book containing a brief résumé of the plot of certain copyrighted operas was not "any other version thereof" within the meaning of former section 1 of this title so as to constitute an infringement of the copyrighted work. *Ricordi v. Mason*, N.Y.1913, 210 F. 277, 125 C.C.A. 125.

Act Mar. 3, 1891, c. 505, 26 Stat. 1107 which amended R.S. § 4952, made the exclusive right of authors and their assigns to dramatize and translate any of their copyrighted works a part of the copyright itself. *Atlas Mfg. Co. v. Street & Smith*, Mo.1913, 204 F. 308, 122 C.C.A. 598, 47 L.R.A.,N.S., 1002, certiorari denied 7 S.Ct. 323, 231 U.S. 755, 58 L.Ed. 408, petition denied 34 S.Ct. 602, 232 U.S. 721, 5 L.Ed. 815.

Exclusive right of copyright owner of musical composition to make a version and arrangement, is limited to printing, reprinting, etc., and does not include the right to mechanical reproduction which distinct from such right to print, etc. and also from the right to publicly perform for profit. *Edward B. Marks Mus. Corp. v. Foulton*, D.C.N.Y.1948, 70 F.Supp. 604, affirmed 171 F.2d 905.

#### 15. Sale or other transfer of ownership

Under former section 1 of this title which gave copyright owner the exclusive right to "print, reprint . . . copy and vend" his work, addition of "vend" did not enlarge scope of the copyright as to protect owner of copyright on performance from sale of phonograph records embodying the poem as set to music. *Corcoran v. Montgomery Ward & Co.*, C.C.A.Cal. 1941, 121 F.2d 572, certiorari denied 62 S.Ct. 300, 314 U.S. 687, 80 L.Ed. 550.

The copyright holder had the exclusive right to sell his copyrighted work. *Legrini v. Allegrini*, D.C.Pa.1924, 2 F. 610.

Each author or proprietor of a poem may acquire by copyright the sole liberty of copying and vending the same. *Le Dejeune & Co. v. Breiker, etc., Co.*, 1911, 101 F. 35, 111 C.C.A. 567, affirmed S.Ct. 0, 235 U.S. 33, 50 L.Ed. 113.

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with, Mo.1913, 294  
L.R.A.,N.S., 1002,  
t. 73, 231 U.S. 318,  
denied 34 S.Ct.  
468.

opyrighted article  
consent of crea-  
Greenleaf Pub.  
upp. 518.

n author the ex-  
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e printed. Rich-  
densting System,  
Supp. 516. See  
1051, 74 S.Ct. 460,  
30, rehearing de-  
S. 919, 98 L.Ed.  
lm Distributors.  
Industries, Inc.  
t; Leon v. Pacifi-  
h Co., C.C.A.Cal.  
r's Circular Pub.  
b., C.C.A.N.Y.1922,  
ded 42 S.Ct. 404,  
1; Hobbs-Merrill  
117 F. 15, 77 C.C.  
0, affirmed 25 S.  
Ed. 1080; Mun-  
Y.1880, 3 F. 335,  
s 8 S.Ct. 622, 124  
Doran v. Sunset  
p., D.C.Cal.1901,  
ed 304 F.2d 231;  
Mass.1869, Fed.

right is limited  
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scent of proprie-  
D.C.Cal.1952, 163  
F.2d 633.

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ty to make use  
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t, not the sole  
works, though  
s on same prin-  
book Co. v. Col-  
C.C.A.N.Y.1938.

live copies  
onograph record  
music was not  
of the poem  
b) of this title.

Corcoran v. Montgomery Ward & Co., C.  
C.A.Cal.1941, 121 F.2d 572, certiorari de-  
ned 62 S.Ct. 300, 314 U.S. 687, 80 L.Ed.  
30.

Memoranda sheets prepared by a teach-  
er for the use of his students from a  
copyrighted work constituted "copies" or  
"other versions" of the work and an in-  
fringement. Macmillan Co. v. King, D.C.  
Mass.1914, 223 F. 802.

A book containing a brief résumé of  
the plot of certain copyrighted operas  
was not "any other version thereof"  
within the meaning of former section 1  
of this title so as to constitute an in-  
fringement of the copyrighted work. Ri-  
cardi v. Mason, N.Y.1913, 210 F. 277, 127  
C.C.A. 125.

Act Mar. 3, 1801, c. 565, 20 Stat. 1107,  
which amended R.S. § 4952, made the ex-  
clusive right of authors and their assigns  
to dramatize and translate any of their  
copyrighted works a part of the copy-  
right itself. Atlas Mfg. Co. v. Street &  
Smith, Mo.1913, 201 F. 398, 122 C.C.A. 508,  
67 L.R.A.,N.S., 1002, certiorari denied 34  
S.Ct. 323, 231 U.S. 755, 58 L.Ed. 468, peti-  
tion denied 34 S.Ct. 602, 222 U.S. 724, 58  
L.Ed. 815.

Exclusive right of copyright owner of a  
musical composition to make a version  
and arrangement, is limited to printing,  
reprinting, etc., and does not include the  
right to mechanical reproduction which is  
distinct from such right to print, etc.,  
and also from the right to publicly per-  
form for profit. Edward B. Marks Music  
Corp. v. Foulton, D.C.N.Y.1948, 70 F.Supp.  
69, affirmed 171 F.2d 905.

15. Sale or other transfer of ownership  
Under former section 1 of this title,  
which gave copyright owner the exclusive  
right to "print, reprint . . . copy  
and vend" his work, addition of "vend"  
did not enlarge scope of the copyright so  
as to protect owner of copyright on poem  
from sale of phonograph records embody-  
ing the poem as set to music. Corcoran  
v. Montgomery Ward & Co., C.C.A.Cal.  
241, 121 F.2d 572, certiorari denied 62 S.  
Ct. 300, 314 U.S. 687, 80 L.Ed. 550.

The copyright holder had the exclusive  
right to sell his copyrighted work. Pe-  
trivani v. Allegrini, D.C.Pa.1924, 2 F.2d  
60.

Each author or proprietor of a painting  
may acquire by copyright the sole liberty  
of copying and vending the same. Louis  
Fajzage & Co. v. Brenker, etc., Co., Pa.  
211, 191 F. 35, 111 C.C.A. 567, affirmed 35  
S.Ct. 6, 235 U.S. 33, 59 L.Ed. 113.

Selling to subscribers only, and not  
generally to dealers, was protected by  
this title. Henry Hill Pub. Co. v.  
Smythe, C.C.Ohio 1880, 27 F. 914.

This title includes right to vend and  
publish as protected right, as complement  
to preservation of right to copy. Blazon,  
Inc. v. Deluxe Game Corp., D.C.N.Y.1905,  
208 F.Supp. 416.

Exclusive right to vend copyrighted  
material resides in owner of copyrights.  
Shapiro, Bernstein & Co. v. Bleeker, D.C.  
Cal.1905, 243 F.Supp. 999.

Former section 1 of this title gave per-  
son owning copyright not only exclusive  
right to copy but also to vend the copy-  
righted work. Shapiro, Bernstein & Co.  
v. Bleeker, D.C.Cal.1903, 224 F.Supp. 595.

Grant of an exclusive copyright confers  
on holder an exclusive right to vend  
copyrighted work and implies prohibition  
of unauthorized sales. Platt & Munk Co.  
v. Playmore, Inc., D.C.N.Y.1902, 218 F.  
Supp. 207.

A mere offer to sell an infringing book,  
without more, did not constitute a "vend-  
ing" within meaning of former section 1  
of this title. Greenble v. Noble, D.C.N.  
Y.1957, 151 F.Supp. 45.

A "copyright" embraces the right of  
one to make copies of a literary work  
and to publish and vend the work to the  
exclusion of others. Brunner v. Stix,  
Baer & Fuller Co., 1944, 151 S.W.2d 643,  
352 Mo. 1225.

#### 16. Lease

The legal effect of a "copyright" is to  
create in the owner an exclusive property  
right with the incidental power to lease  
or license the use thereof by others on  
stipulated terms. Westway Theatre v.  
Twentieth Century-Fox Film Corporation,  
D.C.Md.1910, 30 F.Supp. 830, affirmed 113  
F.2d 932.

#### 17. Public performance—Generally

Singers and actors have an exclusive  
right in their art and may prohibit an  
unauthorized public performance of re-  
productions thereof. Waring v. Dunlap,  
D.C.N.C.1930, 24 F.Supp. 338.

#### 18. — Literary works

Producing the words of a narrative  
poem in combination with music was not  
a "dramatization" of the poem, and hence  
did not infringe author's copyright. Cor-  
coran v. Montgomery Ward & Co., C.C.A.  
Cal.1941, 121 F.2d 572, certiorari denied 62  
S.Ct. 300, 314 U.S. 687, 80 L.Ed. 550.

Doggerel verse entitled "Pig'n Bull" which described a cowboy's attempt to brand a maverick bull, having action in plenty but lacking dialogue and perceptible plot, was a "narrative poem" and not a "dramatic work" within former section 1 of this title. *Id.*

Right to dramatize book was a part of existing copyright under R.S. § 4052, as amended by Act Mar. 3, 1891, § 1, 20 Stat. 1190. *Stephens v. Howells Sales Co.*, D. C.N.Y.1920, 16 F.2d 805.

An exclusive right to dramatize a novel "for presentation on the stage" meant an exclusive right to dramatize a spoken play and did not comprehend the independent right to dramatize the novel for a moving picture play. *Klein v. Beach*, D.C.N.Y.1910, 232 F. 210, affirmed 230 F. 108, 151 C.C.A. 282.

Under former section 5 of this title the rights to dramatize a novel in the usual form and in the form of a motion picture play were separable, and there could be a copyright for each dramatization. *Photo-Drama Motion Picture Co. v. Social Uplift Film Corporation*, N.Y.1915, 220 F. 418, 137 C.C.A. 42.

The filling of the title of a magazine for copyright and the insertion of the proper notice secured a copyright of a story published therein and protected the right to dramatize the same where the publisher was the owner of both the story and the dramatic rights. *Dam v. Kirk La Shelle Co.*, N.Y.1910, 175 F. 902, 90 C.C.A. 392, 20 Ann.Cas. 1173, 41 L.R.A., N.S., 1002.

Copyright owner of book has right to produce the book in dramatic form and can sue to enjoin an infringing play even if he is not at that time producing a play or, if he is producing a play, without showing that the infringing play will injure his play. *Douglas Intern. Corp. v. Baker*, D.C.N.Y.1971, 335 F.Supp. 282.

Copyright owner's exclusive right to dramatize a nondramatic work includes monopoly in presentation of such work in dramatic form on radio broadcast. *Warner Bros. Pictures v. Columbia Broadcasting System*, D.C.Cal.1951, 102 F.Supp. 141, affirmed in part reversed in part on other grounds 216 F.2d 915, certiorari denied 75 S.Ct. 532, 318 U.S. 971, 60 L.Ed.2d 750.

An author has the exclusive right to dramatize his works. *Gillette v. Stoll Film Co.*, 1922, 200 N.Y.S. 787, 170 Misc. 850.

## 10. — Musical works

Those who listen to radio broadcast of a copyrighted musical composition do not "perform" the composition. *Twentieth Century Music Corp. v. Alken*, Pa.1975, 95 S.Ct. 2010, 422 U.S. 151, 45 L.Ed.2d 81.

The radio reception of broadcast of copyrighted musical compositions did not constitute a "performance" of the copyrighted songs and restaurant owner, who presented music to his customers by the use of a radio set to which were connected loudspeakers located in the restaurant ceiling, did not infringe copyright holders' exclusive right, under former section 1 of this title, to perform the copyrighted work publicly for profit. *Twentieth Century Music Corp. v. Alken*, Pa.1975, 95 S. Ct. 654, 410 U.S. 1007, 42 L.Ed.2d 663.

Acts of hotel proprietor in making available to guests, through radio receiving set and loud speakers, hearing of copyrighted musical composition, constituted "performance". *Buck v. Jewell-La Salle Realty Co.*, Mo.1931, 51 S.Ct. 410, 281 U.S. 191, 75 L.Ed. 971.

That no detailed choice of selections was given hotel proprietor operating radio receiving set and loud speakers did not prevent rendition of copyrighted music from constituting "performance". *Id.*

Single rendition of musical selection may result in several public "performances", and novelty of means of performance does not lessen duty of courts to protect copyright monopoly. *Id.*

Defendants concert, in which story line of rock opera was preserved by performing 20 of 23 selections from the opera in identical sequence as in copyrighted opera, with one exception, and in which singers entered and exited, maintained specific roles, and occasionally gestured, was a "dramatic" performance, even though there was no scenery, costumes or intervening dialogue, and plaintiff, who owned the rights for stage productions and dramatic presentations, was entitled to have defendants preliminarily enjoined from performing the songs in sequence, from using costumes, scenery or intervening dialogue, and from referring to the opera in their advertising. *Robert Stigwood Group Limited v. Sperber*, C.A.N. Y.1972, 457 F.2d 50.

The song, "Kiss Me Again", was no a dramatic composition as it stands, though former section 1 of this title gave the copyright owner the right to dramatize a nondramatic work. *Wiltmark v. Pastime Amusement Co.*, D.C.S.C.1921, 235 F. 470, affirmed 2 F.2d 1020.

The right of public performance connection with copyrighted musical compositions includes separate and rights, among others the right of action, motion picture rights, rights, recording rights, and radio-duction rights. *Remick Music Co. Interstate Hotel Co. of Neb.*, 1 1914, 58 F.Supp. 523, affirmed 17 744, certiorari denied 67 S.Ct. 622, S. 809, 91 L.Ed. 691, rehearing de S.Ct. 700, 330 U.S. 854, 91 L.Ed. 125 also, *Buck v. Swanson*, D.C.Neb. F.Supp. 377, reversed on other grounds S.Ct. 609, 313 U.S. 406, 85 L.Ed. 1 A.L.R. 1431.

That musical compositions were copyrighted and published as individual titles, and that units out of musical were copyrighted and published separately from the copyrights of the shows of which they were parts, permit them to be performed publicly without the license or consent of copyright owners. *Remick Music Co. v. Interstate Hotel Co. of Neb.*, 1 1914, 58 F.Supp. 523, affirmed 17 744, certiorari denied 67 S.Ct. 622, S. 809, 91 L.Ed. 691, rehearing de S.Ct. 700, 330 U.S. 854, 91 L.Ed. 1290.

A radio station was not free to copyrighted musical composition because it was taken from a phonograph record. *Associated Music Publishers Memorial Radio Fund*, D.C.N. 46 F.Supp. 829, affirmed 141 F.2d certiorari denied 65 S.Ct. 120, 323 U. S. 9 L.Ed. 613.

Copyright owner may exclude others from performing musical compositions publicly for profit. *Buck v. Hill Country Club*, D.C.Iowa 1937, 17 613.

Former section 1 of this title gave the copyright proprietor the right to perform copyrighted musical compositions in public for profit. *Robbins Music Corporation*, 1912, 8,2d 337.

## 10. — Dramatic works

Under former section 1 of this title which gave the holder of a copyright an exclusive right to perform or to cause the copyrighted work to be performed publicly for profit, if the author, and gave the exclusive right to perform the copyrighted work publicly for profit if it was a musical composition, the holder of the copyright of a dramatic work and those claiming under him, had an exclusive right to present it publicly. *Green v. Luby*, C.C.N.Y.1909, 177

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51 S.Ct. 410, 70

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the right of public performance in  
connection with copyrighted musical com-  
positions includes separate and distinct  
rights among others the right of publi-  
cizing, motion picture rights, stage  
rights, recording rights, and radio repro-  
duction rights. Remick Music Corp. v.  
Interstate Hotel Co. of Neb., D.C.Neb.,  
55 F.Supp. 523, affirmed 157 F.2d  
729, 330 U.S. 554, 91 L.Ed. 1290. See,  
Buck v. Swanson, D.C.Neb.1939, 33  
F.Supp. 377, reversed on other grounds 61  
U.S. 929, 313 U.S. 406, 85 L.Ed. 1426, 136  
S.Ct. 1431.

That musical compositions were copy-  
righted and published as individual enti-  
ties and that units out of musical shows  
were copyrighted and published separate-  
ly from the copyrights of the entire  
shows of which they were parts, did not  
prevent them to be performed publicly for  
profit without the license or consent of  
the copyright owners. Remick Music Corp.  
v. Interstate Hotel Co. of Neb., D.C.Neb.,  
55 F.Supp. 523, affirmed 157 F.2d  
729, 330 U.S. 554, 91 L.Ed. 1290.

A radio station was not free to use a  
copyrighted musical composition merely  
because it was taken from a phonograph  
recording. Associated Music Publishers v.  
The Memorial Radio Fund, D.C.N.Y.1942,  
11 F.Supp. 829, affirmed 141 F.2d 852, cer-  
tiorari denied 65 S.Ct. 129, 323 U.S. 766,  
11 L.Ed. 613.

Copyright owner may exclude all oth-  
ers from performing musical composition  
publicly for profit. Buck v. Hillsgrove  
Country Club, D.C.Iowa 1937, 17 F.Supp.  
142.

Former section 1 of this title gave to  
the copyright proprietor the exclusive  
right to perform copyrighted musical  
compositions in public for profit. Gay v.  
Remick Music Corporation, 1942, 38 N.Y.  
2d 371.

#### — Dramatic works

Former section 1 of this title  
gave the holder of a copyright the  
exclusive right to perform or represent  
the copyrighted work publicly if a dra-  
matic work gave the exclusive right to per-  
form the copyrighted work publicly for  
profit if it was a musical composition,  
or if it was a musical composition,  
the holder of the copyright of a song  
constituting a part of a dramatic sketch,  
and those claiming under him, had the  
exclusive right to present it publicly.  
Witmark v. Luby, C.C.N.Y.1909, 177 F. 287.

This title secures to an author the ex-  
clusive right to dramatize which includes  
the right to produce the drama as a spo-  
ken play or as a picture play. Underhill  
v. Schenck, 1021, 18" N.Y.S. 589, 114 Misc.  
520.

The representation of a dramatic work,  
which has never been printed nor copy-  
righted, if made without license of the  
proprietor, is a violation of his right,  
and may be restrained by injunction, al-  
though such representation is from a  
copy obtained by a spectator attending a  
public representation by the proprietor  
for money, and afterwards writing it  
from memory. Tompkins v. Halleck,  
1882, 133 Mass. 32, 43 Am.Rep. 480.

#### 21. — Motion pictures and other au- diovisual works

Importation of "distant signals" from  
one community into another does not  
constitute a "performance" under this ti-  
tle; thus, a community antenna televi-  
sion system does not lose its status as a  
nonbroadcaster and thus a non "per-  
former" for copyright purposes when the  
signals it carries are those from distant  
rather than local sources. Teleprompter  
Corp. v. Columbia Broadcasting System,  
Inc., N.Y.1974, 51 S.Ct. 1129, 415 U.S. 394,  
30 L.Ed.2d 415.

One who manually or by human agency  
merely actuated electrical instrumentall-  
ties, whereby inaudible elements that  
were omnipresent in air were made aud-  
ible to persons who were within hearing,  
did not "perform" within meaning of  
former section 1 of this title. Fortnightly  
Corp. v. United Artists Television,  
Inc., N.Y.1968, 88 S.Ct. 2031, 392 U.S. 390,  
20 L.Ed.2d 1170, rehearing denied 89 S.Ct.  
65, 393 U.S. 902, 21 L.Ed.2d 199.

Defendant, which by community anten-  
na television systems received, repro-  
duced, and transmitted by cables to pay-  
ing subscribers television programs re-  
ceived from television stations, which had  
licenses from plaintiff to telecast copy-  
righted moving pictures, did not "per-  
form", within purview of former section  
1(e) and (g) of this title copyrighted mo-  
tion pictures. Id.

Under former section 1 of this title,  
the owners of copyright of motion pic-  
ture film acquire the right to exhibit the  
picture and to grant an exclusive or re-  
strictive license to others to exhibit it.  
Interstate Circuit v. U. S., Tex.1939, 59  
S.Ct. 467, 306 U.S. 208, 83 L.Ed. 610.

Relay importation of distant signals  
did not constitute "performance" for pur-  
poses of determining infringement under  
former section 1 of this title. Twentieth

## Notes 21

Century Music Corp. v. Alken, C.A.Pa. 1974, 500 F.2d 127, affirmed 65 S.Ct. 2040, 422 U.S. 151, 45 L.Ed.2d 64.

Motion picture photoplay was a "dramatic work" within former section 1(d) of this title. Universal Pictures Co. v. Harold Lloyd Corp., C.C.A.Cal.1947, 162 F.2d 354.

Copyright of motion picture photoplay gave monopoly of remake rights to owner of copyright. *Id.*

The copyright of a dramatization covers a photoplay presentation of the same subject. *U. S. v. Motion Picture Patents Co.*, D.C.Pa.1915, 225 F. 800, appeal dismissed 38 S.Ct. 578, 247 U.S. 524, 62 L.Ed. 1248.

Moving picture rights are rights to form of dramatization. *G. Ricordi & Co. v. Paramount Pictures*, D.C.N.Y.1950, 92 F.Supp. 537, modified on other grounds 150 F.2d 400, certiorari denied 72 S.Ct. 77, 342 U.S. 810, 90 L.Ed. 641.

Term "motion picture rights" means silent, sound, talking and all motion picture rights of every type and nature. *Id.*

Moving picture "shorts," consisting of comedy material with meager plot, used to fill in between longer features, were within this title so as to render unauthorized use of such "shorts" infringement, since reduction even of meager plot to motion picture was "dramatization". *Vitaphone Corporation v. Hutchinson Amusement Co.*, D.C.Mass.1937, 10 F.Supp. 359, remanded on other grounds 93 F.2d 170, mandate conformed to 28 F.Supp. 520.

## 22. Public display

An exhibition of a series of photographs of persons and things, arranged on films as moving pictures and so depicting the principal scenes of an author's work as to tell the story, is a dramatization of such work, and the person producing the films and offering them for sale for exhibitions, even if not himself exhibiting them, infringes the

copyright of the author. *Kalem Co. v. Harper Bros.*, N.Y.1911, 32 S.Ct. 20, 222 U.S. 55, 56 L.Ed. 02, Ann.Cas.1013A, 1285.

## 23. Antitrust violations

Where motion picture film exhibitor by force of its monopoly of "first-run theaters" in principal cities of Texas and threat to use its monopoly position against owner of copyright of motion picture film induced the owner to impose restrictions regarding admission price and against double feature programs, on subsequent-run exhibitors, the copyright owner's protection under former section 1 of this title did not relieve the contract from illegality under section 1 of Title 15. *Interstate Circuit v. U. S.*, Tex.1930, 50 S.Ct. 407, 300 U.S. 208, 83 L.Ed. 610.

Owners may not use their copyrights to deter competition or to extend monopoly or to break down competition in other areas. *Lawlor v. National Screen Service Corp.*, C.A.Pa.1950, 270 F.2d 140, certiorari denied 80 S.Ct. 670, 302 U.S. 922, 4 L.Ed.2d 742.

The rights acquired by publishers of copyrighted books under this title did not justify them in combining and agreeing that no member of the association should sell any books to a blacklisted purchaser who was known to cut prices. *Mines v. Scribner*, C.C.N.Y.1900, 147 F. 927.

Owners of a number of copyrighted works may not combine their copyrights by agreement or arrangement, even for purpose of preserving property rights. *Aiken-Rochelle, Inc. v. American Society of Composers, Authors and Publishers*, D.C.N.Y.1948, 80 F.Supp. 888.

Necessities or conveniences of patentee or copyright owner do not justify use of the monopoly of the patent or copyright to create another monopoly. *Id.*

This title does not grant to copyright owners the privilege of combining in violation of otherwise valid state or federal laws. *Alfred Bell & Co. v. Catalda Fine Arts*, D.C.N.Y.1947, 74 F.Supp. 973.

## § 107. Limitations on exclusive rights: Fair use

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

use made of a work in any particular case shall include—

(1) the purpose and character of the use, such as whether the use is of a commercial nature or for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion copied in relation to the copyrighted work as a whole;

(4) the effect of the use upon the market for or value of the copyrighted work.

Pub.L. 94-553, Title I, § 101, Oct. 19

## Historic

Notes of Committee on the Judiciary, House Report No. 94-1476. General Background of the Problem. The judicial doctrine of fair use, one of the most important and well-established limitations on the exclusive right of copyright owners, would be given express statutory recognition for the first time in section 107 [this section]. The claim that a defendant's acts constituted a fair use rather than an infringement has been raised as a defense in innumerable copyright actions over the years, and there is ample case law recognizing the existence of the doctrine and applying it. The examples enumerated at page 21 of the Register's 1961 Report, while by no means exhaustive, give some idea of the sort of activities the courts might regard as fair use under the circumstances: "quotation of excerpts in a review or criticism for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author's observations; use in a parody of some of the content of the work parodied; summary of an address or article, with brief quotations in a news report; reproduction by a library of a portion of a work to replace part of a damaged copy; reproduction by a teacher or student of a small part of a work to illustrate a lesson; reproduction of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a news reel or broadcast, of a work located at the scene of an event being reported."

Although the courts have considered and ruled upon the fair use doctrine over and over again, no real definition of the concept has ever emerged. Indeed, since the doctrine is an equitable rule of reason, no generally applicable definition

Introduced: 1/20/83  
Referred: State Affairs and  
Finance

BY BETTISWORTH, CATO,  
PHILLIPS AND FLOOD

1 IN THE HOUSE

2 HOUSE CONCURRENT RESOLUTION NO. 9

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 Calling for erection of a suitable  
6 memorial to honor veterans of all wars  
7 involving the United States on the site  
8 presently occupied by "Nimbus".

9 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 WHEREAS military personnel who served in wars involving the United  
11 States should be honored in Alaska; and

12 WHEREAS military personnel who served at least 180 days active duty  
13 with a United States military organization during time of war, or were  
14 discharged sooner as a result of illness or injury in service in a war in  
15 which the United States participated, deserve special recognition; and

16 WHEREAS a memorial to honor these persons would be appropriately  
17 visible to the public if placed by the State Court and Office Building in  
18 Juneau, Alaska; and

19 WHEREAS the sculpture "Nimbus", currently located on the grounds of  
20 the State Court and Office Building in Juneau, could be located elsewhere;  
21 and

22 WHEREAS moving the sculpture "Nimbus" and constructing a memorial to  
23 military personnel could be financed through public contributions;

24 BE IT RESOLVED by the Alaska State Legislature that the sculpture  
25 "Nimbus" should be removed from the grounds of the State Court and Office  
26 Building in Juneau and be replaced with a suitable memorial honoring mili-  
27 tary personnel who served 180 days or more active duty with a United States  
28 military organization during time of war or were discharged sooner as a  
29 result of illness or injury in service in a war in which the United States

1 participated; and be it

2       FURTHER RESOLVED that this project be financed through public contri-

3 butions.

COMMITTEE REPORT  
HOUSE

(11)

FURTHER:

5/14/83

Date: 5/25/83

Mr. Speaker:

The Committee on FINANCE has had HCR 10

Relating to access to Whittier, Alaska.

under consideration and reports it back as follows:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HCR 10 (TRSP)  same title  
 new title
- and recommends do pass
- AND attaches a "Letter of Intent"  New Fiscal Note  
 Zero Fiscal Note Attached
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

*Sam Pestinger*  
*Tom Duncan*  
*Gene Kelly*  
*William Smith*  
*Jack T. Smith*  
*Ben Anderson*  
*Gerry Martin*  
*Celbert B. Adams*  
*R. B. Bennett*

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Celbert B. Adams*  
 CHAIRMAN

Offered: 5/14/83  
Referred: Finance

Original sponsors: Fritz, Szymanski,  
Barnes and Liska

1 IN THE HOUSE BY THE TRANSPORTATION COMMITTEE  
2 CS FOR HOUSE CONCURRENT RESOLUTION NO. 10 (Transportation)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 Relating to access to Whittier, Alaska.

6 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

7 WHEREAS there are a number of places along the railbed of the Alaska  
8 Railroad that are paved for temporary use by automobiles when snowslides  
9 cover the Seward Highway, making it impassable; and

10 WHEREAS a significant number of people seek access to Whittier,  
11 Alaska, and access is limited to service on the Alaska Railroad; and

12 WHEREAS the railroad service to and from Whittier is inadequate or  
13 inconvenient and a significant number of people would prefer to drive to  
14 and from Whittier; and

15 WHEREAS highway development to Whittier would create greater recre-  
16 ational opportunities for Southcentral Alaska and provide access to beauti-  
17 ful Prince William Sound thereby adding another important tourism attrac-  
18 tion base as well as access to future harbor facilities;

19 BE IT RESOLVED by the Alaska State Legislature that the Governor is  
20 respectfully requested to direct the Department of Transportation and  
21 Public Facilities to complete as soon as possible in consultation with the  
22 Alaska Railroad a preliminary design for one-way motor traffic facilities  
23 through Whittier tunnels and, if needed, ventilation, lighting and other  
24 improvements such as traffic control systems; and to provide the legisla-  
25 ture with construction cost estimates and projected costs per passenger  
26 based on anticipated traffic volume.

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS HCR 10 (Transpo)  
 Title Relating to access to Whittier  
 Requested by House Finance Committee Date 5/25/83

II. FISCAL DETAIL

Agency Affected DOTPF  
 Program Category Affected \_\_\_\_\_  
 BRU, Program, Or Subprogram(s) Affected \_\_\_\_\_  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		250.0				

FUNDING (Thousands of Dollars)

GENERAL FUND		250.0				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This funding is to be provided as a capital project so that the money does not lapse at the end of the fiscal year. It is the intent of the House Finance Committee that DOTPF utilize any leftover funding from a project entitled "Whittier Access Road, Portage to Bear Valley" (Ch. 101, SLA 82, page 73, line 21) before this \$250.0 is spent on this project. As of this date, there is \$490,950 left in that account with an undetermined amount of that unexpended portion needed to complete the Portage to Bear Valley project.

IV. DATE 5/25/83 PREPARED BY Al Adams, Chair  
 AGENCY House Finance Committee  
 Original: Legislative Finance PHONE 465-3706  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

The following individuals are expected to testify on CS  
HCR 10 (Transpo):

Representative Mike Szymanski will testify on behalf of  
Representative Milo Fritz, prime sponsor

A representative of DOT/PF

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS HCR 10 (Transpo)  
 Title Relating to access to Whittier  
 Requested by House Finance Committee Date 5/25/83

II. FISCAL DETAIL

Agency Affected DOTPF  
 Program Category Affected \_\_\_\_\_  
 BRU, Program, Or Subprogram(s) Affected \_\_\_\_\_

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		250.0				

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		250.0				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This funding is to be provided as a capital project so that the money does not lapse at the end of the fiscal year. It is the intent of the House Finance Committee that DOTPF utilize any leftover funding from a project entitled "Whittier Access Road, Portage to Bear Valley" (Ch. 101, SLA 82, page 73, line 21) before this \$250.0 is spent on this project. As of this date, there is \$490,950 left in that account with an undetermined amount of that unexpended portion needed to complete the Portage to Bear Valley project.

IV. DATE 5/25/83 PREPARED BY Al Adams, Chair  
 AGENCY House Finance Committee

Original: Legislative Finance. PHONE 465-3706  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

for Transportation CS, as well

STATE OF ALASKA  
FISCAL NOTE

Revision Date April 20, 1983

I. REQUEST

Bill/Resolution No.: HCR #10  
 Title: Relating to Access to Whittier, AK  
 Sponsor: Fritz, Szymanski and Barnes  
 Requestor: \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected: DOT&PF  
 Program Category Affected: \_\_\_\_\_  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL OPERATING						
CAPITAL	-0-	250.0	-0-	-0-		
REVENUE	-0-	-0-	-0-	-0-		

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	250.0	-0-	-0-		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL TIME						
PART TIME						
TEMPORARY						

II. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Funding source has not been identified

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared by: William W. Snell, Director Phone: 266-1440  
 Division: Planning & Programming Date: 4/20/83  
 Approved by Commissioner: David W. Haugen Date: 4/20/83  
 Department: Deputy Commissioner, Central Region

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

ASSUMPTIONS:

1. Cost of preparing the existing tunnel for:

One Way Joint Use: Whittier Transportation Options Study estimate of \$36,678,000 (p.69) inflated to construction year equals \$77,220,000 assuming 42 month design period and construction beginning in the summer of 1987.

Two Way Joint Use: Whittier Transportation Options Study estimate of \$64,344,000 (p.69) inflated to construction year equals \$135,300,000 assuming 42 month design period and construction beginning in the summer of 1987.

42 months is necessary to complete the process shown on the attached flow chart.

2. Attached are excerpts from the Whittier Transportation Options Study relating to the various tunnel options. A new feasibility study to examine one way joint use, two way joint use, and a new automobile tunnel would cost approximately \$250,000. Due to the lead time needed for design of this project and the progress in transferring the ARR to the State, it would be more appropriate to begin negotiations at a later stage of the design process.

# STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION  
and PUBLIC FACILITIES

Bill Sheffield, Governor  
RECEIVED  
MAR 24 1983

4111 AVIATION BLVD, POUCH 6900  
ANCHORAGE, ALASKA (TELEX 25-186)

March 21, 1983

The Honorable Mitch Abood  
Representative  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Representative Abood:

The following is in response to your recent request regarding Whittier Access.

Attached are xerox copies of the section of the Executive Summary of the Whittier Transportation Options Study (WTOS) which outlines the Alternatives which were considered and the conclusions reached.

The WTOS included an effort to estimate demand for facilities which would increase access to Whittier as well as to assess the technical feasibility of such facilities. In that effort it was assumed that demand resulted from full development of Whittier according to the City comprehensive plan in existence at that time as well as an existing Shotgun Cove Road and Small Boat Harbor. Based on these assumptions and comments received from the public and other interested agencies, the demand to be expected was forecast. In consideration of the extensive technical analysis of the various options coupled with the demand forecast, Alternative 1A was recommended as a short-term solution and Alternative 1 was recommended as a medium to long-term solution. Now that time has provided perspective on the factors underlying the demand forecast, it is appropriate to update and further refine those underlying assumptions. Similarly, it is also an appropriate time to refine the engineering assumptions in light of any new technology which has become available in the interim.

Alternative 1A was developed as a short-term improvement to provide an increase in capacity and convenience until traffic increased significantly in response to full development of the Whittier area. Four trips between Portage and Whittier would be scheduled instead of the existing three. Minor track modifications would facilitate more efficient operations and reduce loading time. An additional two trips daily could be scheduled by basing the shuttle train in Whittier instead of Anchorage, for a total of six trips daily, and bus service would be provided between Portage and Anchorage. Selection of this alternative would not preclude selection of a different alternative at a future date.

Alternative 1A includes the following:

- 1) Ramp and track modifications and improvements and passenger stations at Whittier and Portage. These improvements would facilitate more efficient operations, at a cost of \$854,000 (1983 dollars).

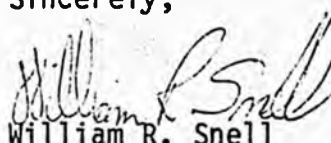
March 21, 1983

- 2) Additional rolling stock and equipment, at a total cost of \$1,464,000 (1983 dollars).
- 3) If the Alternative 1A improvements are used for a longer period (10-20 years), significant tunnel repair work will be needed, at a total cost of about \$10.0 million (1983 dollars). This work would also be required for any other rail-based alternative, including joint rail auto use of the tunnel and to facilitate continued use of the tunnel by the Alaska Railroad. Therefore, expenditures for tunnel improvements would not be "wasted" if an additional "long-term solution" alternative using the existing tunnel is implemented at a future date.

The Department will be looking at the feasibility of converting the existing railroad tunnel into a vehicular tunnel. This would allow an increase in access to Whittier and Prince William Sound. A study to determine the feasibility will begin this spring and there should be sufficient information available on such a proposal of paving the tunnel for vehicular travel by the next legislative session. Once this information is available, a copy will be sent to you.

If our office can be of further assistance please call.

Sincerely,



William R. Snell  
Acting Deputy Commissioner  
Central Region

Attachments

**FINAL REPORT**  
**System Alternatives & Recommendations**

# **WHITTIER TRANSPORTATION OPTIONS STUDY**

**PREPARED FOR**  
**STATE OF ALASKA**  
**DEPARTMENT**  
**OF TRANSPORTATION**  
**AND PUBLIC FACILITIES**  
**ANCHORAGE, ALASKA 99502**

**MARCH 1981**

**DMJM**

**420 L STREET/SUITE 406/ANCHORAGE,ALASKA 99501 807/274-1554**  
**3250 WILSHIRE BOULEVARD/LOS ANGELES,CALIFORNIA 90010 213/381-3663**

#### IV. TRANSPORTATION ALTERNATIVES, COMPARISONS AND EVALUATION

This chapter describes options applicable to Whittier access and discusses them from several standpoints including feasibility, construction costs, operating costs, convenience of users, safety, short and long term benefits to users, land owners, developers, etc. The options are based on current railroad technology and highway vehicles in various combinations. It is presumed that any selected alternative will require soils investigations, title searches, Environmental Impact Statements and Federal, State and Municipal reviews and approvals prior to engineering, design and construction. These items therefore are not developed further in this section. This discussion is concluded by a summary matrix which compares the features of each alternative.

##### Null Alternative

This is the existing system and is included only for use as a basis for comparison with alternatives that would improve access to and from Whittier. Under this alternative, Whittier residents will continue to be relatively isolated and will continue to compete with visitor and ferry traffic in and out of Whittier. With the expansion of the Whittier small boat harbor doubling its capacity, increased congestion will occur. Access will continue to become more and more inconvenient under this alternative and the existing system and service level cannot meet the maximum demand. Furthermore, the limited access capacity will act as a constraint to future growth and development in Whittier.

##### Alternative No. 1 - Improved Auto/Passenger Shuttle Between Bear Valley and Whittier

This alternative is a significant upgrading of the existing shuttle access to Whittier. It would reduce both travel and turn around time by relocating the western terminal from Portage to new facilities in Bear Valley with a new road connecting to the Portage Glacier Visitor's Center access road. The shuttle train would be

Alternative No. 1-A - Improved Auto/Passenger Shuttle Between Portage and Whittier

This alternative also consists of upgrading the existing shuttle access to Whittier but retains the existing Portage terminal point. It too reduces waiting time by providing additional regularly scheduled shuttles to provide four (4) trips initially with potential for expansion to six (6) and extends the daily period of shuttle service. The initial service level retains the rail connection to Anchorage but the expanded system calls for bus service on the Anchorage link. Because the distance is identical to the existing route, travel time is the same but by improving the auto loading procedure and adding one set of rail passenger and flat cars, turn around time can be reduced. This alternative has somewhat limited capacity and could not accommodate the full maximum demand levels. However, the initial service improvements would allow about a 33% increase in existing demand and, if expanded, could provide capacity for more than double the average demand experienced during 1979.

This alternative is also a logical first step in a phased development approach. Under any of the other alternatives, some period of time will be required for necessary design and construction before they can be placed in operation. That period could range from two to five years depending on which alternative was selected. Thus, this alternative could serve either as an interim improvement or as a longer term solution. In any event, it does not preclude a later decision to select one of the other options when the demand levels warrant such action.

This alternative is both the least costly and could be implemented in the shortest period of time. Total estimated capital cost for improved terminals, parking, equipment and tunnel improvements is \$8.8 million with annual operating costs ranging from \$504,000 to \$546,000. This alternative would also have the least overall environmental impacts.

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

#### IV. TRANSPORTATION ALTERNATIVES, COMPARISONS AND EVALUATION

This chapter describes options applicable to Whittier access and discusses them from several standpoints including feasibility, construction costs, operating costs, convenience of users, safety, short and long term benefits to users, land owners, developers, etc. The options are based on current railroad technology and highway vehicles in various combinations. It is presumed that any selected alternative will require soils investigations, title searches, Environmental Impact Statements and Federal, State and Municipal reviews and approvals prior to engineering, design and construction. These items therefore are not developed further in this section. This discussion is concluded by a summary matrix which compares the features of each alternative.

##### Null Alternative

This is the existing system and is included only for use as a basis for comparison with alternatives that would improve access to and from Whittier. Under this alternative, Whittier residents will continue to be relatively isolated and will continue to compete with visitor and ferry traffic in and out of Whittier. With the expansion of the Whittier small boat harbor doubling its capacity, increased congestion will occur. Access will continue to become more and more inconvenient under this alternative and the existing system and service level cannot meet the maximum demand. Furthermore, the limited access capacity will act as a constraint to future growth and development in Whittier.

##### Alternative No. 1 - Improved Auto/Passenger Shuttle Between Bear Valley and Whittier

This alternative is a significant upgrading of the existing shuttle access to Whittier. It would reduce both travel and turn around time by relocating the western terminal from Portage to new facilities in Bear Valley with a new road connecting to the Portage Glacier Visitor's Center access road. The shuttle train would be

based in Whittier rather than Anchorage. It also reduces the waiting time by providing additional regularly scheduled shuttles and extends the daily period of shuttle service. Initially, seven (7) shuttle trips each way over a 12-hour span would be provided with provisions to increase service to thirteen (13) trips each way over 16 hours when travel demand warrants.

The initial service level would have a total capacity of about 350 vehicles per day each direction and approximately 4,100 passengers. In the expanded service, this capacity would increase to approximately 590 vehicles and 3,900 passengers each way. This service would meet about 45% of peak day person trip demand. However, additional passenger coaches could be added to the shuttle train and total person trip demand could thus be met. Auto capacity cannot meet the potential summer maximum demand, however, winter capacity would be adequate.

Total capital cost including the Bear Valley access road, improved terminal facilities, tunnel improvements, new passenger cars, etc. would be approximately \$20 million for the initial system and about \$24 million for the expanded level of service. Annual operating and maintenance costs were estimated at \$559,000 for initial service and just over \$1 million for the expanded system.

Alternative 1 could be implemented relatively quickly and its selection would not preclude the future choice of another alternative. Convenience for Whittier residents is greatly improved without opening Whittier up to unlimited access and the potential congestion which would result. A gradual development of Whittier would be encouraged by this alternative. It would also open Bear Valley to recreational use and to more spectacular views of Portage Glacier. Alternative 1 would result in increased revenues and potential funding subsidies might exist for this alternative.

Alternative No. 1-A - Improved Auto/Passenger Shuttle Between Portage and Whittier

This alternative also consists of upgrading the existing shuttle access to Whittier but retains the existing Portage terminal point. It too reduces waiting time by providing additional regularly scheduled shuttles to provide four (4) trips initially with potential for expansion to six (6) and extends the daily period of shuttle service. The initial service level retains the rail connection to Anchorage but the expanded system calls for bus service on the Anchorage link. Because the distance is identical to the existing route, travel time is the same but by improving the auto loading procedure and adding one set of rail passenger and flat cars, turn around time can be reduced. This alternative has somewhat limited capacity and could not accommodate the full maximum demand levels. However, the initial service improvements would allow about a 33% increase in existing demand and, if expanded, could provide capacity for more than double the average demand experienced during 1979.

This alternative is also a logical first step in a phased development approach. Under any of the other alternatives, some period of time will be required for necessary design and construction before they can be placed in operation. That period could range from two to five years depending on which alternative was selected. Thus, this alternative could serve either as an interim improvement or as a longer term solution. In any event, it does not preclude a later decision to select one of the other options when the demand levels warrant such action.

This alternative is both the least costly and could be implemented in the shortest period of time. Total estimated capital cost for improved terminals, parking, equipment and tunnel improvements is \$8.8 million with annual operating costs ranging from \$504,000 to \$546,000. This alternative would also have the least overall environmental impacts.

## Alternative No. 2 - Improved Rail Passenger Service

This alternative includes the rail shuttle between Bear Valley and Whittier as in Alternative No. 1 but also provides direct passenger-rail service from Anchorage to and from Whittier. No loading, unloading, or rehandling of baggage or recreational gear, etc. is necessary along the line. Some persons would find this more attractive, as it provides fast, efficient and convenient service into Whittier. The existing rail/auto shuttle would still be necessary and would be improved by reducing the length of the rail running time by extending the road into Bear Valley.

Initial service on this alternative would provide four (4) shuttle trips each way plus three (3) round trips between Whittier and Anchorage. Expansion potential could increase service to eight (8) shuttle trips and four (4) round trips to Anchorage on the passenger rail.

System capacity would be similar to Alternative No. 1 in that maximum person trip demand could readily be met but auto ferry capacity would not meet the maximum potential demand at full Whittier development. Capital costs would be similar to those of Alternative No. 1 and were estimated at about \$22 million initial and \$26 million for the expanded service. Annual operating costs, however, would be about 50% greater than Alternative No. 1 being estimated at \$793,000 initial and \$1,500,000 for the expanded service.

Overall development and environmental impacts of this alternative are approximately the same as Alternative No. 1.

## Alternative No. 3 - One-way Joint Use of Existing Tunnel

This alternative would provide direct auto access by utilizing the existing railroad tunnel through Maynard Mountain between Whittier and Bear Valley. Major tunnel improvements would be required to allow use by both rail and vehicular traffic. Improvements would include lighting, ventilation, widening in selected locations to permit turnouts for disabled cars, paving the tunnel floor for rubber tired vehicles, installation of traffic signals and barriers at

each portal, grouting and lining to eliminate water leakage and ice buildup in winter months, and track reconstruction.

This alternative would have adequate theoretical capacity to accommodate the maximum potential demand. However, delays during peak demand periods could be excessive due to long queues waiting for opposing traffic to clear the tunnel. In addition, disabled vehicles in the tunnel could cause further delays since the tunnel width is inadequate to allow for automobiles to pass. The possibility of a vehicle fire presents safety problems, again due to the inability to clear the tunnel. There are also unresolved institutional issues in this option, particularly acceptance of risk or liability by the State or railroad.

Capital cost for this alternative, estimated at \$36.7 million, is higher than the various rail options but lower than other direct access options. The ventilation requirement is a major item in cost for this alternative. Since the existing tunnel does not have adequate height to allow installation of the required ventilation plenum, the tunnel would have to be enlarged, resulting in extensive rock excavation. Maintenance and operating costs have been estimated at \$390,000 per year. Direct access would eliminate the rail shuttle fares but the possibility of tunnel use tolls could offset these user savings.

#### Alternative No. 4 - Two-way Joint Use of Widened Existing Tunnel

This alternative would provide direct access to Whittier by widening the existing railroad tunnel to permit adequate highway width for two auto traffic lanes with the rail line confined to one lane. Other improvements to the tunnel would include the same features as in Alternative No. 3.

Operationally, this alternative is much simpler than the single lane tunnel but signals would still be required at each end to control traffic when a train is approaching or in the tunnel. Safety issues are also reduced but potential conflicts still exist as do the liability issues. This alternative has adequate capacity to meet the maximum demand but some potential for delays exist when train movement would close the tunnel to auto use.

Maintenance of rail facilities during the extensive tunnel expansion work would also be difficult. Capital costs for this alternative have been estimated at \$64.3 million with annual operating and maintenance costs of \$440,000.

#### Alternative No. 5 - New Two-way Highway Tunnel

In this alternative, a new two-lane highway tunnel would be constructed just south of the existing rail tunnel. The new tunnel would be approximately two and one-half miles long, provide lighting, ventilation and emergency phones. As with all highway options, the roadway into Bear Valley would be required but the rail terminal facilities would not be constructed.

Operationally, this alternative presents no rail/auto conflicts and would function simply as a highway. This alternative would provide the highest level of service and reliability of all options considered, would meet maximum demand, and also eliminate the institutional problems associated with joint tunnel use. It would also be the most expensive with capital cost estimated at \$68.3 million and \$440,000 annual operating and maintenance cost.

#### Alternative No. 6 - Portage Pass Highway

This alternative would provide a two-lane highway from the existing Portage Glacier Visitor's Center into Bear Valley and along the face of Maynard Mountain passing the end of Portage Glacier and over Portage Pass. Several locations in the section on Maynard Mountain may require either snow sheds or a short tunnel to reduce probable avalanche problems in areas of major snow chutes.

From an operational standpoint, this option would function much as other mountain highways and would have adequate capacity to meet maximum demand volumes. However, heavy winter snows, icing conditions and avalanche dangers would present severe road hazards in the winter months and high winds through Portage Pass would be a year round problem, particularly for campers and trailers. There are also steep grades (up to 9%) required between Portage Pass and Whittier which make the roadway more hazardous, particularly in winter months.

each portal, grouting and lining to eliminate water leakage and ice buildup in winter months, and track reconstruction.

This alternative would have adequate theoretical capacity to accommodate the maximum potential demand. However, delays during peak demand periods could be excessive due to long queues waiting for opposing traffic to clear the tunnel. In addition, disabled vehicles in the tunnel could cause further delays since the tunnel width is inadequate to allow for automobiles to pass. The possibility of a vehicle fire presents safety problems, again due to the inability to clear the tunnel. There are also unresolved institutional issues in this option, particularly acceptance of risk or liability by the State or railroad.

Capital cost for this alternative, estimated at \$36.7 million, is higher than the various rail options but lower than other direct access options. The ventilation requirement is a major item in cost for this alternative. Since the existing tunnel does not have adequate height to allow installation of the required ventilation plenum, the tunnel would have to be enlarged, resulting in extensive rock excavation. Maintenance and operating costs have been estimated at \$390,000 per year. Direct access would eliminate the rail shuttle fares but the possibility of tunnel use tolls could offset these user savings.

#### Alternative No. 4 - Two-way Joint Use of Widened Existing Tunnel

This alternative would provide direct access to Whittier by widening the existing railroad tunnel to permit adequate highway width for two auto traffic lanes with the rail line confined to one lane. Other improvements to the tunnel would include the same features as in Alternative No. 3.

Operationally, this alternative is much simpler than the single lane tunnel but signals would still be required at each end to control traffic when a train is approaching or in the tunnel. Safety issues are also reduced but potential conflicts still exist as do the liability issues. This alternative has adequate capacity to meet the maximum demand but some potential for delays exist when train movement would close the tunnel to auto use.

There is also a high probability of the highway being closed for periods in the winter, particularly during adverse weather conditions. Since the rail shuttle operations would probably be terminated under this option, this could result in periods of almost total isolation for the residents in Whittier.

Total capital costs for this alternative have been estimated at \$47.8 million with annual maintenance and operating cost of \$270,000.

### Summary of Environmental Issues

While no environmental impact studies were made to quantify the various impacts, an overall assessment was conducted. In general some impact would be associated with all options. However, Alternative No. 1-A would produce by far the least impact with only minor upgrading of the Portage terminal area and Whittier terminal involved. Whittier impacts associated with development pressure would also be less than with other options.

Alternatives No. 1 and No. 2 would have similar impact since essentially the same facilities would be developed in both options. The environmental impacts would relate primarily to the Bear Valley Access Road and new terminal facilities in Bear Valley. Development pressures in Whittier would be somewhat greater than with Alternative 1-A, however, they would be more gradual and easier to control than with any of the direct access options.

In the highway options, Alternatives No. 3, 4 and 5 would have approximately equal impacts as they all require development of the Bear Valley road and extensive tunnel construction activities. Development pressures in Whittier would be about equal also given the perception of direct auto access. However, the traffic problems would be greatest with Alternative No. 3 if maximum demand was reached due to the long lines of traffic waiting to use the tunnel. Direct access could also produce severe traffic problems in Whittier given the relatively small land area and limited opportunity to develop adequate circulation and parking systems.

The Portage Pass Highway, Alternative No. 6, has all of the impacts associated with the other direct access options plus a much greater environmental consequence because of the cut along Maynard Mountain and the road through the Pass. While this route would offer excellent vistas of the glacier, it would also be visible from the visitor's center and would detract from that visually aesthetic experience.

Table S-4 presents a comparison matrix summarizing the various features of each alternative.

#### Cost Effectiveness

In addition to the evaluation factors summarized in Table S-4, an assessment of the relative cost effectiveness of each alternative was accomplished. This analysis was based on the assumption that the maximum demand levels would be reached at some point in time. Capital costs were annualized at various discount rates and then added to annual operating cost. Total annual costs were then divided by annual person trips to determine a cost per trip. Annual person trips were determined on the basis of maximum demand for the direct access alternatives and at system capacity for the rail systems. Table S-5 shows the result of this analysis.

It should be noted that this analysis tends to favor the direct access alternatives since they reflect accommodation of the number of trips under the maximum demand projections while the rail options reflect only the system capacity described in the report. However, as noted in the report, it would be possible to meet person trip demand by adding more passenger cars to the rail options even though auto access would still be limited and therefore user convenience would be lower. If maximum demand were met by the rail systems, direct cost per trip would be substantially lower than for the auto access options. Similarly, the rail options are lower in direct cost at any comparable demand level. This is particularly important since volumes lower than the maximum would undoubtedly prevail for at least a number of years.

Revenue estimates were also made for the rail systems to provide a comparison of potential net public costs since that could bear

TABLE S-4  
COMPARISON MATRIX

	ALTERNATIVE							
	NULL	1	1-A	2	3	4	5	6
	No Change	Improved Auto/ Passenger Shuttle	Improved Portage Whittier Shuttle	Improved Rail Passenger Service	One-way Joint Use of Existing Tunnel	Widened Existing Tunnel, Two-way Joint Use	New Vehicle Tunnel	Portage Pass Highway
Use Existing Tunnel	X	X	X	X	X			
Enlarge Existing Tunnel						X		
New Highway Tunnel							X	
New Surface Highway								X
Bear Valley Road		X		X	X	X	X	X
Bear Valley Parking & Facilities		X		X	X			
Tourism/Recreation	None	Low	Low	Low to Medium	Medium	Medium to High	High	High
Employment opportunities	None	Low	Low	Medium	Low	Medium	High	High
Whittier Area Development	None	Low	Low	Medium	Low	Medium	High	High
Environmental Impact	None	Low	Very Low	Low	Low	Medium	Medium	High
Service Level/Capacity	Low	Medium	Medium	Medium	Medium	High	Very High	Very High
Summer Reliability	High	High	High	High	Medium	High	Very High	Very High
Winter Reliability	Medium	High	High	High	Low	High	High	Very Low
Summer Availability	Medium	High	High	High	Medium	High	High	High
Winter Availability	Very Low	Medium	Medium	Medium	Medium	High	High	Very Low
Convenience/Comfort	Very Low	Medium	Medium	Medium	Medium	High	Very High	Very High
Safety	High	High	High	High	Medium	Medium	High	Medium
Probability of Funding	N/A	Medium	Medium	Medium	Medium	Low	Low	Low
Construction/Implementation Time	N/A	Short	Very Short	Short	Medium	Long	Long	Long
Annual Maintenance & Operating Costs (thousands)	N/A	\$559 Initial \$1041 Exp.	\$504 Initial \$546 Exp.	\$793 Init. \$1500 Exp.	\$390	\$440	\$440	\$270
Construction/Capital Cost (millions)	N/A	\$20.0 Init. \$24.2 Exp.	\$8.8	\$21.9 Init. \$26.0 Exp.	\$36.7	\$64.3	\$68.3	\$47.8

TABLE S-5  
ESTIMATED COST EFFECTIVENESS

	Alt. 1		Alt. 1-A		Alt. 2		Alt. 3		Alt. 4		Alt. 5		Alt. 6	
	10%	15%	10%	15%	10%	15%	10%	15%	10%	15%	10%	15%	10%	15%
Assumed Discount Rates														
Annual Cap. Cost (\$1000)	2,055	3,030	909	1,203	2,273	3,326	3,706	5,509	6,496	9,862	6,894	10,254	4,875	7,197
Annual O/M Cost (\$1000)	559	559	504	504	793	793	390	390	440	440	440	440	270	270
TOTAL (\$1000)	2,614	3,589	1,413	1,707	3,066	4,119	4,096	5,899	6,936	10,302	7,334	10,794	5,145	7,467
Cap or Demand (1000)	756	756	432	432	576	576	2,727	2,727	2,727	2,727	2,727	2,727	2,727	2,727
Cost Per Trip	\$3.46	\$4.75	\$3.27	\$3.95	\$5.32	\$7.15	\$1.50	\$2.16	\$.54	\$3.78	\$2.69	\$3.96	\$1.89	\$2.74
Revenue/Trip <sup>1</sup>	\$3.96	\$3.96	\$3.96	\$3.96	\$3.96	\$3.96								
Net Cost/Trip	+\$0.50	\$0.79	+\$+.69	+\$+.01	\$1.36	\$3.19	\$1.50	\$2.16	\$2.54	\$3.78	\$2.69	\$3.96	\$1.89	\$2.74

<sup>1</sup> Revenue per trip based on passenger only revenue as generated in 1979.

on financing feasibility. Revenue per person trip was estimated based on average per passenger (excluding vehicle revenue) during 1979. As shown in the table, when potential revenue is applied, the public cost would be completely covered for both Alternatives 1 and 1-A while being reduced significantly for Alternative No. 2. It would be possible to impose tolls in the direct access options as well and thereby reduce the public costs. However, that would eliminate one of the most significant benefits of those systems.

#### Summary of Funding Opportunities

The last step in evaluating the various options was to look at potential funding sources. While funding sources and mechanisms are obviously a policy issue, it was considered appropriate to look at possible existing sources, both Federal and State.

At the Federal level, the most likely sources were considered to be the Urban Mass Transit Administration (UMTA), Federal Highways (FHWA) and Federal Railway Administration (FRA). Of these, the UMTA funds were considered highly unlikely since most are applicable to communities over 50,000 population. That would mean funding would have to come through the Municipality of Anchorage where other transit programs are also under consideration. The UMTA Section 18 funds for rural area transit are relatively small and would be inadequate to cover this program.

FHWA funds are allocated to the State in a formula basis. Funds for the direct access options, particularly the new tunnel and Portage Pass Highway would undoubtedly come from the Federal-Aid Primary (FAP) monies. While the allocation of those funds is a policy issue, it did not appear proper to count on such funds for a project of this magnitude given the other highway programs with possible higher immediate demand levels.

At the state level, a current support program is operational on the Whittier shuttle as part of the Marine Highway System. In addition, HR 11737 permits the State to divert up to 5% of its annual FAP funding for capital improvement and operating

assistance on the rail service between Whittier and Portage. These funds could produce between \$750,000 and \$2.5 million annually depending on the allocation methods used. Again, whether these funds would be applicable to joint use options has not been determined.

FRA funds, Section 511, provide up to 100% financing for railroad rehabilitation and improvements primarily oriented to freight related programs. Given the condition of the existing tunnel and trackage, it would appear that participation in the rail alternatives (1, 1-A, or 2) could be a possibility since the improvements would also benefit freight operations. Whether such participation in the joint use options could be obtained is an institutional issue beyond the scope of this study.

In addition, there is the possibility that funding for this project could be obtained through the State Legislative process. This option is obviously a policy issue which would be addressed by the Legislature based on the merits of the specific project proposal and evaluated relative to other priorities statewide.

Based on the evaluation in this study, the most likely sources of funding have been concluded to be:

1. FIWA funding (FAP) through the 5% diversion.
2. FRA participation through loans or grants.
3. Special legislation.

## VI. SUMMARY AND CONCLUSIONS

### A. Summary

As in virtually every analysis of transportation alternatives, the findings and conclusions of this study represent some compromise and trade-offs between analysis factors. Such trade-offs and compromises are necessary since rarely is one alternative identified as being superior according to all criteria used in the comparison. Furthermore, the relative importance of the evaluation factors depends in some measure on the subjective judgment of the evaluator. This study has maintained an objective position while recognizing the current and potential future growth, development and resulting travel demand in the Whittier area.

Improved Whittier access has been an issue for several years and the subject of several prior studies. Basic findings from this study are not markedly different from those of the prior efforts, although conclusions may vary. Principal findings include the obvious fact that current access is inconvenient and often inadequate. In addition, vehicle access is relatively expensive compared to conventional highway travel.

The cost factor is particularly important to Whittier residents who require an automobile. The need for an auto by non-residents who enter Whittier is reduced because of the small size of the area and the convenient location of the rail terminal. Yet, for those persons wishing to use trailered boats on Prince William Sound, the cost becomes a significant factor and diminishes the desirability of the area. However, with increasing cost for gasoline, the rail shuttle may offer a least costly alternative when compared to other more distant locations which require additional fuel costs offsetting the shuttle fare.

For Whittier residents, one of the major inconveniences, relative to time and costs, is the fact that a person cannot leave and return the same day even during summer months. This situation is aggravated in the winter months because of the three-day per week service schedule. However, all of the alternatives eliminate or reduce this problem.

### B. Conclusions

These considerations combined with the analysis conducted in this study lead to the following conclusions:

1. There is a definite need for improved access to Whittier.
2. Improved access can enhance the social and economic climate in Whittier by generating development which in turn will foster improvements to existing services and increase employment opportunities.
3. Expansion of the existing small boat harbor coupled with the relatively short distance to the major population center in Alaska will produce an immediate increase in travel demand. Other factors, such as increased recreation demand as the Anchorage population grows and expanding statewide tourism, will contribute to increased demand for access to Whittier and Prince William Sound in the future. The possibility also exists for increased demand associated with natural resource development and expanded port activity.
4. The existing Whittier - Valdez segment of the State Marine Highway System provides an attractive tourist resource, which possibly could be expanded in the future, and Whittier access is a vital link in that system.
5. Existing population levels in Whittier and the lack of visitor facilities combine to produce a relatively low demand at present.
6. The major highway access alternatives are very expensive and current demand levels do not warrant such costly investments.
7. The single lane joint-use tunnel Alternative No. 3 has many operational and inherent safety problems. In order to produce a reasonable degree of safety, ventilation,

and reliability, this alternative becomes nearly as expensive as the Portage Pass Highway.

8. Unresolved institutional issues, such as the ultimate acceptance of risk and liability by the State or the Alaska Railroad in a joint use operation, further contributes to the questionable feasibility of the joint use options, particularly in single-lane operations.
9. Any of the alternatives examined have adequate reserve capacity to accommodate significant growth in person trip demand. Furthermore, the rail based alternatives have exceptional flexibility to accept future increases by adding additional passenger coaches. The rail based alternatives are, however, somewhat limited in their ability to accommodate major growth in the number of automobiles transported.
10. Traffic congestion and parking problems in Whittier could become severe with the unlimited auto access alternatives and would produce significant increases in local costs for streets, parking facilities, police and security.
11. At maximum demand or capacity levels, the highway based alternatives show better cost effectiveness in terms of total annual capital and operating cost per trip. However, the revenues generated by fares in the rail based systems more than off-set the public sector costs for Alternatives 1 and 1-A. Furthermore, maximum demand levels identified will not occur immediately, and at demand levels under about 1.2 million person trips per year, the total cost per trip for Alternatives 1 and 1-A is less than any highway option even without considering revenue off-sets.

12. Only Alternative No. 1-A offers almost immediate access improvement. All others will require from three to five years to implement since engineering design, environmental studies, permit and review processes as well as construction are required. In addition, most costs associated with Alternative 1-A are applicable to Alternatives 1 and 2. Suggested improvements in the rail system under this alternative will benefit future rail operations even if one of the highway alternatives (except Number 3 and 4 which introduce auto/rail conflicts) is ultimately implemented.
13. Implementation of Alternative 1 or 1-A does not preclude access improvements in the future since all higher level alternatives require access to or through Bear Valley and the improvements to the existing rail tunnel will benefit all future rail operations.

#### C. Recommendation

Based on the analysis and evaluation conducted in this study, the potential funding options and the conclusions reached, this study recommends that Alternative 1-A be implemented as a first stage toward developing Alternative 1 when design and funding become available.

That action would provide some early improvement to relieve existing problems and would, with implementation of Alternative 1, provide adequate capacity for significant increase in demand in the future. A further significant advantage to this approach is that virtually all investment for capital improvement is fully applicable to a decision to implement one of the more expensive direct access alternatives in the event that future demand or other factors warrant such as major harbor expansion with attendant rail demand warrant a higher level facility or preclude use of the existing railroad tunnel.

Consideration should be given to utilizing some funds through the 5% diversion of the State allocation of FAP funds for capital cost and operating assistance. The level of operating subsidy to reduce user cost is a policy issue to be decided at the Legislative level.

MEMORANDUM

"Write It—Then We'll All Know"

To GENE KULAWIK

Town Omaha

Anchorage, Alaska

APR 20 '83

Date 4/19/83

Subject WHITTIER TUNNEL REPORT

ANCHORAGE  
INTERNATIONAL CO.

Job No. \_\_\_\_\_

DC \_\_\_\_\_  
ED \_\_\_\_\_  
MK \_\_\_\_\_

Dear Gene:

Having spent some time in Whittier when we drove the Pipe Line Tunnel, I know how hard it is to get to Whittier. The study made for the Alaska Department of Transportation lists six alternatives. I personally can't believe the Railroad will share their tunnel. Alternative No. 6 over Portage Pass would be a summer road only. It would appear to me that Alternative No. 5, a new two-way highway tunnel, would be the best in the long run. I would have to accept estimate of cost as I don't know how much support, concrete lining, and ventilation would be required. Another alternative might be two smaller one-way tunnels driven with a mining machine. They should require less tunnel support and concrete lining.

From

*W. W. Roberts*

W. W. ROBERTS

WWR:jhr

RECEIVED

APR 27 '83

	Copy	Action
Design & Const.		
Central Region		
Director		
Deputy Director		
Chief Aviation D&C		
Ch. Elder & Harb D&C		
Chief Highway D&C		
Chief Ferryway		
Chief Fishery		
Chief Port		
Chief Ship		
Chief Tug		
Chief Vessel		
Chief Waterway		
Chief Wharf		
Chief Yacht		
Chief Zipline		
Chief Other		
Chief Unassigned		

Introduced: 1/21/83  
Referred: State Affairs,  
Transportation & Finance

BY FRITZ, SZYMANSKI  
AND BARNES

1 IN THE HOUSE

2

HOUSE CONCURRENT RESOLUTION NO. 10

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

Relating to access to Whittier, Alaska.

6

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

7

WHEREAS there are a number of places along the railbed of the Alaska  
8 Railroad that are paved for temporary use by automobiles when snowslides  
9 cover the Seward Highway, making it impassable; and

10

WHEREAS a significant number of people seek access to Whittier,  
11 Alaska, and access is limited to service on the Alaska Railroad; and

12

WHEREAS the railroad service to and from Whittier is inadequate or  
13 inconvenient and a significant number of people would prefer to drive to  
14 and from Whittier;

15

BE IT RESOLVED by the Alaska State Legislature that the Governor is  
16 respectfully requested to direct the Department of Transportation and  
17 Public Facilities to study the paving of the Whittier railroad tunnel for  
18 vehicular traffic and to enter into negotiations with the Alaska Railroad  
19 for the acquisition of right-of-way privileges to permit use of the right-  
20 of-way for vehicular access to Whittier, Alaska.

Offered: 5/14/83  
Referred: Finance

Original sponsors: Fritz, Szymanski,  
Barnes and Liska

1 IN THE HOUSE BY THE TRANSPORTATION COMMITTEE  
2 CS FOR HOUSE CONCURRENT RESOLUTION NO. 10 (Transportation)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 relating to access to Whittier, Alaska.

6 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

7 WHEREAS there are a number of places along the railbed of the Alaska  
8 Railroad that are paved for temporary use by automobiles when snowslides  
9 cover the Seward Highway, making it impassable; and

10 WHEREAS a significant number of people seek access to Whittier,  
11 Alaska, and access is limited to service on the Alaska Railroad; and

12 WHEREAS the railroad service to and from Whittier is inadequate or  
13 inconvenient and a significant number of people would prefer to drive to  
14 and from Whittier; and

15 WHEREAS highway development to Whittier would create greater recre-  
16 ational opportunities for Southcentral Alaska and provide access to beauti-  
17 ful Prince William Sound thereby adding another important tourism attrac-  
18 tion base as well as access to future harbor facilities;

19 BE IT RESOLVED by the Alaska State Legislature that the Governor is  
20 respectfully requested to direct the Department of Transportation and  
21 Public Facilities to complete as soon as possible in consultation with the  
22 Alaska Railroad a preliminary design for one-way motor traffic facilities  
23 through Whittier tunnels and, if needed, ventilation, lighting and other  
24 improvements such as traffic control systems; and to provide the legisla-  
25 ture with construction cost estimates and projected costs per passenger  
26 based on anticipated traffic volume.

Introduced: 1/31/83  
Referred: Health, Education &  
Social Services and Finance

BY RULES BY REQUEST OF THE  
REAA BUDGET OVERSIGHT COMMITTEE

1 IN THE HOUSE

2

HOUSE CONCURRENT RESOLUTION NO. 14

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

Extending the life of the Regional

6

Educational Attendance Area Budget Over-

7

sight Committee.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9

WHEREAS on February 7, 1980, the president of the senate and the  
10 speaker of the house appointed a special Regional Educational Attendance  
11 Area (REAA) Budget Oversight Committee to provide accountability functions  
12 similar to those which municipalities exercise over their school districts;  
13 and

14 WHEREAS the legislature provided funding for the committee's opera-  
15 tions during fiscal year 1981, fiscal year 1982, and fiscal year 1983; and

16 WHEREAS the committee held extensive hearings in the interim between  
17 the Eleventh and Twelfth Legislatures and between the First and Second  
18 Sessions of the Twelfth Legislature, during which it reviewed and scru-  
19 tinized the regional educational attendance areas' financial management of  
20 educational funds; and

21 WHEREAS the committee submitted the reports of its activities in 1981  
22 to the chairman of the house and senate Health, Education, and Social  
23 Services Committees and presented reports to the Legislature in 1982 and  
24 1983; and

25 WHEREAS the committee is continuing to develop better means of review-  
26 ing the operation of regional educational attendance areas as they set out  
27 to construct or operate educational facilities and programs;

28 BE IT RESOLVED by the Alaska State Legislature that the Regional  
29 Educational Attendance Area Budget Oversight Committee is authorized to

1 continue to perform the assignments made to it by the president of the  
2 senate and the speaker of the house on February 7, 1980, through June 30,  
3 1984; and be it

4       FURTHER RESOLVED that the Department of Education shall review and  
5 recommend action to the Governor on the operating budget of each regional  
6 educational attendance area by August 15; and be it

7       FURTHER RESOLVED that the Regional Educational Attendance Area Budget  
8 Oversight Committee shall review the findings of the Department of Educa-  
9 tion.

**COMMITTEE REPORT**  
**SENATE**

3/14/83

FURTHER:

FINANCE

Date: May 25, 1983

Mr. President:

The Committee on HESS has had HCR 14

Extending the life of the Regional Educational Attendance Area Budget Oversight Committee.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- <sup>m</sup> do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title
- and recommends \_\_\_\_\_  new title
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

*George Miller*  
*Joe Jacobson*  
*Paul Fisher*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Joe Jacobson*  
CHAIRMAN



Official Business

# Alaska State Legislature

## House of Representatives

Pouch V  
State Capitol  
Juneau, Alaska 99811

Representative Dick Shultz

February 24, 1983

Al Adams, Chair  
House Finance Committee  
Room 507, Capitol Building  
Juneau, Alaska 99811

Dear Al:

I have reviewed the fiscal note prepared on my behalf for HCR 14, extending the life of the REAA budget oversight committee.

I hereby confirm that the \$50,000 budget provided will be sufficient to meet the needs of the committee.

Sincerely,

A handwritten signature in cursive script that reads "Dick Shultz".

Representative Dick Shultz  
Chair, REAA Budget Oversight Committee

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HCR 14  
 Title Extending the Life of the REAA Budget Oversight Committee  
 Requested by House Finance Committee Date 2/15/83

II. FISCAL DETAIL

Agency Affected Legislative Affairs  
 Program Category Affected Legislature  
 BRU, Program, Or Subprogram(s) Affected REAA Budget Oversight Cmtee.  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES		40.0				
200 TRAVEL		2.0				
300 CONTRACTUAL		5.5				
400 COMMODITIES		2.0				
500 EQUIPMENT		5				
600 LAND & STRUCTURES		0				
700 GRANTS, CLAIMS, ETC.		0				
<b>TOTAL</b>		<b>50.0</b>				

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		50.0				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME						
PART TIME						
TEMPORARY		2				

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The REAA Budget Oversight Committee will operate during the interim, conducting hearings, compiling information, and reporting its findings to the full legislature on REAA district budget, maintenance and operating costs. To assist the committee, two temporary administrative assistants, office space and other incidentals will be necessary. Travel to conduct oversight will also be necessary. The fiscal note reflects the cost of these necessities.

IV. DATE 2/15/83

PREPARED BY Representative Al Adams  
AGENCY House Finance Committee Chair  
 PHONE 465-3706

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
 Bill/Resolution No. HCR-14  
 Title Extending the life of the Regional Educ. Attendance Area Budget...  
 Requested by HOUSE HCSS Date 2-2-83

II. FISCAL DETAIL  
 Agency Affected Education  
 Program Category Affected Elementary & Secondary Education  
 BRU, Program, Or Subprogram(s) Affected \_\_\_\_\_  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-		

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This bill has no fiscal impact on this department.

RECEIVED

FEB 9 1983

LEGISLATIVE FINANCE

IV. DATE 2/3/83 PREPARED BY Steve Hole  
 AGENCY Education  
 PHONE 465-2865  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33- (Rev. 12/82)

OMB Reviewed by: Jerry Bryant

*JMB*



Official Business

# Alaska State Legislature

## House of Representatives

Committee on

Health, Education & Social Services

Pouch V  
State Capitol  
Juneau, Alaska 99811

SUMMARY: HCR 14 Extending the life of the Regional Education Attendance Area Budget Oversight Committee

Pg. 1 L 9-13: Creation of Oversight Committee to act as a borough assembly to the unorganized borough schools to provide similar functions as in the municipal school systems.

Pg. 1 L 14-15:	<u>Year</u>	<u>Total \$</u>	<u>Balance</u>
	FY 80 Approp.	\$125,000	\$124,041
	FY 81 Carry-over from '80	\$124,041	—\$ 2,286 (lapsed)
	FY 82 Approp.	\$125,000	\$ 11 (lapsed)
	FY 83 Approp.	\$100,000	\$ 22,500 (present balance)
	<u>Additions</u>		
	FY 82 Budget Item	\$170,000	\$ -463 (drop out study)
	FY 82 Supplemental	\$125,000	\$124,536 (present balance)

Pg. 1 L 16-20: Hearings held in Juneau and Anchorage.

Pg. 1 L 21-24: Reports to Legislature, Feb. 82, March 82 & Jan. 83.

Pg. 1 L 25-27: Groundwork and problem areas isolated in reports; district by district summaries; break down in detail on individual school basis.

Pg. 1 L 28-  
Pg. 2 L 3: Continue existence through June 30, 1984.

Pg. 2 L 4-6: Requiring review of district operating budgets by Aug. 15.

Pg. 2 L 7-9: REA Budget Oversight shall review findings of DOE regarding district budget reports.

2/10/83

# STATE OF ALASKA

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION  
POUCH WF-STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3795

February 4, 1983

### MEMORANDUM

TO: Linda Otey, Professional Assistant  
House HESS Committee

FROM: Pat Williams  
Legislative Finance Division

SUBJECT: Account 32-92-1-254 REAA Oversight Committee

As requested, the following is information you requested on expenditures of the REAA Oversight Committee:

#### FISCAL YEAR 1983 (July 1, 1982 - June 30, 1983)

	Authorization	Expenditures*	— Balance
Personal Services	60,000	59,430	570
Travel	20,000	3,279	16,721
Contractual	16,000	2,041	13,959
Commodities	2,000	436	1,564
Equipment	<u>2,000</u>	<u>12,264</u>	<u>(10,264)</u>
	100,000	77,450	22,550

\*Expenditures through 1/31/83. The current monthly payroll for this account is running approximately \$9,200 per month (see attached).

#### FISCAL YEAR 1982 (July 1, 1981 - June 30, 1982)

Personal Services	66,000	31,516	(15,516)
Travel	20,000	20,998	( : 998)
Contractual	36,000	20,371	15,629
Commodities	2,000	2,104	( 104)
Equipment	<u>1,000</u>	<u>Ø</u>	<u>1,000</u>
	125,000	124,989	11

FISCAL YEAR 1981 (July 1, 1980 - June 30, 1981)

	Authorization	Expenditures	Balance
Personal Services	99,041	98,165	876
Travel	10,000	12,282	(2282)
Contractual	15,000	9,554	5446
Commodities	Ø	850	(850)
Equipment	Ø	904	(904)
	<u>124,041</u>	<u>121,755</u>	<u>2286</u>

(This was a carry-over appropriation from HB 60 adopted in June 1980 (Fiscal Year 1980))

FISCAL YEAR 1980 (July 1, 1979 - June 30, 1980)

Personal Services	100,000	959	99,041
Travel	10,000	Ø	10,000
Contractual	15,000	Ø	15,000
Commodities	Ø	Ø	Ø
Equipment	Ø	Ø	Ø
	<u>125,000</u>	<u>959</u>	<u>124,041</u>

# STATE OF ALASKA

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION  
POUCH WF-STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3795

February 7, 1983

### MEMORANDUM

TO: Linda Otey, Professional Assistant  
House HESS Committee

FROM: Pat Williams *Pat*  
Legislative Finance Division

SUBJECT: Study Accounts pertaining to REAA Activities

As requested, the following is a breakdown of monies expended from monies appropriated to Legislative Finance for REAA studies:

#### REAA DROP-OUT STUDY

FY 1982

	Authorization	Expenditures	Balance
Personal Services	122,050	125,069	(3,019)
Travel	19,910	44,636	(24,726)
Contractual	24,240	453	23,787
Commodities	4,200	453	3,747
Equipment	<u>Ø</u>	<u>252</u>	<u>(252)</u>
	170,400	170,863	(463)

In June 1982, \$125,000 was appropriated to Legislative Finance for a study of REAA facility Operations and Maintenance Costs. It had a Fiscal Year 1982 effective date (June 29, 1982) and was treated for accounting purposes as a "supplemental." Thus, the appropriation was penalized the \$463 overrun incurred by the Drop-Out study.

No expenditures have been made from the Operations & Maintenance study. There is a current balance of \$124,536.70.

FY 1982

HOUSE ANALYSIS

GOVERNORS REC 62,290.7

OBJECT GROUP	VARIATION		DESCRIPTION: HOUSE VERSUS GOVERNOR
01 PERS. SERV.	206.2	14.9%	FUND 174.7 THREE ADDITIONAL PERMANENT STAFF, 31.5 FOR TWO ADDITIONAL TEMPORARY POSITIONS.
02 TRAVEL	7.0	24.5%	FUND 7.0 TRAVEL FOR SENATE FINANCE CO-CHAIRMAN AND VICE CHAIRMAN HOUSE FINANCE.
03 CONTRACTUAL	21.4	2.5%	FUND CONTRACTUAL ADDITIONAL 21.4 FOR OFFICE COSTS HOUSE/SENATE FINANCE.
04 COMMODITIES	4.4	44.4%	FUND COMMODITIES ADDITIONAL 4.4 FOR OFFICE COSTS HOUSE/SENATE FINANCE.
MM TOTAL	239.0	10.4%	

HOUSE FIGURE 62,529.7

SENATE ANALYSIS

GOVERNORS REC 62,290.7

OBJECT GROUP	VARIATION		DESCRIPTION: SENATE VERSUS GOVERNOR
01 PERS. SERV.	206.2	14.9%	FUND 174.7 THREE ADDITIONAL PERMANENT STAFF, 31.5 FOR TWO ADDITIONAL TEMPORARY POSITIONS.
02 TRAVEL	7.0	24.5%	FUND 7.0 TRAVEL FOR SENATE FINANCE CO-CHAIRMAN AND VICE CHAIRMAN HOUSE FINANCE.
03 CONTRACTUAL	351.8	41.4%	FUND CONTRACTUAL ADDITIONAL 21.4 FOR OFFICE COSTS HOUSE/SENATE FINANCE, FUND LEGISLATIVE OVERSIGHT COMMITTEE ON IMPROVEMENTS TO AVIATION TRANSPORTATION 160.0, FUND REAA LEGISLATIVE OVERSIGHT COMMITTEE TO PURCHASE DROP-OUT STUDY OF RURAL STUDENTS 170.4.
04 COMMODITIES	4.4	44.4%	FUND COMMODITIES ADDITIONAL 4.4 FOR OFFICE COSTS HOUSE/SENATE FINANCE.
MM TOTAL	569.4	24.9%	

SENATE FIGURE 62,860.1

LEGISLATIVE INTENT:

\$35,000 OF CONTRACTUAL IN THIS BUDGET IS DEDICATED TO REVISION OF THE PETROLEUM CASH FLOW MODEL.

ORIGINAL  
APPROP.

#1

Chapter 141

1 the Alaska Native Hospital in Anchorage.

2 ~~\* Sec. 174. The sum of \$268,000 is appropriated from the general fund for~~  
3 ~~payment as a grant to the City of Kotzebue for a land conveyance program.~~

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5 ~~payment as a grant to the City of Kotzebue for the local government assistance~~  
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7 \* Sec. 176. The sum of \$700,000 is appropriated from the general fund to  
8 the University of Alaska for Chukchi Community College for operating expenses.

9 \* Sec. 177. The sum of \$25,000 is appropriated from the general fund for  
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11 tingency fund.

12 ~~\* Sec. 178. The sum of \$1,400,000~~  
13 ~~for payment as a grant to the City of Kotzebue for health and social service~~  
14 ~~delivery programs.~~

15 \* Sec. 179. The sum of \$125,000 is appropriated from the general fund to  
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17 Area Budget Oversight Committee for a study on regional educational attendance  
18 area school district facility operations and maintenance costs.

19 ~~\* Sec. 180. The sum of \$1,400,000~~  
20 ~~to the Department of Education for payment as a grant to the Kotzebue~~  
21 ~~Technical Center for operating expenses.~~

22 \* Sec. 181. The sum of \$250,000 is appropriated from the general fund for  
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24 \* Sec. 182. The sum of \$280,000 is appropriated from the general fund for  
25 payment as a grant to the City of Nome for emergency medical services and  
26 equipment.

27 \* Sec. 183. The sum of \$250,000 is appropriated from the general fund for  
28 payment as a grant to the North Slope Borough for whale research.

29 \* Sec. 184. The sum of \$200,000 is appropriated from the general fund for

eff date 6/29/82  
Lapse date 6/30/83

#2

SUMMARY OF REAA BUDGET OVERSIGHT COMMITTEE  
REPORTS TO THE LEGISLATURE

Initial Report - February 1982:

Title: Report to the Legislature on REAA School Districts

A. Alaska State Operated Schools - ASOSS created in 1970

- 1) State corporation - separate from Department of Education
- 2) Administrative matters handled through Dept. of Administration
- 3) Local boards = 9 - 6 rural members

1971 - Alaska Native Claims Act

1975 - Transition to Rural Education Attendance Areas (REAA)

- 1) Governed by elected school boards from 5 - 11 members
- 2) Larger districts allowed to organize into school board sections according to population distribution, with one or more seats on the board
- 3) REAA powers limited - Legislature the only governing body  
February 1980 - Budget Oversight Committee established by President of Senate and Speaker of House
- 4) New school boards obtained - same powers as municipalities and boroughs
- 5) Originally operated in consultation with community school committees - this was repealed to reduce differences between REAA's and other school districts

B. REAA District Profiles

C. Current Rural Education Issues

- 1) Maintenance & Operations
  - a. \$200 million - REAA school construction in 5 years
  - b. 31% increase in Maintenance & Operations budget - excluding cost and salary increases
  - c. high energy costs - fuel delivery and storage
  - d. inefficient structures - energy waste
  - e. BIA's to be transferred to State
- 2) Instructional television
  - a. 1975 - 100 small earth stations purchased by Alaska
  - b. 1980 - 81 - \$15 million for instructional T.V. - funded by Legislature
- 3) Teacher housing
  - a. some form of subsidized housing
  - b. district phasing out of housing or in process of doing so
  - c. some districts never involved because of:
    1. school board policy
    2. abundance of housing
  - d. Adak housing provided for by Federal government;  
Pribilof housing provided for by National Marine Fishery Service

- e. criticism regarding subsidized housing
    - 1. isolates teachers from community
    - 2. discourages locals from investing in rentals
    - 3. money should go directly to educating children
  - f. quality of teachers/teacher turnover - not adequately informed of housing situation
  - g. National Education Association (NEA) - Housing Task Force
  - h. district built 4 houses - Lower Kuskokwim - selling locally - purpose two-fold: educate students - vocational education to construct future units
- 4) District breakdown teacher concerns
  - 5) School districts priorities and commitments
  - 6) Budgetary constraints regarding program development
  - 7) Drop Out Study - by district began July 1981
    - a. records from districts incomplete and in some cases nonexistent
    - b. summer dropouts not recorded
    - c. dropouts compared with transfers are unclear and not traceable
    - d. Mr. Parrett, Univ. of Alaska Research Inst., rendered services
      - 1. had to rely on personal interviews as a main source of dropout information - used surveyors
    - e. graduation requirements; compare suburban high school grad with REAA high school grad
      - 1. total number of required credits varied from 19 to 22 credits throughout districts
      - 2. 109 high schools (grades 7-12) 64 accredited, 45 are not
        - a. Alaska schools not required to seek accreditation (voluntary on school by school basis) - Metlakatla's high academic core curriculum good example for rest of REAA's

Supplemental Report - March 1982:

Title: Supplemental Report to the Legislature on REAA School Districts

- A. REAA budget management to be looked into in further detail:
  - 1) inadequate responses from REAA's
  - 2) negative press coverage of some district fund mismanagement
  - 3) parental requests
  - 4) enlighten committee and give direction to concerns re: REAA budgets
- B. Resolves in Supplemental Report of March 82
  - 1) Resolution #1
    - a. committee requested Budget & Audit to conduct audits of 21 REAA's for past 3 fiscal years (FY 81,80,79)
  - 2) Resolution #2
    - a. all schools to pursue accreditation

- b. recommend annual visitation on status of school and curriculum development - goal = minimum uniform standards
  - c. Department of Education - records of all graduation requirements and course offerings of each school
  - d. establish 13-14 level school program within REAA high schools
    - 1. college level courses - further understanding of prerequisites
    - 2. program umbrellaed by University - pilot program
      - ie. Koyukon Development Corporation to be broker for post secondary education in the Koyukon Region for college credits and non-credit courses
- 3) Resolution #3
- a. paraprofessionals work towards teacher accreditation
  - b. strong counselling efforts to encourage students to join teaching profession and return to their home communities
  - c. establishing teaching college in rural community
    - 1. rural students to enter teaching profession
    - 2. urban students to participate in endeavor to become acculturated to rural environment

January 1983 Report:

Title: Report to the Legislature - 1983

- A. Background
- B. Fiscal information for REAA's by district
- C. Audits, Department of Education program finals
  - 1) Revenues and expenditures - budget comparisons
  - 2) Food service programs audited



Official Business

# Alaska State Legislature

## House of Representatives

Pouch V  
State Capitol  
Juneau, Alaska 99811

Representative Dick Shultz

February 24, 1983

Al Adams, Chair  
House Finance Committee  
Room 507, Capitol Building  
Juneau, Alaska 99811

Dear Al:

I have reviewed the fiscal note prepared on my behalf for HCR 14, extending the life of the REAA budget oversight committee.

I hereby confirm that the \$50,000 budget provided will be sufficient to meet the needs of the committee.

Sincerely,

A handwritten signature in cursive script that reads "Dick Shultz".

Representative Dick Shultz  
Chair, REAA Budget Oversight Committee

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HCR 14

Title Extending the Life of the REAA Budget Oversight Committee

Requested by House Finance Committee Date 2/15/83

II. FISCAL DETAIL

Agency Affected Legislative Affairs

Program Category Affected Legislature

BRU, Program, Or Subprogram(s) Affected REAA Budget Oversight Cmtee.

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES		40.0				
200 TRAVEL		2.0				
300 CONTRACTUAL		5.5				
400 COMMODITIES		2.0				
500 EQUIPMENT		.5				
600 LAND & STRUCTURES		0				
700 GRANTS, CLAIMS, ETC.		0				
<b>TOTAL</b>		<b>50.0</b>				

FUNDING (Thousands of Dollars)

GENERAL FUND		50.0				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY		2				

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The REAA Budget Oversight Committee will operate during the interim, conducting hearings, compiling information, and reporting its findings to the full legislature on REAA district budget, maintenance and operating costs. To assist the committee, two temporary administrative assistants, office space and other incidentals will be necessary. Travel to conduct oversight will also be necessary. The fiscal note reflects the cost of these necessities.

IV. DATE 2/15/83

PREPARED BY Representative Al Adams

AGENCY House Finance Committee Chair

Original: Legislative Finance

PHONE 465-3706

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/82)

THE LEGISLATURE OF THE STATE OF ALASKA  
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
 Bill/Resolution No. HCR-14  
 Title Extending the Life of the Regional Educ. Attendance Area Budget...  
 Requested by House HESS Date 2-2-83

II. FISCAL DETAIL  
 Agency Affected Education  
 Program Category Affected Elementary & Secondary Education  
 BRU, Program, Or Subprogram(s) Affected \_\_\_\_\_  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-		

FUNDING (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND		-0-	-0-	-0-		
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This bill has no fiscal impact on this department.

RECEIVED

FEB 9 1983

LEGISLATIVE FINANCE

IV. DATE 2/3/83 PREPARED BY Steve Hole  
 AGENCY Education  
 PHONE 465-2865  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 35- (Rev. 12/82)

OMB Reviewed by: Jerry Bryant

*JMB*



Official Business

# Alaska State Legislature

## House of Representatives

Committee on

Health, Education & Social Services

Pouch V  
State Capitol  
Juneau, Alaska 99811

SUMMARY: HCR 14 Extending the life of the Regional Education Attendance Area Budget Oversight Committee

Pg. 1 L 9-13: Creation of Oversight Committee to act as a borough assembly to the unorganized borough schools to provide similar functions as in the municipal school systems.

Pg. 1 L 14-15:	<u>Year</u>	<u>Total \$</u>	<u>Balance</u>
	FY 80 Approp.	\$125,000	\$124,041
	FY 81 Carry-over from '80	\$124,041	-\$ 2,286 (lapsed)
	FY 82 Approp.	\$125,000	\$ 11 (lapsed)
	FY 83 Approp.	\$100,000	\$ 22,500 (present balance)
	<u>Additions</u>		
	FY 82 Budget Item	\$170,000	\$ -463 (drop out study)
	FY 82 Supplemental	\$125,000	\$124,536 (present balance)

Pg. 1 L 16-20: Hearings held in Juneau and Anchorage.

Pg. 1 L 21-24: Reports to Legislature, Feb. 82, March 82 & Jan. 83.

Pg. 1 L 25-27: Groundwork and problem areas isolated in reports; district by district summaries; break down in detail on individual school basis.

Pg. 1 L 28-  
Pg. 2 L 3: Continue existence through June 30, 1984.

Pg. 2 L 4-6: Requiring review of district operating budgets by Aug. 15.

Pg. 2 L 7-9: REAA Budget Oversight shall review findings of DOE regarding district budget reports.

2/10/83

# STATE OF ALASKA

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION  
POUCH WF-STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3795

February 4, 1983

### MEMORANDUM

TO: Linda Otey, Professional Assistant  
House HESS Committee

FROM: Pat Williams  
Legislative Finance Division

SUBJECT: Account 32-92-1-254 REAA Oversight Committee

As requested, the following is information you requested on expenditures of the REAA Oversight Committee:

#### FISCAL YEAR 1983 (July 1, 1982 - June 30, 1983)

	Authorization	Expenditures*	— Balance
Personal Services	60,000	59,430	570
Travel	20,000	3,279	16,721
Contractual	16,000	2,041	13,959
Commodities	2,000	436	1,564
Equipment	<u>2,000</u>	<u>12,264</u>	<u>(10,264)</u>
	100,000	77,450	22,550

\*Expenditures through 1/31/83. The current monthly payroll for this account is running approximately \$9,200 per month (see attached).

#### FISCAL YEAR 1982 (July 1, 1981 - June 30, 1982)

Personal Services	66,000	81,516	(15,516)
Travel	20,000	20,998	( .998)
Contractual	36,000	20,371	15,629
Commodities	2,000	2,104	( .104)
Equipment	<u>1,000</u>	<u>Ø</u>	<u>1,000</u>
	125,000	124,989	11

FISCAL YEAR 1981 (July 1, 1980 - June 30, 1981)

	Authorization	Expenditures	Balance
Personal Services	99,041	98,165	876
Travel	10,000	12,282	(2282)
Contractual	15,000	9,554	5446
Commodities	Ø	850	(850)
Equipment	Ø	904	(904)
	<u>124,041</u>	<u>121,755</u>	<u>2286</u>

(This was a carry-over appropriation from HB 60 adopted in June 1980 (Fiscal Year 1980))

FISCAL YEAR 1980 (July 1, 1979 - June 30, 1980)

Personal Services	100,000	959	99,041
Travel	10,000	Ø	10,000
Contractual	15,000	Ø	15,000
Commodities	Ø	Ø	Ø
Equipment	Ø	Ø	Ø
	<u>125,000</u>	<u>959</u>	<u>124,041</u>

# STATE OF ALASKA

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION  
POUCH WF-STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3795

February 7, 1983

### MEMORANDUM

TO: Linda Otey, Professional Assistant  
House HESS Committee

FROM: Pat Williams *Pat*  
Legislative Finance Division

SUBJECT: Study Accounts pertaining to REAA Activities

As requested, the following is a breakdown of monies expended from monies appropriated to Legislative Finance for REAA studies:

#### REAA DROP-OUT STUDY

FY 1982

	Authorization	Expenditures	Balance
Personal Services	122,050	125,069	(3,019)
Travel	19,910	44,636	(24,726)
Contractual	24,240	453	23,787
Commodities	4,200	453	3,747
Equipment	<u>Ø</u>	<u>252</u>	<u>(252)</u>
	170,400	170,863	(463)

In June 1982, \$125,000 was appropriated to Legislative Finance for a study of REAA facility Operations and Maintenance Costs. It had a Fiscal Year 1982 effective date (June 29, 1982) and was treated for accounting purposes as a "supplemental." Thus, the appropriation was penalized the \$463 overrun incurred by the Drop-Out study.

No expenditures have been made from the Operations & Maintenance study. There is a current balance of \$124,536.70.

FY 1982

HOUSE ANALYSIS

GOVERNORS REC \$2,290.7

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HOUSE FIGURE	\$2,529.7		

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*eff date 6/29/82*  
*Lapse date 6/30/83*

*#2*