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OF THE

COPYRIGHT

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SOCIETY

●

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MESSAGE

FROM THE PRESIDENT OF THE COPYRIGHT SOCIETY OF THE UNITED STATES OF AMERICA

"Omnium rerum principia parva sunt."
The beginnings of all things are small.
CICERO.

Realizing the growing need for the dissemination, in periodical form, of current information in the field of copyright and intellectual property, The Copyright Society of the U.S.A. presents herewith the first issue of its BULLETIN.

It is hoped that THE BULLETIN will prove to be a useful reference source and ready tool to all interested in receiving timely information on copyright. The six annual issues of THE BULLETIN will seek to give coverage and a brief digest of domestic and foreign legislation, including conventions and proclamations, of important court decisions both here and abroad and will contain a current bibliography of books, law review articles and other writings pertaining to copyright. Also listed in this Bibliographical Section will be editorials and data from trade magazines which relate to problems resulting from the use of copyrighted works in literature, drama, art, music, motion pictures, radio, and television.

This publication will constitute something of a pioneer effort, since there has not been until now a national society nor any periodical publication in the United States devoted exclusively to copyright.

The publication of THE BULLETIN appears especially timely and appropriate at this time in view of the fact that only a few months ago the Universal Copyright Convention was signed at Geneva by forty nations, including the United States. Should this Convention ultimately be ratified, it will, of course, have a profound effect upon the rights of authors and users of copyrighted material both here and abroad and may result in important changes in the existing domestic copyright laws of the signatory nations.

It will be the endeavor of the Society to publish as promptly as possible all pertinent information for ready reference by members of the Copyright Bar and all other persons or organizations interested in copyright.

The Society is under obligation to the members of the Editorial Board under the leadership of Professor Walter J. Derenberg for their labor and industry in compiling and presenting the material for this and subsequent issues of THE BULLETIN.

SAMUEL W. TANNENBAUM

PART I.
LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS

UNITED STATES OF AMERICA AND TERRITORIES

1. *U. S. Congress. Senate. S.* 1444.

A bill to amend title 17, section 1(e) of the United States Code entitled "Copyright" with respect to the rendition of musical compositions on coin-operated machines. Introduced by Senator Dirksen (by request), March 25, 1953. Referred to the Committee on the Judiciary.

1 *p.* (83*d Cong., 1st Sess. S.* 1444).

The bill would amend 17 U.S.C. section 1(e) by striking out the last paragraph which exempts public performance for profit by coin-operated machines.

2. *U. S. Congress. House. Committee on the Judiciary. H. R.* 2747.

Amending title 17 of the United States Code entitled "Copyright" with respect to the day for taking action when the last such day falls on Saturday, Sunday, or a holiday. H. Report No. 337 to accompany H.R. 2747. April 30, 1953.

2 *p.* (83*d Cong., 1st Sess. H.R.* 2747.)

H.R. 2747 was reported favorably out of the Judiciary Committee on April 30, 1953. The bill was passed by the House on May 19, 1953 and was referred to the Senate on the following day.

3. *New York. Assembly. Int. No.* 347.

An act to amend the penal law in relation to the unauthorized copying of photograph (sic) records or broadcasts for sale or for use for gain or profit. Introduced by Mr. Wilson, January 13, 1953.

This bill was substituted for an identical Senate bill (Int. No. 188) which was passed by both houses on March 21, 1952 and was vetoed by the Governor on April 2, 1952.

4. *U. S. Dept. of the Air Force.*

Use of copyrighted material. Washington, Dept. of the Air Force, 18 Mar. 1953.

3 *p.* (*Air Force Regulation No.* 5-21).

The regulations prescribe the policies for the acquisition of license rights to reproduce copyrighted material in Air Force publications. Included is a sample form letter for securing the permission of the copyright owner or publisher.

5. *U. S. Dept. of Defense.*

Title 32—National Defense. Ch. VII. Department of the Air Force. Subchapter J—Procurement Procedures. Part. 1008 Patents and Copyrights. Subpart B—Copyrights.

Federal Register, vol. 18, *no.* 43 (*Mar.* 5, 1953), *p.* 1239.

Sections 1008.201 through 1008.205 of the National Defense Regulations set forth Administration requirements and procedures relating to the use and publication of copyrighted materials and the use of copyright clauses in Air Force contracts.

6. *U. S. Dept. of Defense.*

Title 32—National Defense. Ch. IV. Joint Regulations of the Armed Forces. Subchapter A—Armed Services Procurement Regulations. Part 408—Patents and Copyrights. Contracts for personal services.

Federal Register, vol. 18, *no.* 48 (*Mar.* 12, 1953), *p.* 1418.

Section 408.205 of the National Defense Regulations sets forth the text of a clause which is to be inserted in all personal services contracts dealing with the use and publication of copyrighted or copyrightable material. The contractor is to agree to give the government a royalty-free, nonexclusive, irrevocable license to use the material and to notify the government of any adverse claims or notices of infringement.

7. *U. S. Dept. of Justice. Office of Alien Property.*

Summary statement of the jurisdiction and policies of the Office of Alien Property with reference to literary, scientific and artistic works of enemy origin.

Washington, Office of Alien Property, February 18, 1953. 6 *p.* (*mimeo.*).

The summary covers such items as the jurisdiction of the Office of Alien Property; its vesting policies; exceptions to the vesting policy; transactions prohibited in the exploitation of German works; applications for licenses; and the use of royalties for payment of war claims.

8. *Puerto Rico. Camara de Representantes.*

Ley creando la Comisión de Autores, Compositores y Editores de Música de Puerto Rico. P. de la C. 764, Febrero 18, 1953, presentado por el Representante Rivera Reyes (por petición). (Law creating a commission of authors, composers and publishers of music of Puerto Rico. Draft law No. 764, February 18, 1953, introduced by Representative Rivera Reyes by request).

4 p. (*2a Asambleal legislativa, 1a sesión ordinaria*).

This bill, if passed by the territorial assembly, would provide for the licensing of jukeboxes, the revenue being used to support Free Schools of Music and to promote artistic-musical production and national culture.

FOREIGN NATIONS

9. *Canada. Treasury Board.*

SOR/52-538. Financial Administration Act—Regulations *re* refund of overpayment of fees. Extract from the minutes of a meeting of the Honourable the Treasury Board, held at Ottawa, December 2, 1952.

The Canadian Gazette, vol. 86, No. 24, Pt. II, pp. 1066-1067 (*December* 24, 1952).

This regulation provides for the refund of fees where a copyright application has been withdrawn or refused. It includes refunds where a duplicate application has been inadvertently made and where the purpose for which the money was paid has not been fulfilled.

10. *Germany (Federal Republic).*

Gewerblicher Rechtsschutz und Urheberrecht. Textausgabe mit Verweisungen und Sachregister nach dem Stand vom 10 November 1949. Bearbeitet von Assessor Hans Lermer.

Regensburg, Fachbuch-Verlag Georg Pfaffelhuber, 1949. 182 *p.*

This is a compilation of pertinent German legislation on patents, trade-marks and copyright, including the administration of the Patent Office. Brief annotations refer to enabling and amending legislation as well as to related material.

PART II.

CONVENTIONS, TREATIES AND PROCLAMATIONS

11. *U. N. Intergovernmental Conference on Copyright, Geneva,* 1952.
Report of Sir John Blake, rapporteur general.
(*Re-print from UNESCO; Copyright Bulletin, Vol. V, No.* 3-4). *Paris, UNESCO,* 1952. 27 *p.* 24 *cm.*
This is the revised report of the Rapporteur General of the Intergovernmental Copyright Conference held in Geneva August 18 to September 6, 1952.

12. *U. S. Delegation to the Intergovernmental Conference on Copyright, Geneva,* 1952.
Geneva copyright conference, 1952. Report of the Chairman of the United States Delegation to the Intergovernmental Conference on Copyright for the completion and signing of a Universal Copyright Convention held in Geneva, Switzerland, August 18 to September 6, 1952, under the auspices of the U. N. Education, Scientific and Cultural Organization (UNESCO).

Washington, 1953. 7 p. (multilithed).

A brief report of the work involved in the preparation of the Universal Copyright Convention, and the contributions made by the various members of the United States Delegation. A limited number of copies are available upon request.

13. *U. S. Dept. of State.*
International Copyright Relations of the United States of America. Proclamations, treaties and conventions establishing copyright relations. Washington, Office of the Legal Adviser, Dept. of State, Aug. 1, 1951 (revised as of April 27, 1953).
10 *p.* (*multilithed*).

The list of proclamations, treaties and conventions has been brought up to date and is being issued by the Copyright Office.

PART III.

JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY

A. DECISIONS OF U.S. COURTS

1. Federal Court Decisions.

14. *Ballentine v. DeSylva,* not yet reported (S.D.Cal. April 29, 1953).

Action for an accounting of moneys and benefits derived by the widow as a result of renewal in her name of copyrights of the deceased. The cause was brought by the illegitimate son of the deceased author.

Held: For the widow. She was held to be the sole owner, as long as she lived, of all rights to renewals of copyrights in which deceased had an interest.

15. *Edw. B. Marks Music Corp. v. Borst Music Pub. Co.,* 110 F. Supp. 913 (D.C.N.Y. 1953).

Action for infringement of copyright in song "In the Baggage Coach Ahead." The plaintiff was the widow, since remarried, of the author and composer. The defendant publishing company claimed to have acquired rights in the song through an assignment from the individual defendant, Arthur Borst, who alleged to have composed both the music and lyrics.

Held: For plaintiff. The principal issue before the court was whether a widow loses her status under the renewal provision of the Copyright Act as the result of remarriage. It was held that remarriage of the widow in no way affects her rights to secure copyright renewal in her late husband's works.

The court also observed that where similarity between two works is too close to be coincidental, no additional proof of access to the original work may be needed and that under this test, defendant's work clearly infringed upon plaintiff's song.

Furthermore, the now familiar rule was re-emphasized by the court that where there has been no express covenant with regard to a conveyance of the renewal rights, such rights remain in the author and are not covered by assignment of copyright in general terms.

16. *Favorite Films Corp. v. Warner Bros. Pictures,* 97 U.S.P.Q. 11 (S.D.N.Y. 1952).

Unfair competition action by owners of the rights to exploit a motion picture entitled "About Face" against one who released another picture under the same title. Each of the three plaintiffs alleged two causes, one in equity and another for money damages. The defendant opposed plaintiff's request for a jury trial.

Held: Plaintiffs have a right to a jury trial. The action for money damages is in law and entitles the plaintiffs to a jury even though coupled with a claim in equity.

17. *Gordon v. Weir,* 11 F. Supp. 117 (E.D. Mich. 1953).

Action for infringement of a copyrighted advertisement which contained a scheme for a contest. Defendants claimed that the contest, entailing the counting of dots, was merely an idea and not copyrightable.

Judgment for plaintiff. The court said: "Although there is no property right in an idea, there may be a property right in a particular combination of ideas where the combination is reduced to concrete form . . . Advertisements which exhibit some original effort as to conception, composition, and arrangement, have been held copyrightable under the United States copyright statutes."

The court went on to say that "(t)he recent trend . . . indicates a tendency . . . to afford more liberal protection to the copyright owner . . ."

The fact that defendant too had obtained a copyright did not relieve him of liability. BUT, since some of the defendants, without knowledge of the infringement, operated under the defendant's supposed license, and since no profits were shown as to them, they would be relieved of liability. The court further said that although each publication is usually considered a separate infringement, in the light of the plaintiff's practice of authorizing reprints during a contest, there was here only one infringement for each contest.

18. *Lewis v. Kroger Co.,* 109 F. Supp. 484, 95 U.S.P.Q. 359 (S.D.W.Va. 1952).

Motion to dismiss the complaint which alleged infringement of copyrighted prints of a contest. The plaintiff's plan was for newspaper advertising while the defendant distributed its application blanks in its stores.

Held: Motion granted. The court said that it could decide on a motion to dismiss whether there had been an infringement, for it had all of the necessary data, i.e., copies of plaintiff's copyrighted print and copies of defendant's contest. No discernible copying was found. The defendant was held to be able to use the idea for the contest, for it was not copyrightable, as long as ". . . there (was) not any copying of the wording or composition of the plaintiff's print, nor of its basic plan or pattern, discernible to the ordinary observer."

19. *McCulloch v. Zapun Ceramics,* 97 U.S.P.Q. 12 (S.D.N.Y. 1953).

Motion to dismiss the complaint which alleged infringement of copyright on certain Chinese figurines. The motion was made on two grounds: (1) that defendant was an innocent infringer, and (2) that if plaintiff was successful in this action it would result in a double recovery—in that plaintiff would be awarded damages already secured by it in an action against defendant's vendor.

Held: Motion denied. (1) Defendant, if it marketed the copies of the copyrighted figurines, would be an infringer, and would thereby become liable irrespective of the innocence of the infringement. (2) The damages assessed against the manufacturer, defendant's vendor, were assessed as a result of that company's infringement and not the alleged infringement of the defendant.

20. *Stein v. Mazer,* 97 U.S.P.Q. 310 (4th Cir. May 19, 1953).

Action for infringement of plaintiff's copyrighted three-dimensional statuette. The copying occurred after the plaintiff had used the statuette as a lamp base. The lower court dismissed the complaint.

Held: For plaintiff. (1) The court gave great weight to the fact that the Copyright Office had been accepting such statues for several years. (2) It said, quoting Mr. Justice Holmes in *Bleistein v. Donaldson Lithographing Co.,* 188 U.S. 239, 251 (1903), that "A picture is none

the less a picture, and none the less a subject of copyright, that it is used for an advertisement. And if pictures may be used to advertise soap, or the theatre, or monthly magazines, as they are, they may be used to advertise the circus." Thus the court said ". . . that a statue is just as much a work of art when used to support a lamp as when it is displayed in an art gallery."

The court attempted to distinguish the present case from *Stein v. Expert Lamp Co.*, 96 F. Supp. 97, aff'd 182 F. 2d 611, cert. denied 342 U.S. 829. BUT the court said that even if the cases were not distinguishable, it would refuse to follow the *Expert Lamp* case.

In reversing the lower court, it said, "All that we hold and all that we need hold, is that the copyrights of statuettes granted to the plaintiffs were valid, even though plaintiffs intended primarily to use these statuettes in the form of lamp bases and did so use them, and that these copyrights were clearly infringed by defendants, who minutely copied these statuettes in the form of bases for lamps." Judgment of the District Court is reversed.

2. State Court Decisions.

21. *April Productions, Inc. v. G. Schirmer, Inc.*, 97 *U.S.P.Q.* 242 (*N.Y.S.Ct.*, 1953).

Action on a written contract wherein the defendant music publisher agreed to pay plaintiff's assignors royalties for publishing in sheet music form selections from the latter's musical play. The copyrights were originally in the name of the defendant and royalties were paid until 1945 when the renewal copyrights were obtained by a third party. The contract made no mention of copyright.

Held: For plaintiff. "Implicit in the contract is the defendant's obligation to pay the royalties so long as it published and sold the music. Consideration for the obligation having existed when the contract was made, that consideration does not become nugatory or lose its effectiveness by the passage of time or by the fact that the record ownership of the copyrights after twenty-eight years vested in a third party. Indeed, copyright ownership was never vested in the plaintiff's assignor, a fact well known to the defendant since it obtained the original registration in its own name."

B. DECISIONS AND RULINGS FROM OTHER NATIONS

Great Britain

22. *Bauman v. Fussell et al.* (Ct. of App., May 18, 1953).
London Times, no. 52, 625 (May 19, 1953), p. 2.

Action for infringement of a copyrighted photograph of a cock fight which was reproduced in the *Picture Post* for July 15, 1951. One of the defendants saw the photograph and, using the idea, painted a picture, which was exhibited by defendant art dealers and purchased by the third defendant. Plaintiff claims that the painting infringed upon his copyright in the photograph and requests damages from all defendants and delivery of the infringing work by the present owner.

Held: Appeal dismissed. A painter who used a photograph taken by the plaintiff as the basis for a painting did not infringe the photographer's copyright. Lord Justice Romer in a dissent stated that the question of whether the painting was a reproduction or colourable imitation of a substantial part of the picture—which was the proper test—was one of considerable difficulty and, that, in his opinion, what the artist had done infringed upon the plaintiff's copyright in the photograph.

23. *Hartnett v. Pinkett*
(Brentford County Ct., Plaint No. H. 2193, Jan. 12 1953).
103 *Law Journal* 204

Plaintiff had discussed with defendant the taking of photographs during his wedding and subsequently ordered an album made up by defendant from such photographs. Later the plaintiff was sued by a third party for breach of promise and during the trial of that case, the defendant supplied photographs of the wedding without plaintiff's permission. These photographs had appeared in the press. One bore the caption "Wedding Smiles: Now Breach Case." The defendant photographer argued that since no definite contract for the photographs existed until after the wedding, the copyright in the photographs had vested in him.

Held: There had been a contract and not a mere permission to take pictures before the wedding. The main test was whether the plaintiff would have had to pay for the negatives if he had not ordered any copies of the photographs. Applying that test, if the plaintiff had not

taken the album or any of the photographs the defendant would have been entitled to damages for breach of contract or for work done. This was held not to be a case of "taking casual or speculative photographs" but the arrangement was a binding contract, with the result that copyright in the photographs taken was at all times vested in the plaintiff rather than the photographer.

Since the defendant was held to have acted in good faith, a judgment in the amount of £25 was given to the plaintiff.

24. *Reliance* (Nameplates), *Ltd., et al. v. Art Jewels, Ltd.* (Ch. Div., Mar. 3, 1953).

[1953] 1 *All Eng. Rep.* 759; [1953] 1 *W.L.R.* 530; 97 *S.J.* 210.

Action for infringement. Plaintiff company manufactured a commemorative coronation medal designed by second plaintiff who licensed company to reproduce it. Defendant reproduced exact copies by a die made from one of plaintiff's medals. On motion for an interim injunction to restrain infringement.

Held: Medal was within the exception of r. 26 of the Designs Rules, 1949, and therefore a subject for copyright under the Copyright Act, 1911, s. 1 (1). Injunction granted.

PART IV.
BIBLIOGRAPHY

A. BOOKS AND TREATISES

Foreign Publications

25. GEMA

Magnettongeräte und Urheberrecht, München und Berlin, Verlag C. H. Beck (1952). 179 p.

This is a collection of a series of legal opinions by outstanding German copyright lawyers on the question of whether the making of a phonograph record by Magnetophon in a private residence and for private, personal use, may be an infringement of copyright. Also discussed is the question whether the owner of a shop selling Magnetophon equipment may demonstrate by making recordings at the store without being guilty of copyright infringement. The contributors reach conflicting conclusions with regard to these problems.

26. Keckeis, Peter.

Entwicklung und Verhältnis des Übersetzungsrechtes zum Urheberrecht in der Schweiz. (The Evolution and Relationship of Translation Rights to Copyright). Einsiedeln/Zürich, Benziger & Co. AG., 1948. 116 p.

This study was prepared as a doctor's dissertation for the University of Bern. It traces the evolution of translation rights from privileges under kantonal legislation in Switzerland to federal legislation and then makes an analysis of the various rights involved in translations.

27. Pinner, H. L.

World Copyright. The Protection of Intellectual and Industrial Property Throughout the World, a legal encyclopedia. Vol. I. Founded by H. L. Pinner and the late P. M. Dienstag. Leyden, A. W. Sijthoff, 1953.

This is the first in a series of volumes on copyrights, patents, trademarks and unfair competition. It contains a survey of copyright laws, reports and literature for each country, followed by a dictionary arrangement of subject headings beginning with "Abandonment of Copyright" and ending with "Civil Remedies for Infringement of Copyright." The copyright portion of the encyclopedia will be complete in four volumes.

28. Runge, Kurt

Urheber—und Verlagsrecht. Systematische Darstellung under Berücksichtigung des internationalen Urheberrechts, der Urheberrechtsreform und der Nachkriegslage. Bonn, Ferd. Dümmlers Verlag, 1948.

At present only a portion of this comprehensive work on copyright is available in printed form. According to the outline found at the beginning of the work, it is to be in four parts—the fundamental principles of copyright, legislation of the Allied Control Council, and international copyright. The work will also contain the texts of pertinent German legislation.

29. Sawer, Geoffrey

A Guide to Australian Law For Journalists, Authors, Printers and Publishers. Melbourne, Melbourne University Press, 1949. 96 p.

The work, prepared by a professor of law at the Australian National University, covers such subjects as the general structure of the Australian legal system; copyright; defamation; contempt of court; obscenity; blasphemy and sedition; lotteries, gambling, advertisements and election; registrations and deposits; and general information for journalists. The book also contains a glossary of legal terms.

30. *U. N. United Nations Educational, Scientific and Cultural Organization. Dept. of Cultural Activities, Copyright Division.*

Copyright Bulletin, Vol. V, No. 3-4, 1952. 260 *p.*

This entire issue is devoted to the Universal Copyright Convention. The text of the Convention appears in German, Italian and Portuguese as well as in the official languages of English, French and Spanish. It also contains the report of the Rapporteur-General in its final form, a summary of the achievements of the Intergovernmental Copyright Conference as presented by the Director-General of UNESCO at its 7th session in Paris October, 1952, and the texts of governmental observations on the Draft Convention.

B. LAW REVIEW ARTICLES

1. United States

31. Anderson, William E.
Copyrights.

Chicago Bar Record, vol. 34, *no.* 6 (*Mar.* 1953), *pp.* 255-261.

A general survey of American copyright law presented for the information of the general practitioner, edited from a lecture before the Bar Association on January 27, 1953.

32. Derenberg, Walter J.
Copyright Law.

New York University Law Review, vol. 28, *no.* 3 (*Mar.* 1953), *pp.* 681-695.

This is a preprint of the section on Copyright Law which will appear in the *Annual Survey of American Law* for 1952, to be published in book form in the near future.

33. Dubin, Joseph S.
Copyright Aspects of Sound Recordings.

Southern California Law Review, vol. 26, *no.* 2 (*Feb.* 1953), *pp.* 139-156.

Originally prepared as a paper to be read before the Patent, Trade-Mark and Copyright Section at the American Bar Association Convention in 1952, the present article has been revised and corrected. The author reviews judicial opinion on copyright protection of sound recordings and concludes that the compulsory license provision of 17 U.S.C., sec. 1(e) is sufficiently broad to include the use of music recorded on sound tracks. An annotated chart indicating the status of copyright relations between the various nations of the world has also been included.

34. Finkelstein, Herman.
Plagiarism and Originality, by Alexander Lindey.

Yale Law Journal, vol. 62, *no.* 1 (*Dec.* 1952), *p.* 126.

In reviewing Mr. Lindey's book the general attorney for ASCAP feels that it has admirably carried out the author's purpose—to make laymen, if they imagine they are ". . . victims of piracy, or if they are accused of the offense—knowledgeable and tractable clients."

35. Finkelstein, Herman.
Risks and Rights in Publishing, Television, Radio, Motion Pictures, Advertising, and the Theatre, by Samuel Spring.

Yale Law Journal, vol. 62, *no.* 2, (*Jan.* 1953), *p.* 297.

In reviewing this volume, aimed at laymen, Mr. Finkelstein feels that the author attempted too much in trying to cover the *entire* field of copyright. The book is said to be useful in parts but to be suffering from a too summary treatment of portions of the subject matter.

36. Pilpel, Harriet F.
Tax Aspects of Copyright. Outline of lecture. New York, Federal Bar Association Mar. 2, 1953. 5 p. (mimeo).

The outline mentions such subjects as capital asset status v. capital gain, the transfer of income producing property, the spreadback and the spreadforward, the problems of the non-resident alien and other problems. The complete paper will be published by the Commerce Clearing House in the near future.

37. Protecting the Artistic Aspects of Articles of Utility: Copyright or Design Patent?

Harvard Law Review, vol. 66, *no.* 5 (*Mar.* 1953), *pp.* 877-886.

A discussion of the *Expert Lamp* cases and the problem of securing protection for a work of art having a utilitarian purpose.

38. Rabinowitz, Jack.
Legal Protection of Ideas.

Brooklyn Law Review, vol. 19, *no.* 1 (*Dec.* 1952), *pp.* 97-105.

The author examines the question whether the originator of an unpatented or uncopyrighted idea may have a property right or other legal interest in the intangible mental concept which is the product of his creation.

39. Sargoy, Edward A.
The Universal Copyright Convention signed at Geneva, Sept. 1952. Memorandum addressed to the members of the Committee on International Copyright, Section of Patent, Trademark and Copyright Law, American Bar Association. New York, Feb. 9, 1953. 33 p. (mimeo).

The memorandum is a resumé of the various provisions of the Universal Copyright Convention and of some of the problems to be considered with regard to amending our present domestic law.

40. Soper, Herbert D.
Certain Accounting and Tax Aspects of Patents, Trademarks and Copyrights.

Journal of the Patent Office Society, vol. 35, *no.* 4 (*Apr.* 1953), *pp.* 296-306.

Although most of the article deals with the accounting and tax aspects of patents, some space is devoted to the determination of tax liability on income derived from copyrights or infringement actions.

Annual Report

41. *U. S. Copyright Office*

Fifty-fifth annual report of the Register of Copyrights for the fiscal year ending June 30, 1952. Washington, Copyright Office, 1953. 12 p.

This is a reprint of that portion of the Annual Report of the Librarian of Congress dealing with the operations of the Copyright Office during 1951-1952.

42. Yankwich, Leon R.

Thoughts of Copyright.

Los Angeles Bar Bulletin, vol. 28, *no.* 4 (*Jan.* 1953), *pp.* 117-118, 129-134.

A brief presentation of the historical evolution of American copyright, and a discussion of the questions of moral rights and the manufacturing clause by the Chief Judge, U. S. District Court for the Southern District of California.

2. FOREIGN

1. English

43. Critical Times for Authors. A survey of present conditions prepared for the Society of Authors. London, The Favil Press, Ltd., 1952.

A supplement to the Spring, 1953 issue of *The Author.* The report suggests that the time is now ripe for the British author to consider advocating a form of domain public payant and possibly to advocate a "borrowing-fee" royalty on books loaned by libraries.

44. Ewart, Kenneth.

Copyright.

Cambridge University Press, 1952. 19 *p.*

(*Cambridge Authors' and Printers' Guides, No.* 5).

Briefly explaining to authors the British copyright system.

45. Guerität, Jacques French.

Authors and Broadcasting (SACD-EBU standard contract).

Documentation and Information Bulletin, vol. 3. *no.* 15, (*Sept.* 1952), *pp.* 474-478.

The Société des Auteurs et Compositeurs Dramatiques de France has amended its charter in order to extend its collections for performance rights to radio and television.

Their approved standard contract is summarized.

46. Honig, F.
The Universal Copyright Convention, some Additional Observations.

The International and Comparative Law Quarterly, vol. 2, *pt.* 1 (*Jan.* 1953) 5*th ser., pp.* 88-90.

A discussion of the compromises in the Universal Copyright Convention.

47. James, F. E. Skone,
Proposed Changes In Copyright Law.

The Law Journal, vol. 103, *n.s., no.* 4536 (*Jan.* 2, 1953), *pp.* 5-7.

One of the leading experts on British copyright law summarizes the changes which have been proposed by the Copyright Committee of 1951 with regard to such subjects as duration of copyright, fair dealing, designs, ancillary rights, mechanical rights, records, motion pictures, broadcasting, performing rights, remedies and procedures, photographs and testamentary disposition of unpublished works.

2. In French

48. Abel, Paul.
La Réforme de la loi britannique sur le droit d'auteur, rapport de la commission du droit d'auteur. (Revision of the British law on Copyright, report of the Copyright Committee).

Le Droit d'Auteur, vol. 66, *no.* 3 (15 *Mar.* 1953), *pp.* 25-30.

Dr. Abel reviews some aspects of the report of the British Copyright Committee of 1951, such as the term of copyright protection, fair dealing, performing rights, droit moral and the rights involved in typography.

49. Boor, [Hans Otto] de.
Lettre d'Allemagne. (Letter from Germany).

Le Droit d'Auteur, vol. 66, *no.* 3 (15 *Mar.* 1953), *pp.* 30-35.

In the first part of his "letter" Prof. de Boor reviews the recent discussions on copyright protection of motion picture films, including the rights of the author, co-authors, producers, composers, and performing artists, as well as the relative merits of the proposals advanced by Justus Koch and Eugen Ulmer. The second part of the report deals with a survey of recent copyright litigation in Germany.

50. Duchemin, J. L.
Réunions internationales sur le droit d'auteur, Genève—Venise, Août et Septembre 1952. (International Conferences on Copyright, Geneva—Venice, August and September 1952). Paris, Syndicat de la Propriété Artistique, 1952.

This report discusses the various copyright issues presented at the Intergovernmental Conference at Geneva and the International Conference of Artists at Venice.

Droit moral, translation rights, treatment of artistic works and domaine public payant are among the matters considered.

51. Hepp, François.
Les Perspectives actuelles de l'universalisation du droit d'auteur. (Present prospects for the universalization of copyright). Paris, Rousseau et Cie., 1952. 27 p.

M. Hepp discusses the obstacles which must be overcome before there can be a universalization of copyright, including differences in ideology, legal theory, a conflict of interests, and some nations' jealous regard for their sovereignty. Despite these difficulties, the author expresses optimism for ratification of the Universal Copyright Convention.

52. Homburg, Robert.
La Protection des oeuvres orales. (The protection of oral works).

Inter-Auteurs, no. 110 (1*er trimestre,* 1953), *pp.* 26-27.

A brief survey of domestic and international legislation concerning the protection of lectures, speeches, sermons and similar oral presentations.

53. Romanus, Sven.

La revision des lois nordiques sur le droit d'auteur. (The revision of Nordic laws on copyright).

Inter-Auteurs, no. 110 (1*er trimestre* 1953), *pp.* 7-9.

Since 1939, the governments of Denmark, Norway, Finland and Sweden have been working on projects to make uniform, if possible, their laws on copyright, to enact legislation concerning new phases of copyright and to amend their present legislation so as to permit adherence to the Brussels revision of the Bern Copyright Convention. This article lists the chapter headings for the current uniform draft law and sets forth some of the subjects being discussed.

54. Straschnov, Georg.

Rapports entre la Convention de Berne et la Convention universelle. (Relationships between the Bern Convention and the Universal Convention).

Le Droit d'Auteur, vol. 66, *no.* 4 (15 *Apr.* 1953), *pp.* 37-44.

Mr. Straschnov discusses the evolution of the provision contained in the Universal Copyright Convention recognizing the concurrent existence of the Bern Copyright Convention.

55. Ulmer, Eugen.

Appareils magnetiques et droit d'auteur. (Wire recordings and copyright).

Inter-Auteurs, no. 110 (1*er trimestre,* 1953), *pp.* 14-19.

This is a French translation of a study which has been included in a compilation of legal studies recently published by GEMA in Munich. Prof. Ulmer compares proposals recently advanced by German writers as to the rights involved in the making of wire recordings, for private use or study. (Cf. supra p. 11).

3. In German

56. Ohr, Helmut.

Der Rechtsschutz der Schaufenstergestaltung nach dem Kunstschutzgesetz—ein Beitrag zur Frage des Schutzes der Raumgestaltung. (The legal protection of the arrangement of show-windows under the Kunstschutzgesetz—a contribution to the question of protection of interior decorating.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 55, *no.* 1 (*Jan.* 1953), *pp.* 19-29.

57. Schönherr, Fritz.
Das Genfer Welturheberrechtsabkommen. (The Geneva Universal Copyright Convention).

Oesterrechische Blätter für Gewerblichen Rechtsschutz und Urheberrecht, vol. 1, *nr.* 11/12 (6 *Dez.* 1952), *pp.* 42-44.

A brief summary of the provisions of the Universal Copyright Convention, signed at Geneva on September 6, 1952.

58. Spengler, Albrecht.
Einige Rechtsfragen betreffend die GEMA. (Some legal questions concerning GEMA).

Gewerblicher Rechtsschutz und Urheberrecht, vol. 55, *no.* 2 (*Feb.* 1953), *pp.* 78-81.

59. Spitzmüller, Alexandre de.
La "Staatlich genehmigte Gesellschaft der Autoren, Komponisten und Musikverleger (A.K.M.)". (The official organization of authors, composers and publishers of music).

Inter-Auteurs, no. 110 (1*er trimestre,* 1953), *pp.* 11-13.

A brief history of the Austrian performing rights society, A.K.M.

4. In Italian

60. Bologna, Italo.
Osservazioni in tema di diritto d'autore: diritto morale ed utilizzazione economica dell'opera.

Il Foro Italiano, anno 77, *fasc.* 17-18 (*Sept.* 19, 1952), *pp.* 1061-1067.

In a commentary on a decision of the Court of Appeals of Rome handed down July 6, 1948, the author discusses various aspects of the principle that upon the gift of a work of art, the right to reproduce does not pass to the donee, even though there is no express reservation in favor of the author.

61. Galteri, Gino.
Le Formalita' nella legislazione italiana sul diritto d'autore (Formalities under Italian legislation on copyrighting).

Il Diritto di Autore, vol. 23 *no.* 4 (*Oct.-Dec.,* 1952), *pp.* 490-507.

A member of the Italian Office of Literary, Artistic and Scientific Property discusses the historical evolution of the requirements for deposit and registration in Italian copyright legislation.

62. Giannini, Amedeo.
Note di diritto cinematografico. (Note on motion picture rights).

Il Diritto di Autore, vol. 23, *no.* 4 (*Oct.-Dec.* 1952), *pp.* 455-489.

An extensive study of the rights of the various authors and performing artists involved in the creation of motion picture film plays and documentaries, reviewed in the light of the provisions contained in both the Italian law of 1941 and the 1948 Brussels revision of the Bern Copyright Convention.

63. Giannini, Amedeo.
Note sul diritto d'autore. (Note on copyright).

Rivista del Diritto Commerciale, 1952, *fasc. nos.* 5-6 (*May-June,* 1952), *pp.* 189-202.

A presentation of some of the problems pertaining to protection of photographic works under the Bern Copyright Convention and the domestic law of Italy.

5. In Spanish

64. Crearían Comisíon Autores Musicales.
El Mundo, año 34, *no.* 14946 (*San Juan, Mar.* 7, 1953), *p.* 12.

An announcement of the draft law, introduced in the Puerto Rican legislature on February 18, 1953, which would provide for the creation of a Commission of Authors, Composers and Publishers of Music. The Commission would be regulated by the Secretary of Education for the purpose of protecting, promoting and preserving artistic-musical works and national culture. Among other things, it provides for the licensing of jukeboxes, the fees to be distributed by the Commission.

C. ARTICLES PERTAINING TO COPYRIGHT FROM TRADE MAGAZINES

1. United States

65. Appeal board decision due on stations' fees to CAPAC.

The Billboard, vol. 65, *no.* 9 (*Feb.* 28, 1953), *p.* 17.

During a recent meeting of the Canadian Copyright Appeal Board, one of its members suggested that amendments be made to the Canadian Copyright Act with regard to the scheduling of royalty fees for public performances paid to performing rights societies.

66. BMI backs copyright study; to issue production manual.

Publishers' Weekly, vol. 163, *no.* 15 (*Apr.* 11, 1953), *pp.* 1609-1610.

At a meeting of the Book Manufacturers' Institute on April 2 it was decided to join with the American Book Publishers' Council in a factual study of how many books would be affected by the proposed modifications of the manufacturing clause.

67. Books, Morals and Liberty, an illuminating statement of enduring principles.

The Bookseller, no. 2468 (*Apr.* 11, 1953), *pp.* 1040-1045.

After reading several articles on the activities of the Gathing Committee in the United States, a number of readers of The Bookseller, an English book-publishing trade magazine, have inquired as to the contents of Judge Curtis Bok's opinion in the case of *Commonwealth of Pennsylvania v. Gordon.* The present article is the first of a series containing excerpts from the opinion.

68. "The Case of Dr. Keen", a poser in copyright law.

The Bookseller, no. 2461 (*Feb.* 21, 1953), *p.* 696.

A report on a humorous hypothetical copyright infringement presented at a recent meeting of the Association of Special Librarians in England. The situation involves the rights of an employee-author and "fair-copying." Only the facts and various claims are given.

69. Compulsory licensing nix sought by Sharp.

The Billboard, vol. 65, *no.* 17 (*Apr.* 25, 1953), *pp.* 44, 71,

An attorney representing a record manufacturer in a pending copyright infringement suit in Chicago is said to have asked the district court to declare the compulsory licensing provision in 17 U.S.C., sec. 1(e) unconstitutional, claiming that it restricts the right of the copyright owner in negotiating with subsequent recording companies.

70. Wilson, Leslie.
Copyright and the scientist.

Nature, vol. 170, *no.* 4339 (*Dec.* 27, 1952), *pp.* 1108-1109.

The author takes exception to the formulae proposed by the British Copyright Committee for "fair copying" particularly when applied to the digesting or abstracting of scientific articles and books.

71. Heller, Deane.
Copyright Office is seldom surprised. By... and David Heller.

The Washington Star Pictorial Magazine (*May* 3, 1953), *p.* 4.

A short account of some of the more unusual deposits received by the Copyright Office during the course of its operations.

72. Introduce new juke bill in Congress. McCarran-sponsored legislation has backing of ASCAP, other music segs.

The Billboard, vol. 65, *no.* 10 (*Mar.* 7, 1953), *pp.* 16, 51.

The article discusses the provisions of the new McCarran bill in the light of the bills introduced in the recent sessions of Congress.

73. Mexico's inking of B.A. Copyright Act to hypo plugging of U. S. Tunes.

Variety, vol. 190, *no.* 2 (*Mar.* 18, 1953), *p.* 48.

Mexico's ratification of the Buenos Aires Copyright Convention of 1910 is expected to insure greater protection to U.S. copyright owners, music publishers and composers.

74. Tryon, W. S.
Nationalism and international copyright: Tennyson and Longfellow in America.

American Literature, vol. 24, *no.* 3 (*Nov.* 1952), *pp.* 301-309.

The author analyzes the oft-repeated claim of the nineteenth century that American authorship suffered because of the cheapness of the piratical reprints of English authors. He finds that while many American authors may have suffered losses, Longfellow was able to hold his own against his leading English counterpart.

75. Remarried widows still hold copyright, says 'Coach' case.
The Billboard, vol. 65, *no.* 11 (*Mar.* 14, 1953), *p.* 18.

In *Edward B. Marks Music Corp. v. Borst Music Publishing Co., Inc.* (supra p. 6), the New Jersey District Court held that although a widow had remarried, she is entitled to renew the copyright. The defense had contended that the writer's brother was entitled to renew. The same case is also mentioned in *Variety,* vol. 190, no. 1 (Mar. 11, 1952), p. 39.

76. Beatty, J. Frank.
Rights in non-dramatic work.

Publishers' Weekly, vol. 163, *no.* 13 (*Mar.* 28, 1953), *pp.* 1428-1430.

This commentary on the new Title 17 U.S.C., section 1(c) first appeared in the Feb. 16, 1953 issue of "Broadcasting: Telecasting" and has been reprinted in its entirety in the present issue of the *Publishers' Weekly.*

77. Rumor MOA may form own copyright organization. 'No Comment', says Miller; BMI action is cited.

The Billboard, vol. 65, *no.* 17 (*Apr.* 25, 1953), *p.* 110.

As a hedge against possible jukebox legislation the Music Operators Association is rumored to be forming a performing rights organization which would insure operators of a supply of music not subject to either ASCAP or BMI control.

78. Status of Japanese Copyright.

Publishers' Weekly, vol. 163, *no.* 20 (*May* 16, 1953), *p.* 2009.

The United States notified Japan on April 22, 1953, that it did not wish to renew the copyright treaty of 1905. Negotiations have been pending with respect to a new basis for copyright relations between the two countries.

79. Melcher, Frederic G.
Stories and verse will be increasingly on the air.

Publishers' Weekly, vol. 163, *no.* 13 (*Mar.* 28, 1953), *p.* 1437.

An editorial on the effect the new copyright amendment will have on the use of non-dramatic literary works in radio programs.

80. Vital problems of the book industry thrashed out at council meeting.

Publishers' Weekly, vol. 163, *no.* 20 (*May* 16, 1953), *pp.* 1988-2005.

Among the topics discussed at the recent meeting of the American Book Publishers' Council were the Universal Copyright Convention, copyright relations with Japan and modification of the manufacturing clause.

81. Brandon, William.
The Wedding Present.

Good Housekeeping, vol. 136, *no.* 4 (*Apr.* 1953), *pp.* 54-55, 236-244.

A short story involving the renewal of copyright in a musical composition.

2. Switzerland

82. Beidler, Franz W.
Ein Welturheberrechts-Abkommen. (A Universal Copyright Convention).

Der Schweizer Buchhandel, vol. 10, *no.* 20, (*Oct.* 31, 1952), *pp.* 437-440.

Dr. Beidler comments briefly on the national treatment clause, the formalities, translation rights and the minimum term of copyright protection adopted in the Universal Copyright Convention of 1952.

LAST MINUTE NEWS

EXECUTIVE M, June 10, 1953

As the first issue of THE BULLETIN goes to press, President Eisenhower issued on June 10, 1953, Executive M. Executive M is a message from the President to the Senate, transmitting the copy of the Universal Copyright Convention of 1952 for the purpose of receiving the advice and consent of the Senate with regard to ratification of the Convention. Attached to the President's printed message is the report of Secretary of State Dulles, recommending ratification of the Convention. We reprint here the concluding part from Secretary Dulles' letter.

"Throughout the period of development of this convention, this Government has engaged in close and continuous consultation with the various United States business and professional groups interested in copyright either directly or through the attorneys representing them in the copyright field. Various committees of the American Bar Association have had this work under continuous advisement. The United States delegation to the Geneva Conference included four leading private copyright attorneys as advisers. The delegation was also fortunate to have two congressional advisers from the Judiciary Committee of the House of Representatives.

Participation in the Universal Copyright Convention by the United States will not only significantly improve the protection accorded to United States private interests abroad, but will make a substantial contribution to our general relations with other countries of the free world. Early action by the United States with respect to ratification of the convention will enable the United States to play a leading part in helping to improve international relations in this important field."

CHANGE IN COPYRIGHT OFFICE RULES

According to the Federal Register of June 17, 1953, page 3459, Section 201.2(d)(2) has been revised, with regard to requests by attorneys for information, to read as follows:

§201.2 *Information given by Copyright Office.****

(d) *Requests for copies.****

(2) *Request by attorney.* When required in connection with litigation, actual or prospective, in which the copyrighted work is involved; but in all such cases the attorney representing the actual or prospective plaintiff or defendant for whom the request is made shall give in writing: (i) the names of the parties and the nature of the controversy; (ii) the name of the court where the action is pending, or, in the case of a prospective proceeding, a full statement of the facts of the controversy in which the copyrighted work is involved; and (iii) satisfactory assurances that the requested copy will be used only in connection with the specified litigation.

(Sec. 207, 61 Stat. 666; 17 U.S.C. 207)

This amendment shall be effective sixty days after the date of publication in the Federal Register. (Wednesday, June 17, 1953.)

ARTHUR FISHER,
Register of Copyrights.

Approved: June 11, 1953
Verner W. Clapp
Acting Librarian of Congress.

A POET'S OBSERVATIONS ON COPYRIGHT

CALLING SPRING VII—MMMC

As an old traveler, I am indebted to paper-bound thrillers,

Because you travel faster from Cleveland to Terre Haute when you travel with a lapful of victims and killers.

I am by now an authority on thumbprints and fingerprints and even kneeprints,

But there is one mystery I have never been able to solve in certain of my invaluable reprints.

I am happily agog over their funerals, which are always satisfactorily followed by exhumerals,

But I can't understand why so many of them carry their copyright lines in Roman numerals.

I am just as learned as can be,

But if I want to find out when a book was first published, I have to move my lips and count on my fingers to translate Copyright MCMXXXIII into Copyright 1933.

I have a horrid suspicion

That something lies behind the publisher's display of erudition.

I may be oversensitive to clues,

But I detect a desire to obfuscate and confuse.

Do they think that because a customer cannot translate MCMXXXIII into 1933 *because he is not a classical scholar,*

He will therefore assume the book to have been first published yesterday and will therefore sooner lay down his XXV cents or I/IV of a dollar

Or do they, straying equally far from the straight and narrow,

Think that the scholarly will snatch it because the Roman copyright line misleads him to believe it the work of Q. Horatius Flaccus or P. Virgilius Maro?

Because anybody can make a mistake when dealing with MCMs and XLVs and things, even Jupiter, ruler of gods and men;

All the time he was going around with IO he pronounced it Ten.....

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COPYRIGHT

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SOCIETY

●

OF THE U. S. A.

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CONTENTS

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PART I.

LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS

UNITED STATES OF AMERICA AND TERRITORIES

85. *U. S. Congress. Senate. S.* 2559.

A Bill to amend title 17, United States Code, entitled "Copyrights". Introduced by Mr. Langer, Aug. 1, 1953. Referred to the Committee on the Judiciary.

8 *p.* (83*d Cong., 1st Sess., S.* 2559).

Identical with H. R. 6616, below Item 89.

86. *U. S. Congress H. R.* 2113.

An Act to amend the Federal Charter of The American Legion. Approved June 26, 1953.

1 *p.* (*P. L.* 80, 83*d Cong., 1st Sess., H. R.* 2113).

The corporation is granted the right ". . . to use, in carrying out the purposes of the corporation, such emblems and badges as it may adopt and to have the exclusive right to manufacture, and to control the right to manufacture, and to use, such emblems and badges as may be deemed necessary in the fulfillment of the purposes of the corporation." It is also granted the ". . . . sole and exclusive right to have and to use, the name 'The American Legion' or 'American Legion.'"

87. *U. S. Congress. House. H. R.* 6225.

A Bill to amend title 17, United States Code, entitled "Copyrights," to provide for a statute of limitations with respect to civil actions. Introduced by Mr. Keating (by request), July 10, 1953. Referred to the Committee on the Judiciary.

2 *p.* (83*d Cong., 1st Sess. H. R.* 6225).

The bill would amend section 115 of title 17, United States Code, by adding a new paragraph providing that "no civil action shall be maintained under the provisions of Title 17 U. S. C. unless the same is commenced within three years after the claim accrued."

88. *U. S. Congress. House H. R.* 6608.

A Bill to amend title 17, United States Code, entitled "Copyrights with respect to provisions governing notice of copyright." Introduced by Mr. Keating (by request), July 29, 1953. Referred to the Committee on the Judiciary.

4 *p.* (83*d Cong., 1st Sess. H. R.* 6608).

The statutory requirements as to the contents and position of the copyright notice would be made less rigid.

89. *U. S. Congress. House. H. R.* 6616.

A Bill to amend title 17, United States Code, entitled "Copyrights." Introduced by Mr. Crumpacker, July 29, 1953. Referred to the Committee on the Judiciary.

8 *p.* (83*d Cong., 1st Sess. H. R.* 6616).

This bill is intended to amend the Copyright Act of 1909 in all respects in which that act requires amendments for the purpose of enabling the United States to ratify the Universal Copyright Convention as signed by the United States in Geneva last Fall.

With this aim in mind, H. R. 6616 would, *inter alia*:

(a) Do away with the requirement of a separate Presidential Proclamation with regard to mechanical reproduction rights under Section 1 (e) of the Act of 1909;

(b) Eliminate with regard to foreigners entitled to protection of the Convention the obligatory deposit requirements of the 1st section of Section 13 of the Act of 1909;

(c) Eliminate with regard to persons under (b) the requirement of American manufacture (viz., binding and printing of books first published abroad in the English language);

(d) Eliminate the import prohibitions of Section 107 so far as they relate to the manufacturing requirements of Section 16;

(e) Change the notice requirements with regard to parties entitled to the benefits of the Convention so as to hold sufficient use of the symbol © accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright.

90. *U. S. Congress House. H. R.* 6670.

A Bill to amend title 17, United States Code, entitled "Copyrights." Introduced by Mr. Reed (of Illinois), July 30, 1953. Referred to the Committee on the Judiciary.

8 *p.* (83*d Cong., 1st Sess. H. R.* 6670).

Similar to H. R. 6616.

91. *U. S. Dept. of Justice. Office of Alien Property.*

Annual Report of the Office of Alien Property for the Fiscal Year ending June 30, 1952. 124 p.

The activity of the Office of Alien Property in the copyright field is discussed from page 52 to page 56. Included are short paragraphs on vesting, royalties, administration, music, books, periodicals, motion pictures and miscellaneous works.

FOREIGN NATIONS

92. *Belgium. Laws, statutes, etc.*

Loi du 26 Juin 1951 portant approbation de la Convention de Berne pour la protection des oeuvres littéraires et artistiques, signée le 9 septembre 1886, complétée à Paris le 4 mai 1896, revisée a Berlin le 13 septembre 1908, complétée à Berne le 20 mars 1914, revisée à Rome le 2 juin 1928, et revisée en dernier lieu à Bruxelles le 26 juin 1948.

Revue de Droit Intellectuel L'Ingénieur-Conseil, vol. 43, nos. 3-4 (Mar.-Apr. 1953), p. 25.

Statute of June 26, 1951 approving the Bern Convention for the Protection of Literary and Artistic Works, signed September 9, 1886, completed at Paris May 4, 1896, revised at Berlin September 13, 1908, completed at Bern Mar. 20, 1914, revised at Rome June 2, 1928, and revised recently at Brussels June 26, 1948.

93. *Paraguay. Laws, statutes, etc.*

Ley n. 94—por la cual se aprueba el decreto ley n. 3642 del 31 marzo de 1951, que protege las creaciones cientificas, literarias y artisticas y se crea el registro público de derechos intelectuales.

Gaceta Oficial, no. 295 (10 July 1951), pp. 15-20.

This law approves an earlier decree giving protection to scientific, literary and artistic works, and creating a public registry of intellectual rights.

94. *Paraguay. Laws, statutes, etc.*

Decreto n. 6.609 que reglamenta la ley n. 94, por la cual se protegen las creaciones artisticas, literarias y cientificas y se crea el registro público de derechos intelectuales.

Gaceta Oficial, no. 324 (5 Sept. 1951), pp. 3-5.

Administrative regulation under statute referred to in item 93.

PART II.

CONVENTIONS, TREATIES AND PROCLAMATIONS

95. *Italy.*

Adhésion à la convention de Berne pour la protection des oeuvres littéraires et artistiques, revisée en dernier lieu à Bruxelles le 26 juin 1948. (Adhesion to the Bern Convention for the Protection of Literary and Artistic Works, revised recently at Brussels on June 26, 1948.)

Le Droit d'Auteur, vol. 66, no. 7 (15 july 1953), pp. 73.

Italy has deposited its ratification, effective July 12, 1953, of the 1948 revision of the Berne Convention.

95. (a) *Haiti.*

According to a bulletin just received from Mr. Manuel Canyes, Chief, Division of Law and Treaties, Pan American Union, the Government of Haiti deposited with the Pan American Union on August 25, 1953, its instrument of ratification of the Inter-American Convention on the rights of the author in literary, scientific, and artistic works signed at Washington in 1946. The said instrument of ratification bears the date of February 18, 1953. The following countries are now parties to the 1946 Copyright Convention: Bolivia, Brazil, Costa Rica, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua and Paraguay.

95. (b) *Argentina.*

From the same source as item 95 (a), information is received that the Government of Argentina has ratified the same Convention by Law No. 14186 approved on July 20, 1953. The instrument of ratification by Argentina is expected to be deposited shortly with the Pan American Union.

PART III.

JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY

A. DECISIONS OF U. S. COURTS

1. Federal Court Decisions.

96. *Markham v. Borden Co., Inc.*, 98 U. S. P. Q. 346 (1st Cir. August 21, 1953).

Action for infringement of plaintiff's copyrighted trade catalogs of refrigeration supplies and accessories. The district court found that plaintiff had a valid copyright; that defendant copied this material in nine items out of hundreds listed in the catalog; and that the defendant had not resorted to a common source. However, the district court held that there was no infringement because the copying was not "material and substantial."

The appellant argued that the "material and substantial" test has no application to the catalogs, which, they said, were covered by § 3 of the Copyright Act, the component parts section, affording blanket protection for magazines, periodicals and the like by providing that one copyright on such a publication will protect each part thereof as if it had been separately copyrighted. The appellee argued that § 3 protects only "composite works or periodicals," whereas the catalogs were mere compilations, covered by § 7. The appellee, arguing from *Shapiro, Bernstein & Co. v. Bryan,* 123 F. 2nd 697, 699 (2 Cir. 1941) asserted that "composite works" are those ". . . to which a number of authors have contributed distinguishable parts, which they have not however 'separately registered.' . . ."

Held: Reversed and remanded with directions to assess damages and enter judgment for the plaintiff. The court said that it agreed with the statement in *Shapiro, Bernstein & Co.*, ". . . . but essentially it means that 'composite works' are those which contain distinguishable parts which are separately copyrightable." It does not mean that the components must have been separately authored. "If such a selective pirating were allowed by applying the 'material and substantial' test to the whole catalog rather than to each of its parts, then the copyright on the catalog would seem to have very little value. Such a result would be inconsistent with the policy of protecting original achievements in this area and the statutory language does not indicate that such a result was intended."

97. *Overman v. Loesser,* 98 U. S. P. Q. 177 (9th Cir. June 26, 1953).

Action for infringement of plaintiff's copyrighted song, "Wonderful You," by defendant's subsequently copyrighted song, "On a Slow Boat to China." The plaintiff asserted two grounds for appeal: (1) That the lower court's finding that "On a Slow Boat to China" was written prior to "Wonderful You" was erroneous in that it was based upon a mere preponderance of the evidence, and not on evidence that was "clear and convincing or beyond doubt." Since access was proved, the appellant contended that the stricter rule of evidence was applicable in the light of *Hoeltke v. Kemp,* 80 F. 2d 912 (4 Cir. 1935); (2) That it was error to sustain appellee's objection to an expert being asked whether there was a likelihood that the two songs could have been independently composed.

Held: For defendant. (1) The court said that the strict rule in *Hoeltke v. Kemp* had been modified on a rehearing, and the rule as there stated and adopted by the present court is that ". . . the evidence of access by the defendant to plaintiff's ideas, coupled with the subsequent release by defendant of a product bearing noteworthy similarity to plaintiff's ideas, should be considered as strong and persuasive evidence of copying which requires the defendant to counter with strong, convincing and persuasive evidence to the contrary to refute the inference of copying. Mere denial without substantial support would not ordinarily be thought sufficient by the trier of fact." The burden of proving plagiarism remains with the plaintiff. (2) The decision as to the question on the expert was one of discretion for the trial court, and the court said, "(W)e think it took the more desirable course by confining the expert's opinion to definite facts in the case, rather than receiving his application of them."

98. *Rosenthal v. Stein, d. b. a., Reglor of California,* 98 U. S. P. Q. 180 (9th Cir. June 26, 1953).

Action for infringement of plaintiff's copyrighted three-dimensional statuette, which both the plaintiff and the defendant used as lamp bases. The district court, 103 F. Supp. 227, found for the plaintiff, saying that copyright "(p)rotection is not dissipated by taking an unadulterated object of art as copyrighted and integrating it into commercially valuable merchandise. The appropriateness of copyright registration is determined by the character of the registered work of art as registered and not by the ability, intent or hope of the registrant to use it as dress for a utilitarian object." The defendant admitted copying, relying on *Stein v. Expert Lamp Co.,* 96 F. Supp. 97 (N. D. Ill. 1951), aff'd 188 F. 2d 611 (7 Cir. 1951), cert. denied, 342 U. S. 829 (1951).

Held: For plaintiff. The court said that under the principles of *Bleistein v. Donaldson Lithographing Co.,* 188 U. S. 239 (1903) ". . . a work of art appears to be no less subject to protection of a copyright if it is prepared for and used commercially as a means of making money. We know of no authority to the contrary. And we think the principle or the teaching of the case is that the protection given by a copyright on a work of art is not lost by its double service of displaying its artistic quality while supplying a practical function of a utility article." The court also said, "We do not read the design patent law as stronger or prevailing over the copyright law, hence we are of the opinion that when the creator of the statuettes was granted copyright privileges as to them, such privileges became rights and cannot be affected by a speculation that possibly the objects could have been patented as designs. . . . The theory that the use of a copyrighted work of art loses its status as a work of art if and when it is put to a functional use has no basis in the wording of the copyright laws and there is nothing in the design-patent laws which excludes a work of art from the operation of the copyright laws."

99. *Shaw Advertising, Inc. v. Ford Motor Co.,* 98 U. S. P. Q. 186 (D. C. N. D. Ill. May 8, 1953).

Motion by defendant for summary judgment. Plaintiff, in 1945, contacted the defendant concerning a proposed advertising scheme it had drawn up. At defendant's request, plaintiff sent representatives to Dearborn, Michigan, where the plan was presented to defendant, who later informed plaintiff that it did not desire to use its plan. The complaint alleges that the plan was new, novel and unique, and was unknown to defendants or any other person before disclosure. Part of the plan involved the use of the slogan, "Get the feel of the wheel," and in 1949 defendant instituted an advertising campaign using the slogan, "Take the wheel—Try the feel." The complaint contains eight causes of action, the last three of which are based upon an alleged violation of plaintiff's common-law copyright in its intellectual or literary property. Defendant urges that the plan was neither novel nor concrete, and that the plaintiff's voluntary disclosure to defendant destroyed whatever protectable interest plaintiff may have had.

Held: Motion denied. The court said that to be protected an idea must be in concrete form; that it must be novel, or have some elements of novelty; and that the creator of the idea must not have revealed its contents to other persons prior to its disclosure to a prospective purchaser. To discover whether or not the idea was novel and whether it was copied

required findings of fact that had to be made at a trial. As to the nature of the rights asserted by the plaintiff the court said, "In some of its claims, plaintiff asserts that its interest should be protected by implied contract; in other claims, plaintiff shifts to a tort theory, and seeks recovery on the basis of plagiarism or piracy of its ideas. Such a property interest is recognized and protected by the courts, though recognition was extended less than two decades ago, and the protection is qualified by certain rigorous requirements. *Liggett & Myers Tobacco Co. v. Meyer,* 101 Ind. App. 420; *Ryan & Associates v. Century Brewing Ass'n,* 185 Wash. 600; *Matarese v. Moore-McCormack Lines,* 158 F. 2d 631; *Belt v. Hamilton National Bank,* 108 F. Supp. 689."

100. *Simon & Co. v. United States,* 88 Treas. Dec., No. 32, p. 14 (U. S. Customs Court, Second Division. July 28, 1953).

Action to reduce the assessed duty on imported merchandise. The merchandise consisted of a two-volume work entitled "Atlas of Human Anatomy," imported as unbound sheets containing illustrations and some printed matter and folded in signatures of 16 pages. The great bulk of the work consisted of plates, with no text except for a title. Each volume contained several title pages, a preface by M. W. Woerdeman, an extended index, a page devoted to credits for the illustrations, and a page of errata. The collector of customs classified the merchandise as charts and assessed them at a rate of 12½ per centum ad valorem. The plaintiff contended that the sheets were books of bona fide foreign authorship, unbound but collated, and, hence, dutiable at 5 per centum ad valorem. The plaintiff did not prepare the charts, but he did arrange them in sequence, select the material to be used, and prepare the index. Expert witnesses said that the arrangement in sequence was the act requiring skill, and that the orderly manner of presentation made these volumes extremely valuable.

Held: For plaintiff. "Printed sheets in the form of signatures, which require no further manipulation than binding and which contain 'in orderly and connected fashion the record of the intellectual and literary work of the author' are books for tariff purposes." Authorship under the Tariff Act of 1922 is said to have ". . . received almost as broad a connotation as that under the copyright laws and has not been confined to pure literary endeavors." In the instant case, ". . . (t)he original ideas of a great anatomist were brought to fruition by artists who drew what he sought to have depicted, from material he had provided them. The illustrations were then arranged and collated by him in a sequence known in medical science as a systematic anatomy. Knowledge, experience and

much study entered into its creation. And, as surely as though the drawings were verbal descriptions of the human anatomy, they represent the thoughts, ideas and intentions of its author."

101. *Stein v. Mazer,* 97 U. S. P. Q. 310 (4th Cir. May 19, 1953).

The defendant has filed a petition for certiorari. The case is noted in the BULLETIN, Vol. I, No. 1, Item 20.

102. *Strivers, d. b. a. v. Sir Francis Drake Hotel,* 98 U. S. P. Q. 7 (9th Cir. June 9, 1953).

Appeal from judgment for defendant. Plaintiff alleged copyright infringement due to defendant's use of eleven illustrations in an advertisement. The illustrations were taken from plaintiff's handbook which contained several illustrations intended for use by advertising agencies. Plaintiff had distributed the book to the defendant. The handbook clearly stated that a royalty of one dollar was to be paid for each illustration used. But the handbook was not clear as to when payment was due, before or after publication. The defendant published the volume, and the district court found that it was in the process of paying plaintiff's claim when the suit was brought, one week after the appearance of the advertisement.

Held: Judgment affirmed. The time of payment was not clearly stated in the handbook, the term employed being "used." Since it was open to doubt as to when the illustrations were "used," the defendant could reasonably have assumed that payment was due after publication.

2. State Court Decisions.

102. *Avon Periodicals, Inc. v. Ziff-Davis Publishing Co.,* 98 U. S. P. Q. 38 (N. Y. Sup. Ct., App. Div. June 9, 1953).

Action for unfair competition. Plaintiff used the title, "Eerie," for a comic book. Defendant later used "Eerie" on a magazine closely duplicating the size, format, design and illustrated cover of plaintiff's product.

Held: For plaintiff. "Recognizing that plaintiff had no right to a monopoly on the use of the word 'Eerie' and that plaintiff's use of the name had not achieved a secondary meaning in behalf of its magazine, we still think that defendants were not entitled to duplicate plaintiff's product to the point that there would be no obvious distinction between the two to the running eye." Injunction granted against defendant's use of the name "Eerie" in the "comic" field in connection with a magazine which simulates plaintiff's design and appearance.

103. *Burtis v. Universal Picture Co., Inc.,* 97 U. S. P. Q. 567, 40 A. C. 857 (Sup. Ct. Calif. April 29, 1953).

Action for damages for unauthorized use of literary property. Plaintiff submitted an outline synopsis to defendant motion picture company which, on the basis of the synopsis, entered into an agreement with plaintiff to have him write an original story suitable for a motion picture, granting the defendant an option to purchase the same. Plaintiff wrote the story and delivered it to defendant which did not exercise its option but which retained both the synopsis and the story. Subsequently, defendant produced a motion picture which plaintiff claimed was copied from and constituted an unauthorized use of his work.

Held: Judgment for plaintiff reversed. There being no evidence of substantial similarity between the motion picture and protectable portions of plaintiff's work, the implied finding of copying of plaintiff's work was found to have no support in the record. The kind of similarity which must exist, said the court, is the kind which will be apparent to the average reader, observer, spectator or listener rather than as a result of dissection.

104. *Kurlan v. Columbia Broadcasting System, Inc.,* 97 U. S. P. Q. 556, 40 A. C. 833 (Sup. Ct. Calif. April 29, 1953).

Appeal from a judgment entered upon an order sustaining the defendant's demurrers without leave to amend. Plaintiff alleges that Ruth McKenney originated the Ruth and Eileen stories which appeared in the New Yorker magazine and which were dramatized in the stage play "My Sister Eileen" and as the basis of a movie of the same name; that he has the sole right to use said characters for radio broadcasting; that he originated a new radio program idea, techniques and methods of presentation including a new radio production format; that he submitted a written script and sample audition recording embodying the same to defendants; and that defendants accepted the submission, became fully familiar with plaintiff's material and then broadcast a weekly program called "My Friend Irma" which substantially copied, used and embodied plaintiff's material. Five causes of action are pleaded: (1) express contract, (2) contract implied in fact, (3) contract implied in law, (4) trade customs, practices and usages and (5) a cause of action in the nature of copyright infringement.

Held: Judgment reversed as to each cause of action. The court reiterates its conclusions in *Weitzenkorn v. Lesser,* Item 105 and adds these: (1) Even though the literary content of plaintiff's program has been previously published and is in the public domain, and even though "the dramatic core" of plaintiff's production, together with its two principal charac-

ters, their relationships, and its locale, are unoriginal under the allegations of the pleading, nevertheless neither its style and manner of expression nor its minor characters can be held, upon demurrer, to lack originality as a matter of law. (2) Plaintiff's allegations that he created novel program techniques and methods of presentation create an issue of fact as to originality, novelty and similarity. (3) "Although Kurlan has described his production as a new and original program, he does not allege that he represented it to the defendants as such. Also, there is no allegation that the agreement was conditioned upon Kurlan's production being new and original. The pleading allows Kurlan to present evidence, if there be such, tending to prove a promise, express or implied in fact, to pay for the use of his program whether or not it is original." (4) There is a distinction between the allegations required in an implied-in-fact contract count and an implied-in-law contract count. "Under the first theory, the required proof is essentially the same as that for the count upon express contract, with the exception that conduct, rather than words of promise, must be proved from which the promise may be implied. On the other hand, if Kurlan relies upon a contract implied in law, the proof necessary for a recovery is the same as that required by the tort action for plagiarism." (5) The statute of frauds is no defense to the express contract count since, if there has been "a sale," there has also been an acceptance of a portion of the goods.

105. *Weitzenkorn v. Lesser*, 97 U. S. P. Q. 545, 40 A. C. 813 (Sup. Ct. Calif. April 29, 1953).

Appeal from a judgment entered upon an order sustaining defendants' demurrers without leave to amend. There are three causes of action: (1) Plaintiff alleges that she wrote and was exclusive owner of a literary composition, that she submitted it to defendants pursuant to an express oral understanding and agreement that, in consideration of such submission, she would be paid the reasonable value thereof if defendants should use all or any part of it, that defendants accepted submission of her work and retained it in their possession for several months, and that thereafter, without paying plaintiff, they produced and exhibited a motion picture which patterned on, copied and used her composition. (2) Repeats the allegations of the first count but in lieu of an express understanding alleges that the submission was made at defendants' special instance and request. (3) Alleges that defendants copied and misappropriated plaintiff's work in lieu of alleging an express or implied contract.

Held: Judgment affirmed as to the third (copyright infringement) cause of action and reversed as to the first (express contract) and second (implied contract) causes of action.

Plaintiff argued that her complaint tenders issues of fact with respect to access, originality, similarity and copying on which she is entitled to have a jury pass, and that factual issues may not be determined by the court on demurrer. Stating that this was a question of first impression in California, the court held that, in the first instance, these are questions of law to be determined by the court. Its conclusion was based on this reasoning: under Section 426(3) of the California Code of Civil Procedure, plaintiff's composition as well as defendant's movie is before the court for review; the application of the word "infringement" in this section is not limited to copyright infringement cases alone, but applies as well to actions for breach of contract; and since an appellate court may set aside a jury's verdict because the evidence is insufficient—it is a necessary corollary to this principle that whether there is any question of fact to present to the trier of fact is, in the first instance, a question of law. In passing, the court noted that by 1947 amendment to Section 980 of the California Code, the protection formerly given to "any product of the mind"; i.e., a mere idea, had been eliminated; and that California has returned to the traditional theory that only the representation or expression of an idea is protectable.

The demurrer to the third cause of action (copyright infringement) was sustained because the court found no similarity between protective portions of plaintiff's work and defendant's motion picture.

The demurrer to the first cause of action (express contract) was overruled because, as pleaded, plaintiff would be entitled to recover even if it lacked novelty, originality or any protectable element. The proof could show that defendants agreed to pay plaintiff for her composition if they used it or any portion of it "regardless of its originality" (novelty), "regardless of its protectability and no matter how slight or commonplace the portion which they used."

The demurrer to the second cause of action (implied contract) was overruled because "Under the theory of a contract implied in fact, the required proof is essentially the same as under the first count on express contract, with the exception that conduct from which the promise may be implied must be proved." [1]

1. The Editorial Board is indebted to Mr. David M. Solinger of the New York Bar for having prepared the digest of the cases recorded in Items 103, 104, and 105.

B. DECISIONS AND RULINGS FROM OTHER NATIONS

106. *Sutton v. Walt Disney Productions,* 98 U. S. P. Q. 198 (Dist. Ct. App. Cal., 2d Dist., Div. 2. June 22, 1953).

Appeal from judgment after the trial court had sustained a demurrer to the amended complaint. Appellant contended that respondent's motion picture, "Beaver Valley," was produced from her book, "Circus in Nightland." Pursuant to the stipulation of the parties and the provisions of § 426, sub. 3, of the Code of Civil Procedure, both book and film were deemed part of the pleading. The defendant admitted access, raising only the question of similarity.

Held: Judgment affirmed. Since both products were before the court, the court could, on demurrer, decide the merits of the plaintiff's case. No other evidence was deemed necessary. "A comparison of the two works leaves no suspicion that the film is a reproduction of the book. The only ground of similarity is that both relate to animals. The book is a fantasy . . . ; the film is a real life portrayal. . . ."

Canada

107. *Composers, Authors and Publishers Association of Canada, Ltd. v. Associated Broadcasting Co., Ltd.,* 17 C. P. R. 1 (Ont. Ct. of App. May 21, 1952).

Motion seeking permission to pay a $2,000 bond with leave to appeal from a decision in favor of plaintiff to Her Majesty's Privy Council. The original action had been instituted prior to the passage of an Act abolishing such appeals, and the defendant sought to take advantage of this fact.

Held: Motion denied. The court said that while the action was an important test case, it could not be appealed because it did not come within the first section of the Privy Council Appeals Act of 1937.

108. *Composers, Authors and Publishers Association of Canada, Ltd. v. Maple Leaf Broadcasting Co., Ltd.,* 18 C. P. R. 1 (Exchequer Court of Canada. February 23, 1953).

Action for infringement of copyright. The defendant questioned the validity of the Copyright Appeal Board's action in fixing the rate applicable to radio broadcasting as a percentage of the gross revenue of the station.

Held: For plaintiff, granting an injunction and damages. The court said that the purpose of the *Copyright Amendment Act of* 1931 was to control the rates which a performing rights society could charge for the use of those works which it owned or controlled, and that it was reasonable for the Board to fix those rates, as per radio broadcasting, on a percentage of the gross revenue of the station.

109. *Composers, Authors and Publishers Association of Canada, Ltd. v. Kiwanis Club of West Toronto* (Ct. of Appeals. June 26, 1953), not yet reported.

Appeal by the CAPAC from judgment denying them injunctive relief and damages. The respondent, a fraternal organization, carrying on various social, charitable and benevolent activities held dances and there employed an orchestra which was paid for its service. Section 17 of the Canadian Copyright Act is as follows:

> Further providing that no church, college or school and no religious, charitable or fraternal organization shall be held liable to pay compensation to the owner of any musical work or to any person claiming through him by reason of the public performance of any musical work in furtherance of a religious, educational or charitable object.

Held: Injunction granted and damages in the sum of five dollars. The court put the issue as being whether ". . . the performance of such music by an orchestra paid for its services at the dances held by the Club (was) an act 'in furtherance of . . . a charitable object' by reason of the ultimate destination of the net profits to charity?" "Does the ultimate disposal of the net return bring these operations within the proviso so that it can be said that the Club may, carte blanche, use any music it sees fit regardless of copyright?" In answer the court said, "The performance, to be 'in furtherance of,' must . . . be a participating factor in the charitable object itself or in an activity incidental to it, for the purpose of which the object may consist of component parts of cognate character; but it could not be said to be so associated with the object here by its role in the ordinary business entertainment of a dance; there is neither a participation in the object nor in anything incidental to it."

PART IV.

BIBLIOGRAPHY

A. BOOKS AND TREATISES

United States Publications

110. University of Chicago Law School.

Conference on the Arts, Publishing, and the Law, May 5, 1952.
Its Conference Series, No. 10, 148 p.

Included among other matters of interest are lectures by Herman Finkelstein, "Anti-Trust Laws and the Arts," Robert L. Wright, "The Film Industry: Its Sherman Act Past and Communications Act Future," Norman R. Tyre, "Protection of Ideas (Radio, Television, and Movies)," Arthur Fisher, "Privilege of Using Public and Private Manuscripts in the Protection of Art," and by the late Arthur Farmer, "The Pressure Group Censors the Author."

110 (a). Commerce Clearing House, Inc.

1953 Copyright Problems Analyzed.
Second-of-a-Series, 262 p.

Sponsored by the Federal Bar Association of New York, New Jersey, and Connecticut, the second volume of lectures arranged and edited by Theodore R. Kupferman, includes an introduction by Bernard A. Grossman, president of the Association, and the following papers: Arthur Fisher, "The Copyright Office and the Examination of Claims to Copyright"; William Klein, II, "Protective Societies for Authors and Creators"; David M. Solinger, "Idea-Piracy Claims—or Advertiser, Beware!"; Edward B. Colton, "Contracts in the Entertainment and Literary Fields"; Alfred H. Wasserstrom, "Magazine, Newspaper and Syndication Problems"; Harriet F. Pilpel, "Tax Aspects of Copyright Property"; and Walter J. Derenberg, "Copyright No-Man's Land: Fringe Rights in Literary and Artistic Property."

Foreign Publications

111. Bappert, Walter

Verlagsrecht. Kommentar zum Gesetz über das Verlagsrecht vom 19.6.1901 unter Berücksichtigung des österreichischen und schweizerischen Rechts und einiger praktischen Fragen aus dem Verlags—und Buchhandelswesen Von . . . und Dr. Theodore Maunz. München, C. H.

Beck'sche Verlagsbuchhandlung, 1952.

Considers publishing contracts with reference to the Austrian and Swiss statutes. The authors discuss the concept of the publishing right being a slice carved from the copyright and carrying with it all of the rights and obligations inherent therein. Many practical problems of publishing and bookselling are dealt with, and discussion is had of the contracts and practice in musical and dramatic works, works of art, and motion pictures. The appendix contains the texts of the German, Austrian and Swiss copyright acts, as well as the publishing contract law of the latter two countries.

112. Serrero, André

Protection des oeuvres littéraires et artistiques étrangères aux Etats-Unis, les formalités.

Paris, Librairie Générale de droit et de jurisprudence, 1953, 157 p.

After a short prefatory note by Prof. Jean Escarra, the work deals with the treatment of foreign literary and artistic works in the United States. It touches on several aspects of the problem, including the United States attitude towards publication, unpublished works, manufacturing and ad interim copyright, as well as the formalities of notice, registration and renewal. The appendix contains a list of the countries with whom the United States has copyright relations, a bibliography and a table of cases.

B. LAW REVIEW ARTICLES

1. United States

113. Bovard, Gilbert K.

Copyright Protection in the Area of Scientific and Technical Works. *Iowa Law Review, vol.* 38, *no.* 2 (*Winter* 1953), *pp.* 334-344.

A condensation of the paper which received the 1952 Nathan Burkan Memorial Award. It includes an analysis of the problem of protection of

works of art having utilitarian aspects. The author believes that both the Copyright Act and the Patent Law must be amended to provide adequate protection for such works.

114. Breathitt, Edward T., Jr.

Copyright Protection to Aliens and Stateless Persons.
Kentucky Law Journal, vol. 41, *no.* 3 (*Mar.* 1953), *pp.* 302-315.

An analysis of the legislative and judicial evolution of copyright protection as it was extended from citizens and residents of the United States to certain aliens and then to "stateless" persons. The conclusion is reached that foreign authors still lack adequate protection in the United States and suggests that the only solution will entail a complete overhaul of domestic legislation coupled with adherence to the International Copyright Union.

115. Chambers, John W.

Property—Ideas as the Subject of Property Rights.
Georgia Bar Journal, vol. 15, *no.* 4 (*May* 1953), *pp.* 504-505.

Comment on *Belt v. Hamilton National Bank,* 108 F. Supp. 689 (D. D. C. 1952). The author opines that the courts of Georgia will not protect ideas which are neither patentable nor copyrightable.

116. Dirrim, Lysle R.

The Common-Law Copyright and its Limitations.
Dicta, vol. 30, *no.* 3 (*Mar.* 1953), *pp.* 108-116.

The author cites a number of court decisions defining or explaining the concept of common-law copyright and then discusses the various methods by which an author or owner of a common-law copyright may unwittingly lose its protection. He notes the difficulties in proving common law rights.

117. Finkelstein, Herman

The Universal Copyright Convention.
The American Journal of Comparative Law, vol. 2, *no.* 2 (*Spring,* 1953), *pp.* 198-204.

A comparative analysis of the Universal Copyright Convention and the Berne Convention, including a brief history of the concept of international copyright.

118. Gorham, Howard N.

Deposit as Publication Under Section 12 of the Copyright Code.
Intramural Law Review of New York University, vol. 8, *no.* 3 (*Mar.* 1953), *pp.* 202-223.

Discussing the application of the Copyright Law to unpublished works, particularly the ambiguities of the present statutory provisions, including such questions as whether deposit provisions apply to unpublished musical compositions.

119. Halliday, Walter J.

Losing Copyrights Under the Law of the United States.
Journal of the Patent Office Society, vol. 35, *no.* 5 (*May* 1953), *pp.* 343-371.

Originally published in the *Canadian Patent Reporter* (vol. 15, pt. 2, Dec. 1951), the article examines the statutory requirements of the copyright notice under the United States law.

120. Literary Property—Owners of opera copyright recover damages in French court where opera's title used for otherwise non-infringing motion picture.
Harvard Law Review, vol. 66, *no.* 7 (*May* 1953), *pp.* 1324-1325.

In a recent case before the French Court of Appeals, the owner of a copyright in an opera sued the producer of a motion picture having an independent plot but using the same title. The court held that the plaintiff was entitled to damages, and indicated that the title, "Manon," might be sufficiently original to merit copyright protection. The note compares French and American law on the protection of titles.

121. Kelley, David P.

Design Patents and Copyrights: the Scope of Protection.
The George Washington Law Review, vol. 21, *no.* 3 (*Jan.* 1953), *pp.* 353-367.

The author compares copyright and design patent, points out that in England one can secure both types of protection for an article, providing it meets the requirements of both concepts and concludes that if the opinion in *Stein v. Expert Lamp Co.*, 96 F. Supp. 97, aff'd 182 F. 2d 611, cert. denied 342 U. S. 829, is to be followed, the copyrightability of a three-dimensional work of art will depend entirely on the angle from which a photograph is taken.

122. McCarthy, John J.

Copyright—The Common Law Recognizes a Property Right in an Idea, If it is Novel and Reduced to a Concrete Form.

The Georgetown Law Journal, vol. 41, *no.* 3 (*Mar.* 1953), *pp.* 424-427.

Finding that the court's opinion in *Belt v. Hamilton National Bank,* 108 F. Supp. 689 (D. D. C. 1952), is capable of two interpretations, (1) extending the common-law copyright to the expression of ideas, and (2) finding a property right in the idea itself, the author expresses a preference for the former.

123. Miketta, C. A.

The Case of the Threaded Nipple.

Journal of the Patent Office Society, vol. 34, *no.* 12 (*Dec.* 1952), *pp.* 971-974.

A commentary on *Stein v. Expert Lamp Co.,* 96 F. Supp. 97, aff'd 182 F. 2d 611, cert. denied 342 U. S. 829.

124. Copyright—Eligibility—Utilitarian use of a work of art.

Minnesota Law Review, vol. 37, *no.* 3 (*Feb.* 1953), *pp.* 212-215.

A note on *Stein v. Rosenthal,* 103 F. Supp. 227 (S. D. Cal. 1952) dealing particularly with the point that the copyright law contains no limitation on the use made of copyrighted works, and that the original intent of the applicant for a claim to copyright is beyond the contemplation of the copyright law.

125. Copyright Infringement—Measure of Damages Where Infringer's Profit Shown.

St. John's Law Review, vol. 27, *no.* 2 (*May* 1953), *pp.* 354-357.

A case note on the Supreme Court decision in *Woolworth v. Contemporary Arts,* 344 U. S. 228 (1952).

126. Equity—Property Right in an Idea.

St. John's Law Review, vol. 27, *no.* 2 (*May,* 1953), *pp.* 364-366.

In commenting on the court's findings in *Belt v. Hamilton National Bank,* 108 F. Supp. 689 (D. D. C. 1952) the author of this note commends the court for its apparent willingness to protect ideas and recognize their commercial value, but warns that there is likelihood of an increase in vexatious litigation based on unfounded claims to originality.

127. Schauer, Richard

Recent Development in Performers' Literary Property Law.
U. C. L. A. Intramural Law Review (*Mar.* 1953), *pp.* 13-20.

Discussing *Granz v. Harris,* 198 F. 2d 585 (2 Cir. 1952), the author concludes that complete relief for a performer is impractical since an injunction is limited in jurisdiction and effect, and damages are at best conjectural. He also finds that a performer's individual interest must yield to the public interest in ready availability of artistic productions.

128. Schulman, John

Another View of Article III of the Universal Copyright Convention.
Wisconsin Law Review, vol. 1953, *no.* 2 (*Mar.* 1953), *pp.* 297-310.

This article by Mr. Schulman is a reply to Mr. Sam B. Warner's article in 1952 Wisc. L. Rev. 493.

129. Singer, Daniel M.

International Copyright Protection and the United States: The Impact of the UNESCO Universal Copyright Convention on Existing Law.
The *Yale Law Journal, vol.* 62, *no.* 7 (*June* 1953), *pp.* 1066-1096.

The author first discusses United States protection of foreign works, international protection of European works under the Bern Union, and the protection of United States works in Bern Union countries. He then surveys the important features of the Universal Copyright Convention, concluding that the success of the UCC will depend ultimately upon the United States' adherence to it; and concludes that, despite opposition from printers' unions and book manufacturers, the necessary changes in American domestic legislation will not be detrimental to the interested groups.

130. Soffen, M. C.

Unfair Competition—Literary Property—Protection of Ideas.
The George Washington Law Review, vol. 21, *no.* 5 (*Apr.* 1953), *pp.* 654-657.

Discussing the court's opinion in *Belt v. Hamilton National Bank,* 108 F. Supp. 689 (D. D. C. 1952), the writer maintains that the question of concreteness of an idea should not be left to a jury, but rather be treated as a question of law, reviewable on appeal.

131. Piracy on records.
Stanford Law Review, vol. 5, *no.* 3 (*Apr.* 1953), *pp.* 433-458.

The first part of this article is devoted to a factual account of the recent developments in phonograph pirating followed by a history of the American cases. The problem being fundamentally a socio-economic conflict, the author concludes that the best solution would be an amendment to the U. S. Copyright Law giving the record manufacturers protection for a limited period.

2. FOREIGN

1. English

132. Ivamy, E. R. H.
Copyright law revision.

Current Legal Problems, 1953, edited by George W. Keeton and George Schwarzenberger on behalf of the faculty of Laws, University College, London. (London, Stevens & Sons, Ltd., 1953), vol. 6, pp. 196-215.

Discussing the problems arising from the operations of the Performing Right Society and the Phonographic Performance Inc. Also dealing with protection in the televising of sporting events, moral rights of the author, and the United States' failure to join the Bern Convention. These problems are further analyzed in the light of how they are being handled in Canada and the United States, and also from the viewpoint of the recommendations made by the Copyright Committee of 1951 as well as in the light of UNESCO's efforts to solve them on the international level.

2. In French

133. Ciampi, Antonio.
Les Sociétés de droit d'exécution hier et aujourd 'hui. (The Performing Rights Societies Yesterday and Today).
Inter-auteurs, no. 111 (*2me trimestre* 1953), *pp.* 47-50.

With three European performing rights societies having reached the half-century mark or more in age, the author takes this opportunity to sum up the achievements and obstacles encountered by such organizations. As present-day difficulties, the author lists diverse means of dissemination, the stigma of anti-trust legislation, high taxes levied on all users and the magnitude of surveying, reporting and controlling public performances.

134. Goldbaum, Wenzel.

Lettre d'Amérique latine. (Latin American Letter).
Le Droit d'Auteur, vol. 66, no. 7 (15 july 1953), pp. 78-81.

A brief summary of recent developments in the field of copyright law in Latin America. Among the highlights are new laws promulgated by Mexico, Paraguay and the Dominican Republic, the bi-lateral agreement between France and Mexico granting reciprocal rights to authors of musical compositions, and the new regulations to the copyright law issued by Guatemala.

135. Malaplate, Leon.

La Situation du droit d'auteur au Japon. (The Copyright Situation in Japan).
Inter-auteurs, no. 111 (2me trimestre 1953), pp. 69-71.

A brief survey of Japanese domestic legislation, her international copyright relations and the recent negotiations completed by JASRAC.

136. Santiago, Oswaldo.

Les Sociétés d'Auteurs au Brésil. (Performing Rights Societies in Brazil).
Inter-auteurs, no. 111 (2me trimestre 1953), pp. 51-52.

A report on the history and relationship of the three principal performing rights societies in Brazil.

3. In German

137. Vogel, Karl-Heinz.

Zum Leistungsschutzrecht des ausübenden Musikers beim Film. (Concerning the Performing of Interpreting Artists in Music used in Motion pictures).
Gewerblicher Rechtsschutz und Urheberrecht, vol. 55, no. 5 (Mai 1953), pp. 199-203.

4. In Spanish

138. Cervera y Jimenez-Alfaro, Francisco.

Inscripción registral de las transmisiones o modificaciones del derecho de autor y sus similares. (The Recording of Transfers or Change in Ownership of Copyright and Similar Rights).

Boletin de la Propiedad Intelectual, año III, no. 9, 2a epoca (1er trimestre, 1951), *pp.* 1-4.

A brief essay on the value of registration to both author and publisher.

139. Fernández, Luis Alonso.

El derecho de autor en el extranjero sobre un caso particular de derecho de autor. (Copyright Abroad as Involved in a Specific Copyright Case).

Boletin de la Propiedad Intelectual, añn III, no. 9, 2a epoca (1er trimestre, 1951), *pp.* 5-5.

A note commenting on a recent Belgian case involving the copyright in a calendar listing the dates for local and foreign football events. The Belgian court found sufficient originality to warrant copyright protection.

C. ARTICLES PERTAINING TO COPYRIGHT FROM TRADE MAGAZINES

1. United States

140. ASCAP leads off jukes copyright. Lineup of witnesses shaping similar to that of last Congress.

The Billboard, vol. 65, *no.* 26 (*June* 27, 1953), *p.* 126.

A reference to the hearings conducted July 15 by the Senate Judiciary Committee on S.1106 which would amend the compulsory license on juke boxes, 17 U. S. C., sec. 1(e).

141. Bill would amend copyright code.

The Billboard, vol. 65, *no.* 30 (*July* 25, 1953), *p.* 30.

An announcement of a congressional bill which would provide a three year statute of limitation for civil actions instituted under the Copyright law.

142. Blakemore in N. Y. to finalize deals on nip royalties.
Variety, vol. 191, *no.* 1 (*June* 10, 1953), *p.* 61.

Tom Blakemore, only United States citizen licensed to practice law in Japan has been appointed to represent United States music publishers in Japan with regard to copyright problems.

143. Bourne files reply in suit over "Gang."
The Billboard, vol. 65, *no.* 26 (*June* 27, 1953), *p.* 17.

Writers claim that the copyright in "That Old Gang of Mine" reverted to them at expiration of the original copyright term, unless there was a separate financial consideration to bind the transfer of rights.

144. Bowden, Edwin T.
Henry James and the Struggle for International Copyright: An unnoticed item in the James bibliography.
American Literature, vol. 24, *no.* 4 (*Jan.* 1953), *pp.* 537-539.

When an active campaign was being waged during the 1880's by the American Copyright League and leading American authors in support of international copyright, the name of Henry James was among the missing. However, in 1887, James sent an open letter to a meeting of the League which argued in favor of international copyright and pleaded for international morality and good faith.

145. Chappell "Bless Us" Deal stirs trade, ASCAP execs.
The Billboard, vol. 65, *no.* 31 (*Aug.* 1, 1953), *pp.* 14, 30.

The significance of this transaction is that an ASCAP publisher has secured the world selling rights to a copyrighted music composition owned by a BMI publisher. The industry is waiting to see what if any repercussions occur.

146. Copyright bill limits action.
The Billboard, vol. 65, *no.* 32 (*Aug.* 8, 1953), *p.* 33.

A note on the Keating bill which would provide a limitation of three years on copyright infringement action.

147. Court sings own tune on ditty rights.
The Billboard, vol. 65, *no.* 32 (*Aug.* 8, 1953), *pp.* 14, 32.

In a Federal court it was recently held that an assignment of re-

newal rights by the author of the lyrics did not include rights to the music and that a song composed of independently written words and music is a "composite work" rather than a "joint opus."

148. Hauk, Charles J.
Caution: Don't do that or you're in trouble.
Reprint from Productionwise (*April* 1953), 4 *p.*

Advising affirmative action to protect rights in advertising.

149. Defense files infringement denial on "Cocktail."
The Billboard, vol. 65, *no.* 26 (*June* 27, 1953), *p.* 16.

Famous Music has filed a claim against Brandom Music, et al, alleging that the ballad "Pretend" infringes "Cocktail For Two." A defense is being made that the New York District Court does not have jurisdiction over Brandom, a Chicago firm.

150. Defer juke box copyright hearings until June 30. Opponents of proposals request more time to prepare testimony.
The Billboard, vol. 65, *no.* 25 (*June* 20, 1953), *pp.* 87, 92.

Reasons for postponement have been given as press of business on the part of Senate committee members and a request for more time to prepare testimony.

151. Hepp, Francois E.
Outline of Some Practical Aspects of the Universal Copyright Convention.
Publishers' Weekly, vol. 163, *no.* 25 (*June* 20, 1953), *pp.* 2547-2549.

After dealing briefly with the duration and formality provisions of the Universal Copyright Convention, Dr. Hepp, head of the Copyright Division of UNESCO, discusses at some length the translation provision contained therein. He concludes that the realistic approach embodied in the documents will not only make for its early ratification and contribution to international unification of the law, but will also result in greater protection to the author and a greater market for the publishers.

152. Jenner juke hearing has its comedy.
The Billboard, vol. 65, *no.* 30, (*July* 25, 1953). *pp.* 29-53.

A note on some of the amusing highlights of the hearing.

153. Hauk, Charles J.
Interview with Mr. Hauk.
Art Director and Studio News, vol. 5, *no.* 3 (*June,* 1953), *p.* 32.

The article reviews some of the recent changes made in the laws that affect art directors, advertising managers, publishers and printing buyers.

154. Leeds faces suit on "Now's Hour."
The Billboard, vol. 65, *no.* 26 (*June* 27, 1953), *p.* 20.

Leeds acquired Canadian and U. S. rights to British composition "Now is the Hour." They are being sued for an accounting and other alleged breaches of the agreement. The court has asked for an amended complaint.

155. Limit copyright life of pix to 25 years? Brit. producers protest.
Variety, vol. 191, *no.* 5 (*July* 8, 1953), *p.* 2.

The recommendation by the Copyright Committee of 1951 that copyright protection in British films be limited to 25 years has brought protests from several film producers' associations. The producers claim that there is as much original work in motion pictures as there is in books, printed music or paintings and that the development of TV and the like will extend the life of films beyond the proposed 25-year period.

156. Long wait on Crumpacker bill implementing copyright pact.
The Billboard, vol. 65, *no.* 32 (*Aug.* 8, 1953), *pp.* 13, 33.

Announcement of the introduction of a bill amending the copyright law so as to implement the ratification of the Universal Copyright Convention. The article also mentions that another bill has been introduced which would change the statutory requirements for notice.

157. McCarran Bill probe delay; resumes after solon recess. Jukemen's counsel wins plea for additional time to prepare case.
The Billboard, vol. 65, *no.* 30 (*July* 25, 1953), *pp.* 28, 96, 98.

The account summarizes the oral testimony and written statements submitted by the various witnesses to the hearings held the afternoon of July 15, 1953 on S. 1106.

158. Mills, Columbia Pictures sign pact on flick music rights.
The Billboard, vol. 65, *no.* 27 (*July* 4, 1953), *pp.* 15, 49.

Mills has been assigned publisher world rights to all background music and songs used in Columbia Picture productions except those written by writers already under contract to other publishers and old copyrights revived for film use. Copyright owners of film scores in foreign countries are paid per performance, hence returns from abroad are more substantial than here.

159. Modern told to withdraw "Dragnet" wax. AM-TV producer charges infringement on tune, format.
The Billboard, vol. 65, *no.* 30 (*July* 25, 1953), *pp.* 28, 53.

Producers of the radio-TV melodrama entitled "Dragnet" have made demands that Modern Records deliver up all its master records, matrices, labels, sheet music and advertising matters on which the title "Dragnet" appears. The charge is made that its recording of "Dragnet Blues" infringes a copyright in the theme music and is in unfair competition with the radio-TV program.

160. New York bar favors Universal Copyright Code.
Publishers' Weekly, vol. 163, *no.* 22 (*May* 30, 1953), *p.* 2209.

161. "Old Gang" renewal fuss nears airing. Writers challenge automatic renewing by pubs; full court action approaching.
The Billboard, vol. 65, *no.* 29 (*July* 18, 1953), *pp.* 21, 59.

Outlines the arguments contained in the reply and cross-claim filled by the writers' attorney.

162. Postpone indefinitely hearing on juke copyright legislation. Chance slight for reopening ere adjournment of Congress.
The Billboard, vol. 65, *no.* 27 (*July* 4, 1953), *pp.* 16, 93.

Refers to the hearing on S.1106. (The hearing was held on July 15.)

163. Nathan, Paul.
Rights and Permissions.
Publishers' Weekly (*June* 3, 1953), *p.* 2399.

Discusses Erich Maria Remarque's problems in protecting his motion picture rights in two films against the attack of the Bank of America. The Superior Court of Los Angeles County has awarded "quiet title" to the Bank. The pictures are "Arch of Triumph" and "The Other Love."

164. Schwimmer's infringe suit.
The Billboard, vol. 65, *no.* 31 (*Aug.* 1, 1953), *p.* 41.

The Walter Schwimmer Productions, Inc. has filed suit alleging copyright infringements by the publishers of Look magazine, Telenews Productions and United Television Programs Inc., charging that the program, "Look Photoquiz," is a copy of a copyrighted show called "Movie Quick Quiz."

165. SPA writers take Spitzer copyrights.
The Billboard, vol. 65, *no.* 29 (*July* 18, 1953), *p.* 22.

No payment of royalties has been made since the death of Henry Spitzer, and since failure to make a detailed statement of earnings constitutes a breach of contract, SPA contends no special assignment is necessary to return copyright ownership to the writer.

166. UNESCO copyright treaty for study.
The Billboard, vol. 65, *no.* 25 (*June* 20, 1953), *pp.* 23, 55.

An announcement that President Eisenhower had sent the Universal Copyright Convention to the Senate, and that proposed legislation to amend the U. S. Copyright Law to facilitate this country's adherence to the convention had been introduced.

167. Universal copyright code up for ratification.
Publishers' Weekly, vol. 163, *no.* 25 (*June* 20, 1953), *p.* 2544.

Announcement of the President's message transmitting the Universal Copyright Convention to the Senate for ratification.

2. England

168. Authors and taxation.
The Author, vol. 43, *no.* 4 (*Summer,* 1953), *pp.* 68-69.

A brief comment on the Honorable R. A. Butler's Budget speech in Parliament announcing a proposed relief in taxation by allowing author's royalties for the first two years after publication to be spread in a manner similar to the lump sums received in the sale of an interest in the copyright of their work.

LAST MINUTE NEWS

INSTITUTE ON LAW AND THE ENTERTAINMENT INDUSTRY

An announcement has been received that the School of Law of the University of California at Berkeley, California, has scheduled a symposium on current legal problems in the field of motion pictures, radio, television and recording. Sessions will be held on November 12, 13, and 14, 1953.

Outstanding speakers will discuss such subjects as "The Invasion of the Right of Privacy by Electronic Device," "Unfair Competition in Ideas and Titles," "Negotiation and Enforcement of Personal Service Contracts," "Defamation," and other problems of artists, actors, producers, telecasters and recorders.

The list of speakers includes Rudolf Callmann and John Schulman of New York City, Professor Benjamin Kaplan of the Harvard University School of Law, Dean William L. Prosser of the University of California School of Law, William Carman, Herman Selvin, Joseph Dubin, Robert Myers, David Tannenbaum, and Gordon Youngman of Los Angeles, California.

The registration fee is $15.00 including the reception and dinner which will be held November 13th. For further information or registration, write Adrian A. Kragen, School of Law, University of California, Berkeley 4, California.

REPORT OF COPYRIGHT EXAMINING DIVISION

(Extract from Annual Report of Register of Copyrights)

"We have had our share of the odd and the unusual, ranging from something old, in the form of a recipe for smelts, accompanied by an odoriferous exhibit, to the most modern, in the form of a baby H bomb formula and atomic fizz drinks.

"Wall Street may have its hand on the economic pulse of the Nation, but the Examining Division has its hand on the literary pulse. The pulse seemed stronger this year, with a 7 percent rise in copyright registrations (see Copyright Service Division summary). Biggest increase was in the field of music. But, while more people were bursting into song, some musicians and singers found need to express themselves in prose: Artie Shaw wrote "The Trouble with Cinderella" and Bing Crosby wrote "Call Me Lucky." Greats in the other arts also turned to new media: Bette Davis and Rosalind Russell left Hollywood and went "legit," furnishing not only some new music but lots of material for the drama critics, most of it copyrighted. This restlessness people were feeling in their familiar fields even found its way into the division's own operations. The periodical examiners tried their hands at cataloging. Doing the two jobs simultaneously should prove economical as well as furnish a better product sooner.

"The most exciting question of the year was the one Reglor of California kept asking from coast to coast in a series of infringement actions: "Does a work of art cease to be a work of art when it becomes a lamp?" The U. S. Court of Appeals in both the Fourth and Ninth Circuits said "No" and it looks now as if Reglor can continue copyrighting its figurines as works of art, then sell them as lamp bases without losing copyright protection. By this time next year the Supreme Court may have answered the question. Although the year was filled with many reminders that crime does not pay, the division received its share of complaints from victims of literary pirates. Most surprising was the request from the Planning Commission of a New England State, unhappy about finding its scenery pictured on Chamber of Commerce blurbs for Middle Atlantic and Western States. The Commission wanted to copyright the slogan 'Most Stolen State in the 48.'" [Abraham L. Kaminstein]

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PART I.

LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS

UNITED STATES OF AMERICA AND TERRITORIES

169. *Federal Trade Commission*

In re: Doubleday & Co., F.T.C. Dkt. 5897.

Interlocutory appeal from the Hearing Examiner's decision granting Doubleday & Co.'s motion to dismiss Count III and from his rulings granting in part the Company's motion to dismiss Count I.

The case as to Count I depended upon the contention that the following operative facts established violations of section 5 of the Federal Trade Commission Act:

(a) The failure to extend the same publication rights to retail book stores as granted to book clubs;

(b) The agreement with book clubs that Doubleday would not print, publish, or release to retail book sellers copyrighted publisher's editions prior to the date by which the book clubs are able to print, publish, or distribute book club editions; and

(c) The fixing of resale prices under fair trade laws as to publisher's editions sold to independent retail stores while leaving the book clubs free from any resale price maintenance.

The Hearing Examiner dismissed the complaint as to operative facts (a) and (b), saying that ". . . such practices did not extend or increase the legal copyright monopoly; that "a copyrightee or his licensee may legally agree or do anything which accomplishes no more than to preserve or exploit the monopoly given him but that he may not by restrictions or restraints add to that monopoly, extend it or increase its effective orbit of operation. *Mercoid Corporation v. Mid-Continent Co.,* 320 U.S. 661." The Hearing Examiner ruled that the practice outlined in operative facts (c) was illegal in that it went beyond the legal copyright monopoly and restricted ". . . price-wise one avenue of distribution thereby holding a price umbrella over another and competitive avenue, and extend(ed) restraint of competition below and beyond the orbit of licensee's own field." This ruling was not appealed.

Held: The dismissal of the charges brought under operative facts (a) was affirmed. The dismissal of the charges brought under operative facts (b) was reversed.

In ruling on the legality of granting exclusive licenses of publication rights to the book clubs, the Commission said that ". . . exclusivity is the essence of copyright (35 Stat. 1075, 17 U.S.C. sec. 1), and . . . a licensee (such as respondent) has the right arbitrarily to sublicense one and refuse to sublicense another." The possible economic effect of such exclusivity was held to be immaterial.

As to the agreements with reference to publication dates, operative facts (b), Chairman Howrey, speaking for the Commission, said that such restrictions were *not* within the class of contractual provisions within the scope of the copyright. The opinion went on to say that ". . . the prohibition against prior publication and sale is for the benefit of the book club. It 'effectively insulates' the latter from pre-publication competition. It prevents competitors, including retail book sellers, from offering their higher price editions prior to the date when the lower price book club edition hits the market. The retail book sellers are thus deprived, by agreement between respondent and the book club, of any opportunity of reaching the market first. The prohibition has the purpose and effect of restraining not only respondent but also third parties (respondent's customers) who are competitors of the book club." The Commission reserved judgment as to whether the agreements constituted an unreasonable restraint of trade or an unfair method of competition, and remanded for further proceedings to determine whether such practices were illegal.

Commissioner Mason did not participate in the decision.

Count III dealt with the relationship of the McGuire Act (66 Stat. 631, 15 U.S.C. 45) to respondent's practice of selling directly to the public through its wholly-owned or controlled book shops, 25 in number, while selling the same editions to independent retail book stores under fair trade contracts. Since such activity is completely outside the scope of copyright law, it is not here discussed, except to indicate that the point was remanded for further hearings.

170. *U.S. Treas. Dept., Internal Revenue Board.*

Rev. Ruling 234, Internal Revenue Bulletin 1953, *no.* 22, p. 7.

Under the so-called "Eisenhower Amendment" of 1950, 117 (a) (C), I.R.C., literary, musical and artistic compositions, and similar property,

were excluded from the classification of capital assets and the proceeds from the sale of such property was thus taxable as ordinary income. Under the present ruling, a taxpayer not an author by profession may, if the requirements of 44(b), I.R.C. are met, report the sale of a manuscript on an installment basis. The ruling states that the sale must be for more than $1,000 and that the initial payment, in cash or other property excluding evidence of indebtedness of the purchaser, must not exceed 30% of the selling price.

The executory contract involved in the ruling, reported to deal with the sale of ex-President Truman's memoirs (N. Y. Times, Nov. 8, 1953, Business and Financial Section, pp. 1, 5), calls for the sale to occur on delivery, payments to be made via four non-interest bearing notes of 25x value, one of which is to mature in each of the four years succeeding the sale. The initial payment of 20x is to be paid in cash. If the requirements are fully met, the transaction will be viewed by the Bureau as a casual sale of personal property and the gain may be spread over the period of payment.

The ruling is discussed in an article entitled "Author's Installment Sale of Manuscript," 535 CCH Standard Federal Tax Reports 8527 (November 4, 1953).

171. *Library of Congress, Copyright Office.*

Copyright Deposits of Unpublished Works, Library of Congress Information Bulletin *vol.* 12, *no.* 45, Nov. 9, 1953.

In order to identify as copyright deposits the unpublished works transferred to the Library from the Copyright Office, a "Copyright Deposit" stamp will hereafter be applied to such works. This suggestion, recommended by a committee consisting of Messrs. George Cary, Abe Goldman, and Luther Mumford, was approved by the Register's Conference and by the Acting Librarian. The Copyright Service Division will be responsible for applying the stamp to all unpublished works received as copyright deposits and transferred to the Library.

FOREIGN NATIONS

172. *Austria. Laws, statutes, etc.*

Loi fédérale amendant la loi sur le droit d'auteur (du 8 juillet 1953). (Urheberrechtsgesetznovelle 1953).

Le Droit d'Auteur, vol. 66, no. 10 (Oct. 15, 1953), pp. 113-115.

The Austrian copyright law of 1936, as modified by the law of July 14, 1949, has been amended by a new law of July 8, 1953, which was to go into effect on the same day as Austria's ratification of the Brussels Revision of the Bern Copyright Convention.

PART II.

CONVENTIONS, TREATIES AND PROCLAMATIONS

173. *Great Britain.*

Ordonnance concernant l'application de la loi de 1911 sur le droit d'auteur a l'Union Birmane (No. 613, du 9 avril 1951).

Le Droit d'Auteur, vol. 66, no. 6 (15 june 1953), pp. 62-63.

A French translation of a British Order In Council which extended the protection of the Copyright Act of 1911 to works first published in Burma on or after January 4, 1948 and to unpublished works of Burmese nationals and of persons resident in Burma.

174. *Ecuador-West Germany.*

An agreement signed by representatives of the Ecuadoran and West German governments in Quito, August 1, 1953, to enter into force when the Ecuadoran Government's ratification is delivered to the Federal Republic of Germany at Bonn.

This agreement provides that German property seized by the Ecuadoran government during World War II and still under its control is to be restored, without charge, to the former German owners. Literary and artistic property, as well as patents, trade-marks and other commercial property, are included under the arrangement.

175. *Argentine Republic.*

Ratificase al convención interamericana sobre el derecho de autor en obras literarias, cientificas y artísticas suscripta en Washington. Ley 14-186, sancionada 13 de mayo 1953; promulgada 20 de julio 1953.

Boletin Oficial, no. 17.445 (July 24, 1953), p. 1.

Ratifying the Washington Convention, of 1946.

176. *Austria.*

Adhésion à la convention de Berne pour la protection des oeuvres littéraires et artistiques, revisee en dernier lieu à Bruxelles le 26 juin 1948.

Le Droit d'Auteur, vol. 66, no. 10 (Oct. 15, 1953), pp. 113.

Notification by Austria to the Swiss government and the member nations that Austria has ratified the Brussels revision of the Bern Convention as of October 14, 1953.

177. *Japan.*

A copyright arrangement was established Nov. 10, 1953, between the United States and Japan. Notes were exchanged between the United States Ambassador and the Minister of Foreign Affairs conveying assurances of reciprocal national treatment as regards copyright matters and the President issued a Proclamation under Section 9 (b) extending copyright benefits, including Section 1 (e) rights, to nationals of Japan.

The obligation undertaken by Japan under this arrangement is based upon Article 12 of the Peace Treaty, and the arrangement is therefore to run for a period of four years from April 28, 1952, the date of the coming into force of the Peace Treaty. The diplomatic notes which were exchanged declare it to be the understanding of the two Governments that efforts will be made to arrive at a mutually satisfactory agreement to regularize the copyright relations between the two countries at the earliest practicable date.

(Communication from Office of Economic Defense and Trade Policy, Department of State, Nov. 10, 1953; cf. also Fed. Reg., vol. 18, no. 224, Nov. 17, 1953, pp. 7263-7265.)

PART III.

JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY

A. DECISIONS OF U.S. COURTS

1. Federal Court Decisions.

178. *Durland, Inc. v. Newman,* 98 U.S.P.Q. 399 (E.D.N.Y. 1953).

Motion for a preliminary injunction to restrain defendants from manufacturing and selling miniature replicas of automobiles of the period between 1900 and 1910. The plaintiffs alleged unfair competition in that defendants' automobiles, as to size, color and general appearance, were virtually, if not actually, copies of plaintiffs'. It was further alleged that defendants' packaging was identical with that of the plaintiffs.

Held: Motion denied. "The design and appearance of the automobiles of which the miniatures are copies, outmoded for many years, have long since passed into the public domain and may be freely copied." As for the packaging, the court said that there could be no confusion, for the boxes used were of a different color, used different types of lettering and bore pictures which were substantially different.

179. *Heuer v. Parkhill,* 114 F. Supp. 665 (W.D. Ark. Sept. 22, 1953).

Action for permanent injunction and damages. In 1945, defendant initiated a "package" tour to his hotel in Eureka Springs, Arkansas. Until plaintiffs entered the field, more than 800 travel agencies were selling defendant's tour and it was extremely successful. In 1949, plaintiffs, travel agents, added to their offerings a "package" tour to a competing hotel in Eureka Springs. They prepared an original folder describing the tour, and had it distributed through various travel agencies. Since plaintiffs were able to offer their Eureka Springs tour as one of several "packages," most of the travel agencies stopped selling defendant's tour, his only offering, and said plaintiffs'. In 1951, attempting to meet the competition, defendant had a folder prepared which was identical with plaintiffs' folder, except that the picture and name of defendant's hotel was inserted in place of the picture and name of the hotel advertised by plaintiffs.

Held: Injunction issued but damages denied. The court, quoting from 52 Am. Jur., Trademarks, Trade names, and Trade practices, Section 116, Page 595, said "The general rule is that the appropriation of another's advertising matter or method is not itself unfair competition, although it may become such where it induces or may induce the public to suppose that in dealing with the appropriator they are dealing with or obtaining the product or services of the originator. . . ." In the present case the court found that defendant simulated plaintiffs' folder and attempted to pass off his tour as that of the plaintiffs. The court withheld damages because of the fact that less than 100 of the simulated folders had been distributed.

180. *Shapiro Bernstein & Co., Inc. v. Jerry Vogel Music Co., Inc.,* 98 U.S.P.Q. 438 (S.D.N.Y. July 25, 1953).

Action for copyright infringement involving the renewal copyright in the instrumental music of "12th Street Rag" composed by Bowman in 1914 and the renewal copyright of a song bearing that title, copyrighted by a music publisher, J. W. Jenkins Music Co., in 1919. Bowman assigned all of his rights and title to the copyright of the instrumental music to the Jenkins Co. in 1916. In 1918, without the consent or authorization of Bowman, Jenkins Co. engaged Sumner to write a lyric for Bowman's music. This "song" was copyrighted in 1919. Plaintiff, claiming through Bowman and Jenkins, asserted that it had the exclusive rights to the instrumental music and the "song" as a whole, including the lyric. Defendant, claiming through Sumner, published the song with Bowman's music and Sumner's lyric and also filed a claim to the renewal right.

Two causes of action were alleged: (1) for the infringement of the renewal copyright of Bowman's instrumental music "12th Street Rag," and (2) for the infringement of plaintiff's claimed renewal right in the song "12th Street Rag," consisting of Bowman's music and the lyric by Sumner.

Defendant counterclaimed, (1) for a declaratory judgment that it was co-owner of an undivided 50% interest in the song, (2) for an accounting by plaintiff of its profits, and (3) for an injunction against plaintiff.

Held: Plaintiff's second cause of action and the defendant's counterclaim dismissed. An interlocutory decree was given the plaintiff on its first cause of action.

According to the Court, there were two principal issues. First, if Sumner wrote the lyric for Jenkins Co. in the capacity of an employee, the renewal rights to the lyric would have passed to plaintiff via the Jenkins' assignment. If he wrote the lyric as an independent contractor on special assignment, the renewal right in the lyric remained in Sumner, and he could have assigned it to Vogel. The court held that Sumner had been on independent assignment and that he could validly assign his renewal right to defendant.

The second, and more interesting issue, was whether or not the song was a "joint work." The court said that "(w)hether or not the combined work product of two authors is to be adjudged their 'indivisible product,' turns on the intent each had in mind in respect to his share of the unitary whole. Unless each had the intent that his work would be complementary to the work of another, the resulting work is not a 'joint work' but a 'composite work.' It is not the intent of the publisher of a song that is determinative; it is the intent of the composer of the music and the author of the lyric." The court distinguished *Edw. B. Marks Music Corp. v. Jerry Cogel Music Co.,* 140 F. 2d 266 (2 Cir. 1944), where the lyrics had been composed and sold to a publisher who later, without the lyricist's knowledge, engaged someone to compose a melody for the words. In that case, the lyricist had intended that the words should be set to music of someone else's composition, and the composer had known that the music he was composing was for use with those particular words. There Judge Hand said that the authors of a joint work need not work in concert or even know of each others existence, and that "(i)t is enough that they mean their contributions to be complementary in the sense that they are to be embodied in a single work to be performed as such." Judge Leibell, in the present case, pointed out that there was no evidence that Bowman composed the music with the intention that a lyric be added to it. All of the evidence pointed to the fact that he, in fact, did not intend such an addition to his work. The court also distinguished *Shapiro Bernstein v. Vogel,* 161 F. 2d 406 (2 Cir. 1947), cert. denied 331 U.S. 820 (1947), where the court found joint authorship on the ground that the person who wrote the melody had intended that it should be supplemented by lyrics. The court again stressed the necessity that the authors intend that their works would be complemented or complementary. The court said that even though Bowman had assigned all of his copyright interests, including the renewal right, before the lyric was added, his intentions, and not those of the publisher, would control.

181. *Silvers v. Russell,* 98 U.S.P.Q. 376 (S.D. Cal. June 10, 1953).

Action for infringement of copyright and trade mark and for unfair competition. Plaintiff used as a label on phonograph records and on catalogues advertising the records a distinctive mark, consisting of the representation of a phonograph record, with a girl in ballet costume dancing on it. Plantiff alleged that defendant substantially copied the design.

Held: Judgment for plaintiff. Although the design had been published thirteen years prior to its deposit, Judge Yankwich said that it was not in violation of the statutory requirement that copies "shall be promptly deposited." 17 U.S.C. § 13. The delay in deposit did not affect the validity of the copyright; citing *Washington Pub. Co. v. Pearson,* 306 U.S. 30 (1939) and *Shapiro, Bernstein & Co. v. Jerry Vogel Music Co.,* 161 F. 2d 406 (2d Cir. 1947). Since the label was of sufficient originality to be copyrightable, the court held that it was necessarily distinctive enough to satisfy the lesser requirements of trade mark law. Continuing, the judge found that "(t)he facts examined in the light of the law of copyright show the chief element necessary to constitute infringement, *substantial copying.* . . . And whether we deal with infringement of a copyright or of a trade mark, the facts supporting infringement would also constitute unfair competition, although the method of computing damages might be different."

182. *Taylor v. Metro-Goldwyn-Mayer Studios,* 98 U.S.P.Q. 430 (S.D. Cal. July 17, 1953).

Motion for summary judgment by defendant in an action for plagiarism of certain ". . . designs, scenes and lighting effects, the latter being produced by particular arrangements of camera and lights and by certain movements, positions and character of color screens." Plaintiff asserted that she claimed no right in the bare idea, but that she did claim a property right in ". . . a new and original representation and expression of a unique and novel combination of ideas. . . ." The "idea" in question involved the photographing of a live figure concealed behind a spray of water and highlighted in a novel manner. Defendants, for the purpose of the motion, conceded that plaintiff's sketches and the ideas therein expressed were original, that defendants had access thereto, and that, in so far as there was a similarity between scenes in defendants' motion pictures and plaintiff's sketches and ideas, the similarity was the result of copying. Plaintiff's attorney, on oral argument, conceded that it was impossible in California to attain a property right in an idea, but he argued

that the protection claimed by plaintiff was not for an idea but for "the know how of putting the idea across."

Held: Motion granted. The court pointed out that under a 1947 amendment to the California Code, as interpreted in *Weitzenkorn v. Lesser,* 40 Cal. 2d 778, 256 P. 2d 947 (1953), reported in the BULLETIN, Vol. I, No. 2, Item 105, "(t)he Legislature had abrogated the rule of protectibility of an idea, and California now accept(ed) the traditional theory of protectible property under common law copyright." The amendment was held to change the rule set forth in *Stanley v. C.B.S.,* 35 Cal. 2d 653, 221 P. 2d 73 (1950) and *Golding v. R. K. O. Pictures, Inc.,* 35 Cal. 2d 690, 221 P. 2d 95 (1950) that an idea as such rather than the form and manner of its expression, was protectible. As for plaintiff's "know how" or her "secret" process, the court held that, assuming it was protectible before publication, it lost that quality by publication and was in the public domain.

2. State Court Decisions.

183. *Archie Comic Pub. Inc. v. American News Co.* (Sup. Ct. N. Y. Spec. Term, N. Y. Law Journal, Oct. 29, 1953, p. 928).

Action for unfair competition. The publisher of a comic book, "Archie," charged that its distributor, defendant, was distributing two other comic books, "Stevie" and Morty," which, it was alleged, were similar in form and content to plaintiff's publication and were attempts to trade upon the success of plaintiff's product. Plaintiff did not claim originality for any of the features common to the books. Nor did it assert that the use of any one of these features constituted unfair competition. It did assert that the sum total of the copying added up to unfair competition.

Held: For defendant. The court found that comic books generally were issued in the same form and were indistinguishable when seen from a distance. Thus, in order to distinguish one comic book from another, the purchaser would have to approach and read the name of the book. As to the fact that the stories depicted were similar, the court said, "The general rule as to literary property is that rights are limited to similarity of expression . . .", and that the similarities in the present case were only as to a kind or type of character. The books all belonged to what the trade described as the "teenage" group. Appropriation of a general idea was said not to be unfair competition unless it goes to the extent of violating

a copyright. Here, the similarity was such that while the incidents described were different, they were of such a character that they could have been inserted in any of the books without affecting their basic nature. Such a similarity was not one of expression, but of type, and as such, was not actionable.

184. *Loeb v. Turner,* 257 S.W. 2d 800 (Tex. Civ. App. April 10, 1953).

Plaintiff, owner of a radio station in Arizona, appealed from the judgment of the trial court denying his request for a permanent injunction and for damages. Plaintiff had contracted for ". . . the exclusive right to have telephone broadcast lines installed at South Mountain Speedway and to broadcast therefrom any or all of the racing events . . . such rights to apply to radio broadcasting throughout the United States." During such a broadcast, an agent of the defendant radio station had listened, and, via long distance telephone, had relayed the race information to the defendant station. Within a few minutes of such simultaneous transmission, the information was handed to the defendant announcer who was engaged in recreating the events on the air. The Arizona station had a 40 mile range, and the defendant station was located more than 1000 miles away in Texas. Thus, there was no overlapping of listener coverage.

Held: Judgment sustained. The court viewed the case as involving the question whether defendants ". . . had a right to incorporate into their broadcast the news which had been picked up a few minutes before from appellant's factual broadcast of the races." It was said that the exclusivity of the plaintiff's arrangement with the raceway was not challenged, for the defendants' agent had never been within the confines of the track when he relayed the information.

The court cited *International News Service v. Associated Press,* 248 U.S. 215 (1918) as holding "that a commercial news-gathering agency may acquire a quasi property right in fresh news items . . . as against a rival news-gathering agency (but not against the public) which seeks to 'pirate' its columns and news bulletins." But the court said it did not apply because there had been no actual competition in the present case, while the *International News Service* case had involved an injunction which was limited ". . . to the immediate area within which the two agencies and their members (were) in actual competition." Further, the court pointed out that decisions of the United States Supreme Court were ". . . not necessarily binding upon the State courts of Texas. . . ."

The opinion was expressed that after broadcast, the facts "communicated gratuitously to the public became news available for comment and use, so far as any property right of appellant was concerned, by the public generally and individually, including appellees. By sending out the news over the airways (which are publicly owned), appellant in effect published the information he had collected. Under our law, as a result of such publication the material became available to everyone, since it was uncopyrighted. . . ." The court asserted that after publication any ". . . attempt to obtain exclusive control of the dissemination of news would violate the laws against monopolies and restraint of trade.

185. *Palmer v. Metro-Goldwyn-Mayer Pictures,* 259 P. 2d 740 (Ct. App. Calif. July 31, 1953).

Appeal from judgment sustaining a demurrer to the complaint which charged that defendants had deliberately copied and appropriated plaintiff's composition and play, "Base Hits and Bloomers," by the production and sale of the motion picture, "Take Me Out To The Ball Game." The trial court, after viewing the picture and comparing it to plaintiff's composition, found that there was insufficient similarity between the two works to sustain the cause of action. The plaintiff objected to the finding, saying that the only function of a demurrer was to raise a question of law and that the issue of similarity was one of fact. The plaintiff also argued that he had been denied his constitutionally guaranteed right to a jury trial.

Held: Judgment affirmed on the basis of *Weitzenkorn v. Lesser,* 40 Cal. 2d 778, 256 P. 2d 947 (1953), reported in the BULLETIN, Vol. I, No. 2, Item 105. The court reiterated that, unless some similarity of protectible material was discernible, no cause of action was stated as a matter of law. The only similarity noted between the two works was in the realm of abstract ideas which, it was said, no one can monopolize.

186. *Stowe v. Croy,* 124 N.Y.S. 2d 291 (June 12, 1953).

Seeking a declaration of rights under a contract. The common law literary property of plaintiff's testator was in question. After contracting, registrations of claims to copyright were made.

Held: Since rights incident to copyright are for the federal courts to determine, the complaint and counterclaim were dismissed without prejudice, for the registration of the claims to copyright had terminated the common law literary rights to which the contract related.

PART IV.

BIBLIOGRAPHY

A. BOOKS AND TREATISES

1. United States Publications

187. Dubin, Joseph S.

Copyright—Duration of Protection, Chart No. II.

Universal City, California, Universal Pictures Co., Inc., 1953. 3 p.

188. Gitlin, Paul.

Tax Aspects of Patents, Copyrights and Trade-Marks, by . . . and Wm. Redin Woodward.

New York, Practising Law Institute, January 1953. 83 p.

A revised edition of a booklet which was first published in 1950. The work covers such aspects as capital gains and losses, tax relief under section 107, installment sales under section 44, damages as income, taxation of non-resident aliens, and problems raised by death of the owner of the patent, copyright or trade-mark.

189. The United States Patents Quarterly.

Cumulative Digest, volumes 52-91 . . . in four volumes . . . A Cumulative digest of reported decisions relating to patents, trade-marks and copyrights . . . January 1, 1942 to December 31, 1951.

Washington, Bureau of National Affairs, Inc., 1953. 4 v.

The annual digests of the United States Patents Quarterly have been cumulated into a ten year digest. In the first three volumes, the digests of reported cases have been arranged by subject headings. The last volume includes a table of all the cases and tables of the patent, trade-mark and copyright material involved in the cases. The digest should prove to be a valuable reference tool.

190. Warner, Harry P.

The Law of Radio and Television *Rights.*

Albany, N. Y. Matthew Bender & Co., Inc. 1953.

This treatise is the second part of a work, the first volume of which was entitled *Radio & Television Law.* The present volume aims at covering not only the copyright law but the law of unfair competition and parts of trade-mark law as well. Separate chapters are devoted to such problems as protection of advertising and program ideas, registration of program names and character titles as service marks under the Trade-Mark Act of 1946, problems involving the right of privacy and other related matters. The book is presented in one large compression binder; it is apparently intended to make available to purchasers periodic supplements in loose-leaf form.

2. Foreign Publications

191. *Prefatory Note:* By far the most important new publication is the *Revue Internationale du Droit D'Auteur,* of which the first issue has just been published. The review, published by a group of distinguished French jurists and experts in the field of copyright (the editorial address is 17, rue Pigalle, Paris 9e) will appear quarterly in January, April, July and October. The subscription price for foreign subscribers is set at 2500 frs. The leading articles are printed in French, English and Spanish. The first issue consists of a prologue by Senator Marcel Plaisant, a comprehensive discussion of the recent decision by the Appellate Court of Brussels holding the use by broadcasting companies of phonograph records for broadcasting purposes to be a violation of the author's rights in the absence of special permission, a further article on copyright protection of cinematographic works, another leading article on the fair use problem in connection with the microfilming of copyrighted material by libraries; a fourth article discusses the French law of protection of works of the applied arts, a problem with which the U.S. Supreme Court is presently confronted in the case of *Stein et al. v. Mazer et al.,* 204 F. 2d 472 (4th Cir. 1953). These articles are followed by a reprint in full of some of the court decisions discussed in the leading articles and a section on general information on copyright all over the world. Special mention is made at the end of the article of the formation of the Copyright Society of the United States of America and this BULLETIN and hope for close cooperation is expressed by the Editors.

The officers of the Society and the editorial board desire to take this opportunity to congratulate the editors of *Revue Internationale du Droit D'Auteur* and to assure them of our equal desire for cooperation and mutual exchange of information in the copyright field.

191. Chaves, Antonio.

Proteção internacional do direito autoral de radiodifusão.

São Paulo, Max Limonad, 1953. 661 p.

A comprehensive treatise on numerous aspects of authors' rights as they are concerned in radio broadcasts, not only in Brazil, but on the international level. Beginning with the history of copyright and the various international conventions, the author discusses the problems of publication, reproduction, performance, the rights of performing artists, moral rights, royalties and license fees, the effect of differing copyright terms in various countries, public domain, rights of record manufacturers, sanctions and defenses, and criteria for protection in international law.

193. Hazard, John N.

Law and Social Change in the U.S.S.R.

Toronto, The Carswell Company, Limited, September 1953. 306 p.

Chapter 8 of Professor Hazard's book deals with copyright problems in the Soviet Union. The chapter is entitled "The Individual has a Niche" and the subheadings are as follows: Copyright Balances Individual and Community; The Property Right is Limited; Suits Against Publishers; Music and Photographs; Income Tax Implications; Favouring the Inventor; and Problems of Administration.

194. Mak, W.

Rights Affecting the Manufacture and Use of Gramophone Records.

The Hague. Martinus Mijhoff. 1952. 224 p.

This is an interesting study of the legal status of creative artists, performing artists and gramophone record manufacturers, written by a Dutch expert, in the English language. It is probably the most complete and thorough discussion of copyright protection of records which has been offered up to the present time. Special attention is devoted to the status of records under the revised Bern Convention and the work is concluded

with a draft of a special act for the protection of record manufacturers and performing artists. The entire book is written primarily from the viewpoint of giving added protection—not necessarily under the Copyright Act—to performing artists and record manufacturers.

195. Ulmer, Eugen.

Opinion on cinematography and copyright given at the request of the Office of the International Union for the Protection of Literary and Artistic Works.

Heidelberg, April 28, 1953. 16 p.

An English translation of an opinion by Dr. Ulmer discussing Article 14 of the Bern Convention. The author examines the problem of the protection of authors, producers and performers in the light of regulations in force in the important film producing member nations. The opinion calls for a further elaboration of Article 14 to insure adequate protection. [Gewerblicher Rechtsschutz und Urheberrecht (Auslandsteil) October, 1953.]

196. Valdés Otero, Estanislao

Derechos de autor; regimen juridico uruguayo; prologo de Eduardo J. Couture.

Montevideo, 1953. 414 p.

(Biblioteca de publicaciones oficiales de la Facultad de Derecho y Ciencias Sociales de la Universidad de Montevideo, Sección III, 68.)

The author traces the historical evolution of Uruguayan copyright legislation and then analyzes many of the legal principles involved in the light of comments made by many of the European and Latin American writers. In a chapter entitled "Author's Rights on the International Level," Sr. Valdés discusses Uruguay's participation in international conferences and devotes considerable space to a discussion of the work of UNESCO in developing the Universal Copyright Convention and the Geneva Conference of 1952.

197. Montanari, Mario

La Disciplina giuridica della cinematografia, per . . . ed Guido Ricciotti. Firenze, Casa Edit. del Dott. Carlo Cya, 1953. 2 v.

The first volume of this work consists of a study of the various legal rights inherent in the production, distribution and exhibition of motion picture films, and includes substantial material on authors' rights as well as the so-called connected rights. The second volume contains indexes and the texts of pertinent legislation, administrative regulations, and international agreements in force in Italy.

198. Von Mangoldt, H.

Die Rechtliche Ordnűng des Rundfunks im Ausland.

Munich, C. H. Beck, 1953. 182 p.

The Legal Regulation of Broadcasting Abroad.

B. LAW REVIEW ARTICLES

1. United States

199. Ilosvay, Thomas R.

Scientific Property.

The American Journal of Comparative Law, vol 2, *no.* 2, (*Spring,* 1953), *pp.* 178-197.

A survey of the studies and legislative developments in the field of protection granted scientific discoveries.

200. Pannone, Joseph D.

Property Rights In an Idea and the Requirement of Concreteness.

Boston University Law Review, vol. 33, *no.* 3 (*June* 1953), *pp.* 396-403.

After surveying the Anglo-American judicial opinions, the author concludes that, while the courts refuse to extend common law protection to abstract ideas, they are usually willing to allow recovery where there is sufficient evidence of concreteness to identify the idea as a creation of the claimant.

201. Smith, Louis Charles

The Copying of Literary Property in Library Collections.

Law Library Journal, vol. 46, *no.* 3 (*Aug.* 1953), *pp.* 197-206.

A discussion by a member of the Copyright Office legal staff of the law with regard to the photocopying of copyrighted material and non-copyrighted unpublished material.

202. Lerner, Max K.

Limitations Imposed on Television and Radio.

American Bar Association Journal, vol. 39, *no.* 7 (*July* 1953), *pp.* 568-575.

202a. Woodhams, R. E.

A copyright sketch for the general lawyer.

Michigan State Bar Journal, vol. 32, *pp.* 15-18 (*Oct.* 1953).

2. Foreign

1. English

203. The National Library.

Books Required to be Deposited with the National Librarian—Book Deposit Regulations.

Canadian Patent Reporter, vol. 18, *Pt.* 3, *Sec.* 1, (*June* 1953), *pp.* 105-113.

Containing an explanatory note concerning provisions of the Canadian National Library Act of 1952 and the National Library Book Deposit Regulations of 1953, the text of the National Library Act, and the text of the official explanation issued with the regulations.

204. Sawer, Geoffrey

Copyright in Reports of Legal Proceedings.

The Australian Law Journal, vol. 27, *no.* 2 (*June* 18, 1953), *pp.* 82-86.

Analyzing the problems raised by the copyrightability of written and oral court decisions. Although basing the article on English law, Professor

Sawer observed that the whole problem had been avoided in the United States on the "very sensible principle" that verbatim reports of judicial opinions are not subject to copyright.

2. In French

205. Goldbaum, Wenzel

Le Droit moral dans la législation en Amérique latine.

Le Droit d'Auteur, vol. 66, no. 8 (Aug. 15, 1953), pp. 92-95.

A survey of how the "moral right" is dealt with in Latin American legislation.

206. Ulmer, Eugen

Consultation sur la cinématographie et le droit d'auteur établie à la demande du Bureau de l'Union internationale pour la protection des oeuvres littéraires et artistiques.

Le Droit d'Auteur, vol. 66, no. 9 (Sept. 15, 1953), pp. 97-110.

A French translation of Dr. Ulmer's opinion. See item No. 194.

207. Magnin, Charles L.

Confederation internationale des societes d'auteurs et compositeurs. Commission de legislation (Paris, 21-22 septembre 1953).

Le Droit d'Auteur, vol. 66, no. 10 (Oct. 15, 1953), pp. 120-123.

This is a report on a meeting of the Legislative Committee of CISAC in which the recommendation by Eugene Ulmer that Article 14 of the Bern Convention be amended so as to include protection for motion picture producers was discussed.

208. MacCarteney, Richard S.

Lettre des Etats-Unis d'Amerique.

Le Droit d'Auteur, vol. 66, no. 10 (Oct. 15, 1953), pp. 115-117.

Summarizing developments in the United States in the field of copyright law during 1952-1953.

209. Vaunois, Louis

Lettre de France (première partie).

Le Droit d'Auteur, vol. 66, *no.* 10 (*Oct.* 15, 1953), *pp.* 117-120.

In the first part of a résumé of recent French decisions involving copyright the author discusses the questions of whether the person supplying the subject matter of a motion picture is a co-author; whether an attorney has a copyright in his pleadings; and whether an author-proprietor of an architectural design may enjoin the reproduction and sale of photographs and postal cards showing the design.

3. In German

210. Hubmann, Heinrich

Der Schutz der Rundfunksendung gegen unbefugte Verwertung.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 55, *nos.* 8-9 (*August-September* 1953), *pp.* 316-323.

Protection of Broadcasts against Unauthorized Use.

4. In Italian

211. Rubinstein, Stanley

La Protezione delle "Idee Elaborate."

Il Diritto di Autore, vol. 24, *no.* 1. (*Jan.-Mar.* 1953), *pp.* 43-51.

A report presented at a recent meeting of the Committee on Legislation of C.I.S.A.C., dealing with the protection of ideas, especially those which may be utilized as a basis for radio, television and motion picture productions. The article includes some observations on the recent U.S. decision, *Belt v. Hamilton National Bank,* 108 F. Supp. 689 (D.D.C. 1952).

212. Sanctis, Valerio de

La Convenzione Universale sul Diritto D'Autore. Part III—La "Convenzione Universale del Diritto di Autore" e i protocolli annessi indipendenti, firmati a conclusione della conferenza intergovernativa de Ginevra. (18 agosto 6 septembre 1952).

Il Diritto di Autore, vol. 24, *no.* 1 (*Jan.-March* 1953), *pp.* 1-42.

The third and last part of a comprehensive report on the Universal Copyright Convention by one of the leading Italian copyright experts. The present section deals primarily with the substance and juridical theory behind the three protocols annexed to the Universal Copyright Convention as signed at Geneva on Sept. 6, 1952.

213. Bogsch, Arpad

Il Concetto di "pubblicazione" e la convenzione universale del diritto di autore.

Il Diritto di Autore, vol. 24, *no.* 2. (*April-June* 1953), *pp.* 169-202.

This study on the concept of "publication" and the Universal Copyright Convention includes a survey of the divers uses of the term "publication" in national and international law and of the discussions of the UNESCO meetings concerning its use in the draft of the Universal Copyright Convention, particularly with regard to its concept in connection with national treatment, formalities, duration of protection, and right of translation.

214. Di Stefano, C. A.

Trattamento fiscale del diritto d'autore.

Il Diritto di Autore, vol. 24, *no.* 2 (*April-June* 1953), *pp.* 161-168.

This is an analysis of the fiscal treatment of authors' rights under Italian tax legislation, with particular emphasis on the proper classification of literary property transferred *inter vivos, causa mortis,* or *de cuius* for inheritance tax purposes. The author is an official of the Italian Ministry of Finance.

215. Smythe, Dallas W.

Approcci teoretici sugli effetti delle communicazioni di massa. (Theoretical approaches to the effects of mass communications.)

Lo Spettacolo, vol. 3, *no.* 1, (*Jan.-Mar.* 1953), *pp.* 1-6.

216. Carrelli, Antonio

La televisione in bianco e nero ed a colori in Italia. (Television in black and white and in colors in Italy.)

Lo Spettacolo, vol. 3, *no.* 1 (*Jan.-Mar.* 1953), *pp.* 6-7.

This item and Item 213 are the two leading articles in the current issue of *Lo Spettacolo* and the periodical itself gives an abstract in English.

C. ARTICLES PERTAINING TO COPYRIGHT FROM TRADE MAGAZINES

1. United States

217. Army-captured film ok'd for pic forms.

The Billboard, vol. 65, *no.* 35 (*Aug.* 29, 1953), *p.* 11.

The Department of Justice has turned over to the Library of Congress a number of German and Japanese films captured by the Army for which TV licenses will be granted. "Paper prints" of films deposited between 1894 and 1913, on which copyrights have expired, are also available to TV film makers. The Library also reports that approximately one half of the films copyrighted during the year have been deposited in their collections.

218. ASCAP and SACM sign Mexican pact.

The Billboard, vol. 65, *no.* 37 (*Sept.* 12, 1953), p. 15.

ASCAP has completed arrangements with the Mexican Performing Rights Society whereby the latter will collect fees for ASCAP members. SACM, however, is represented in the United States by BMI.

219. ASCAP withdraws pleas for amendment of consent decree.

The Billboard, vol. 65, *no.* 42 (*Oct.* 17, 1953), *p.* 1.

Article discusses probability of the court settling the rate dispute between ASCAP and the networks.

220. Book Manufacturer's Institute meeting stresses co-operation.

Publishers' Weekly, vol. 164, *no.* 14 (*Oct.* 3, 1953), *pp.* 1502-1506.

During the 21st annual convention of the Book Manufacturer's Institute (Sept. 21-23, 1953), Douglas M. Black, president of the American Book Publishers' Council, urged support for the ratification of the Universal Copyright Convention and related legislation.

221. Cane, Melville

Belated justice for authors.

The Saturday Review, vol. 36, *no.* 34 (*Aug.* 22, 1953), *p.* 21.

Mr. Cane comments briefly on the case of *Kreymborg v. Durante,* and discusses the recent amendment to the Copyright Law which gives recording and broadcasting rights to literary, non-dramatic works. He feels that it is a welcome change, long overdue.

222. Mitchell, George

The Library of Congress, its little known film collection contains some of cinema's greatest treasures.

Films in Review, vol. 4, *no.* 8 (*Oct.* 1953), *pp.* 417-421.

In discussing early motion pictures and producers, the author alludes to the procedure used for the copyrighting of films prior to the 1912 Act and the unusually valuable collection of films and paper prints resulting from these early registrations.

223. Federal Court heaves out "Moulin Rouge" suit.

Variety, vol. 191, *no.* 13 (*Sept.* 2, 1953), *p.* 5.

Judge Yankwich dismissed the $5,000,000 suit brought by Moulin Rouge Co. of Paris against the producers and exhibitors of the film of the same name. Plaintiff failed to file an amended complaint which would support a charge of unfair competition. The Court of Appeals had previously held that non-competitive businesses may not sue each other for unfair competition.

224. Four Majors oppose, Bar Association supports, U.S. participation in copyright parley.

Variety, vol. 191, *no.* 11 (*Aug.* 19, 1953), *p.* 4.

There are reported indications that four major film companies are planning to oppose ratification of the UCC on the grounds that it does not give adequate protection to motion picture films. On the other hand, it is understood that the American Bar Association will be asked to adopt a resolution favoring ratification, subject to the enactment of necessary amendatory legislation.

225. House and Senate file new copyright bills.

Publishers' Weekly, vol. 164, *no.* 7 (*Aug.* 15, 1953), *pp.* 627-628.

A discussion of the amendments to the United States Copyright Law proposed by H. R. 6616, 6670, and S. 2559, designed to permit U.S. adherence to the Universal Copyright Convention.

226. Kaminstein, A. L.

Copyright and registration of maps. (Reprinted from *Surveying and Mapping, vol.* 13, *no.* 2 (*Apr.-June* 1953), *pp.* 182-184). 3 *p.*

227. Levin, Marvin J.

Tax Saving Practices of Artists and Entertainers, by . . . and Morton J. Mitosky.

Taxes, the Tax Magazine, vol. 31, *no.* 1 (*Jan.* 1953), *pp.* 21-30, 79.

A discussion of some of the problems encountered by artists and entertainers in the taxation of income from use, sale or transfer of copyrighted material.

228. Maxwell, Margaret

ASCAP—Its past and future.

Music Journal, vol. 11, *no.* 9 (*Sept.* 1953), *pp.* 17, 44-46.

This is a brief survey of the history, operations and functions of the American Society of Composers, Authors and Publishers.

229. Music copyright bids flood government agency.

The Billboard, vol. 65, *no.* 35 (*Aug.* 29, 1953), *p.* 17.

In its annual report for fiscal 1952-1953, the U.S. Copyright Office reports an increase of 7% in copyright registrations in all classes including music. Approximately 5,000 more musical compositions were registered in the Copyright Office this year than last.

230. $150,000,000 suit asks Broadcaster-BMI divorce.

The Billboard, vol. 65, *no.* 46 (*Nov.* 14, 1953), *pp.* 1, 17.

Concerning the suit brought by 33 authors and composers complaining of BMI's relationship to the networks. The suit charges violation of the antitrust laws. The complaint was served on November 9, 1953, in the Southern District of New York, under the title Arthur Schwartz et al., individually and on behalf of other writers and composers of musical compositions v. Broadcast Music Inc., et al. (including all of the large broadcasting companies and their officers). The plaintiffs seek, inter alia, a preliminary and permanent injunction directing the defendants to divest themselves of all interests in Broadcast Music Inc., seek dissolution of the National Association of Radio and Television Producers and ask for treble damages in the amount of $150,000,000 for violation of the antitrust laws.

231. $1,600,000 asked for tune plagiarism suits.

The Billboard, vol. 65, *no.* 37 (*Sept.* 12, 1953), *p.* 18.

Connecticut film theater executive, Mrs. Frances Lampert, alleges that "The Song from Moulin Rouge" infringes her "I Want You to Know," copyrighted in 1951, and that "Cause I Love You" infringes her "Annabella." She is asking for $1,100,000 in damages in the first suit and $500,000 in the other.

232. Spaeth, Sigmund

Facing the music in court.

Theatre Arts, vol. 37, *no.* 10 (*Oct.* 1953), *pp.* 74-75, 90.

Mr. Spaeth discusses some of the most recent court actions involving alleged plagiarism of popular song hits. He notes that nuisance suits continue to get into the courts, with sometimes rather unhappy results, and concludes that a more adequate knowledge of music on the part of judges, lawyers, and public might help in alleviating the situation.

233. This is one for a Shamus.

The Billboard, vol. 65, *no.* 37 (*Sept.* 12, 1953), *pp.* 18.

A Mercury Record, released under the title "The Story of Three Loves," was thought to be in the public domain as a melody written by Paganini. It was found to be protected by copyright as an excerpt from Rachmaninoff's "Rhapsody" on a Theme by Paganini.

234. Witmark & Miller File song claim vs. ranch.

The Billboard, vol. 65, no. 34 (Aug. 22, 1953), p. 22.

The two music publishers filed suit for copyright infringement in the U.S. Dist. Ct. for Maine, Northern Division, alleging the unauthorized performance of two songs by the Bar L Ranch at Newport, Me.

2. England

235. Copyright convention commended to U.S. Senate.

The Bookseller, no. 2484 (Aug. 1, 1953), p. 595.

A note dealing with the fact that President Eisenhower has sent the Universal Copyright Convention to the Senate for ratification, and that Secretary of State Dulles has pointed out that early ratification would improve U.S. relations with other countries.

3. France

236. Hirsch Ballin, E. D.

La determination de l'auteur dans l'oeuvre cinématographique.

Inter-Auteurs, no. 112 (3me trimestre, 1953), pp. 103-107.

Observing that the Dutch copyright law of 1912 is silent as to the rights of an author of a motion picture, the writer discusses the difficulty of determining who is the motion picture author under Dutch law and jurisprudence.

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238. *U.S. Dept. of the Army.*

Military Publications, Use of Copyrighted Material. Washington, Aug. 11, 1953.

4 p. (Army Regulations No. 310-11).

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239. *U.S. Dept. of Defense.*

Use of Copyrighted Material in Department of Defense Publications. Washington, Nov. 17, 1952 (Directive No. 5535.1).

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Le Droit d'Auteur, vol. 66, no. 11 (Nov. 15, 1953), p. 125.

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Le Droit d'Auteur, vol. 66, no. 12 (Dec. 15, 1953), pp. 141-142.

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Le Droit d'Auteur, vol. 66, no. 11 (Nov. 15, 1953), pp. 126-130.

This is a French translation of the Japanese Copyright Law, No. 39 of March 4, 1899 as amended by laws No. 63 of June 14, 1910, no. 60 of Aug. 19, 1920, no. 64 of May 30, 1931, no. 48 of May 1, 1934, no. 35 of March 6, 1941 and no. 131 of May 2, 1950.

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Le Droit d'Auteur, vol. 66, no. 12 (Dec. 15, 1953), p. 142.

Cabinet order No. 178 of June 6, 1952 as modified by order No. 338 of Aug. 8, 1952, setting forth the organization and functions of a Copyright Council which is to operate under the direction of the Minister of Public Education.

244. *Japan. Laws, statutes, etc.*

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Le Droit d'Auteur, vol. 66, no. 12 (Dec. 15, 1953), p. 142.

The magazine *Le Droit d'Auteur* has received a communication, dated Nov. 7, 1953, advising them that Cabinet Order No. 272, of July 16, 1949, concerning the registration and protection of foreign copyrights, has been abrogated.

245. *New Zealand. Laws, statutes, etc.*

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Le Droit d'Auteur, vol. 66, no. 12 (Dec. 15, 1953), p. 143.

The Order assures copyright protection in New Zealand to works first published in the Belgian Congo, Ruanda-Urundi, Algeria, the French Colonies, Finland, Iceland, Israel, Liechtenstein, the Philippine Republic, Thailand, Turkey, Vatican City and Yugoslavia. It also modifies the protection accorded works first published in Denmark, Greece, Indonesia, Italy, Japan, The Netherlands, Dutch New Guinea, Surinam, Curacao, Norway and Sweden and takes away copyright protection granted to Haiti.

246. *New Zealand. Laws, statutes, etc.*

Ordonnance etendant l'application de la loi de 1913 sur le droit d'auteur (du 4 mars 1953).

Le Droit d'Auteur, vol. 66, no. 12 (Dec. 15, 1953), p. 144.

A French translation of the Copyright Act Extension Order of 1953 which extends copyright protection in New Zealand to works first pub-

lished in Kenya Colony, North Borneo, Sarawak and Southern Rhodesia. Copyright protection for works first published in Palestine is terminated. The Copyright Act of 1913 is also amended to include the Irish Republic, Pakistan, Singapore and the Malay Federation.

PART II.

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247. *United States.*

Proclamations, Conventions and Treaties Establishing Copyright Relations Between the United States and Other Countries. Washington, Copyright Office, 1951—.

The set consists of a list of proclamations, treaties and conventions establishing copyright relations, compiled by the Treaty Affairs Office of the U.S. Department of State, together with reprints from the *Statutes at Large, Federal Register,* and press releases of the texts of some 70 or more proclamations and international agreements. A limited number of these compilations is available for free distribution by the Copyright Office.

248. *United States,* 1945-1953.

Copyright agreement between the United States of America and Monaco effected by exchange of notes signed at Monaco, Sept. 24, 1952; entered into force September 24, 1952. Washington, U.S. Govt. Print. Off., 1953.

11 p. (U.S. State Department Treaties and other international acts Series 2702, Publication 5039).

PART III.

JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY

A. DECISIONS OF U.S. COURTS

1. Federal Court Decisions

249. *Dunham v. General Mills, Inc.*, 99 U.S.P.Q. 372 (D.C.D. Mass. Nov. 6, 1953).

Motion for summary judgment for defendant in an action for infringement of copyright. The plaintiff alleged that defendant had infringed his copyright by "causing cut-out masks to be produced on numerous cereal boxes." Plaintiff disclaimed any infringement by the defendant's copying the art work appearing on the copyrighted materials, but alleged that the features, details and parts infringed on were as follows: (1) the featuring of cut-out masks on the "Wheaties" cereal package; (2) the printing of a face of an Indian and feather on the back of the package; (3) the printing of the eyes with the technical words "cut-out" in the center of the eyes; (4) the printing of the mask featuring "The Bad Man."

Held: Motion for summary judgment granted. Complaint dismissed. As to the featuring of the cut-out masks, the court said that it was difficult to see what was novel or original about a mask with eye cut-outs and that it was "fundamental in copyright law that to obtain protection an author's ideas must be reduced to concrete form in the copyrighted writing on (sic) article and they must be novel and original." As to the alleged infringement by the printing of the face of an Indian and feather, the court said that none of the plaintiff's copyrights display the face of an Indian or of a feather, and thus there was no infringement. The use of the technical phrase "cut-out" in the center of the eyes of the mask adopted the same method used by plaintiff, but the court said that "here the defendant has not copied the shape or form with which the plaintiff chose to express his ideas." The only things copied were the techniques and methods adopted by the plaintiff and "the copyright gives no exclusive right to practice or use the arts and methods described in the copyrighted work."

The court said that plaintiff took nothing by his claim that he had exclusive rights to a cut-out mask displaying a "Bad Man" character; that it was a well established rule "that a copyright on a work of art does not protect a subject, but only the treatment of a subject." The treatment in the present case was said to be as "different from plaintiff's as night from day." Quoting from *Bleistein v. Donaldson Lithographing Co.,* 188 U.S. 239, 249, 250 (1902), the court said: "Others are free to copy the original. They are not free to copy the copy. . . . The copy is the personal reaction of an individual upon nature. Personality always contains something unique."

250. *Funkhouser v. Loew's Incorporated,* 208 F. 2d 185 (8th Cir. Dec. 11, 1953).

Action for infringement and plagiarism alleging that defendant's motion picture photoplay "The Harvey Girls" infringed upon and was copied from two literary compositions belonging to plaintiff, a copyrighted work entitled "Cupid Rides The Rails" and an unpublished manuscript, "Old John Santa Fe." Plaintiff appeals from the finding by the trial court that there was no substantial or material copying, alleging that such finding was not supported by the evidence.

The evidence showed that in 1939, plaintiff, in collaboration with another, wrote a story called "Cupid Rides the Rails," featuring railroad life and the activities of the "boomers." The story included the opening of a new Fred Harvey eating house and the Harvey girls were presented in a favorable light, supplying the romantic flavor of the story. The story was sold to the American Mercury in 1940. The magazine obtained a copyright which it assigned to plaintiff. A condensation of the story appeared in Readers Digest under the title, "Fred Harvey Girls—Civilizers of the Southwest." Paramount Pictures expressed interest in the story as material for a future motion picture, and the collaborators met with representatives of the Harvey company and the Santa Fe Railroad to discuss the possibilities of a movie. They prepared a manuscript and sent it to their agents, who submitted it to Paramount and to the defendant. Defendant's New York office prepared a synopsis of the story and forwarded it to California. The story was rejected, and it is uncertain whether the manuscript was ever returned. Defendant did retain the synopsis and the Harvey Company and the Santa Fe Railroad retained copies of the manuscript.

Defendant's evidence showed that two authors had submitted a story to them in 1936 which featured a "Harvey Girl." The story was rejected. The same authors submitted another "Harvey Girl" story in 1937, and this too was rejected. The authors persisted, combined their two stories, entitled the final story "The Harvey Girls," and submitted it to defendant in 1941. Defendant then purchased the story, and hired Samuel Hopkins Adams to write a novel based on the material therein. Adams consulted with the restaurant company and the Railroad, obtained much historical data, and published a novel, "The Harvey Girls," in 1942. In 1943, defendant decided to produce a musical motion picture based on the Adams novel. Since the picture was a musical, the Adams novel could not be closely followed and the picture does not parallel it very closely.

Held: Affirmed. The trial court had applied the correct test in reaching its conclusion, i.e., "Whether ordinary observation of the motion picture photoplay would cause it to be recognized as a picturization of the compositions alleged to have been copied, and not whether by some hypercritical dissection of sentences and incidents seeming similarities are shown to exist." The court recognized that there were similarities of setting and background, but pointed out that in a "western" no one has a monopoly on hitching posts, false-fronted buildings, etc. In answer to plaintiff's argument that many of the songs were inspired by ideas or words contained in his stories, the court said that ideas as such are not subject to copyright, nor is the right to the use of certain words protected by copyright. The copyright was said to "secure the right to that arrangement of words which the author has selected to express his idea" and that no infringement can be shown merely by comparing a word or phrase taken from his manuscript with the word or words appearing in the lyrics of the songs. As to plaintiff's attempt to show similarities of character definition, the court said that "considering that both the movie and the manuscript presented activities of Harvey Girls, and information concerning them was received from the same source, we think it reasonable that some similarities in character portrayal could be discovered." However, the court accepted the lower court's finding that such similarities existed only in the remotest degree.

The plaintiff argued that under the rule laid down in *Universal Pictures Co. v. Harold Lloyd Corp.,* 162 F. 2d 354 (9th Cir. 1947), it need not be shown that the whole picture was copied in order to show infringement, but that "the mere copying of a major sequence (was) sufficient." The court could find no copying of a major sequence, and said

that in the *Lloyd* case ". . . a sequence consisting of 57 consecutive comedy scenes had actually been copied by the defendant." No such copying was shown by plaintiff.

251. *Grandma Moses Properties, Inc. v. This Week Magazine,* 99 U.S.P.Q. 455 (D.C.S.D.N.Y. Nov. 30, 1953).

Motion for preliminary injunction seeking to restrain This Week Magazine from advertising, offering for sale or selling prints of a picture painted by "Grandma" Moses. Brought under Rule 65 of the Federal Rules of Civil Procedure. In February 1944, Mrs. Moses painted a picture, identified as number 550, which she entitled, "Over the River to Grandma's House." In March of the same year she painted another picture, identified as number 563, to which she gave the same name. Number 563 was sold the same day it was painted, and was purchased at a public auction by defendant's editor in February 1953. The editor transferred the picture to the magazine and in October 1953 a reproduction was carried by the magazine and instructions were given as to the obtaining of "personal" reprints. The first painting, number 550, was transferred through "Grandma" Moses' exclusive agent, and in 1948, Galerie St. Etienne obtained a statutory copyright on it. Plaintiff corporation was formed shortly after this; the trade-mark "Grandma Moses" was registered; and the 1948 copyright was assigned to the corporation.

Held: Motion denied. Since no statutory copyright was ever obtained on Number 563 and since Number 550 was not copyrighted until 1948, the issues were to be measured in the light of Mrs. Moses' common law copyright. The plaintiff asserted that Number 563 was a copy of Number 550, and the defendant asserted that it was an original. The court held that this made no difference, for Number 563 had been sold without restriction and common law copyright was lost by the general publication or unrestricted sale of a single copy. The only possible restriction might be found in the procurement of the 1948 copyright on Number 550. If the later picture is said to be a copy, the unrestricted sale of that copy ended the common law copyright in the original under the rule of *Bobbs-Merrill Co. v. Straus,* 147 Fed. 15, 19 (2d Cir. 1906), *aff'd* 210 U.S. 339 (1907), and the subsequent application for a statutory copyright was a nullity. If the picture was an original, the copyright on Number 550 could in no way affect it.

252. *Hamilton National Bank v. Belt,* 99 U.S.P.Q. 388, 22 U.S.L.W. 2247 (C.A.D.C. December 3, 1953), aff'g. 108 F. Supp. 689.

Appeal from judgment for plaintiff for damages for appropriation of an idea for a type of radio program which Belt had originated and which he had made known to the Bank. Expressly reserving the right to negotiate with any school, radio station, or sponsor, as well as all other rights, Belt communicated with the Assistant Superintendent of Public Schools in Washington setting forth a plan to select student talent by holding auditions in the high schools, and with the talent thus selected to put on half-hour weekly broadcasts. Each program was to be presented to the students as an assembly, recorded, and the recording broadcast in the evening. The plan was presented in a detailed fashion to the school officials and to various Washington business establishments, including the Bank. The Bank was interested and entered into a contract with Belt, agreeing to pay him $25 a week to make the arrangements with the schools. Once the schools gave their approval, a revised agreement covering the duties and compensation of Belt was to be made. The school authorities did not approve, and under the terms of the agreement with Belt, the Bank cancelled its contract and paid him $50 in full settlement. A few months later the Board of Education advised the Bank of its willingness to approve such a program. The Bank, with the assistance of someone other than Belt, carried forward the plan with periodical broadcasts for over a year.

The Bank contended (1) the idea was so general and abstract as to be devoid of a property right in the absence of a definite contract for compensation for its use following its voluntary disclosure; (2) the question whether the idea was sufficiently concrete to warrant legal protection was one of law which the court erroneously submitted to the jury and which the court of appeals had jurisdiction to decide; (3) to justify legal protection an idea must also be new and novel, a question of fact which the court submitted to the jury without sufficient evidence; (4) the court permitted improper hypothetical questions to be asked experts who testified as to the market value of the idea.

Held: Affirmed. "A person has such a property right in his own idea as to enable him to recover damages for its appropriation or use by another when the idea is original, concrete, useful, and is disclosed in circumstances which, reasonably construed, clearly indicate that compensation is contemplated if accepted and used." In the present case, it was not disputed that the issue of novelty was for the jury, but that

there was insufficient evidence of originality to go to the jury. The trial court was of the opinion that there was no substantial evidence controverting Belt's claim to originality.

"Was this plan concrete?" asked the court. "The Bank says this is a question of law which was erroneously left to the jury. An ancillary position is that in any event the instructions to the jury on this issue were inadequate. We need not decide whether in every case it is for court rather than jury to answer the question of concreteness, for we think this plan was concrete and that to have defined the term more fully for the jury in the context of this case would have been to describe a pattern into which Mr. Belt's plan necessarily fitted. This being so the submission of the question to the jury, though with inadequate instructions, did not harm the Bank."

The court went on to say: "In view of our conclusion that the plan was concrete it is unnecessary to express an opinion as to what protection, if any, should be afforded an abstract idea. Some jurisdictions deny protection in the absence of a contract entered into prior to disclosure and expressly reserving rights in the originator. . . . We leave this question unanswered."

Another question to be answered by the court was whether, assuming the plan to be concrete, novel and useful, it was disclosed to the Bank in circumstances contemplating compensation for its use? The fact that a contract for personal services was entered into, even though terminated, indicated that compensation was expected. The disclosure to the bank was held not to make the idea "public property." Citing *How J. Ryan &Associates v. Century Brewing Association,* 185 Wash. 900, 55 P. 2d 1053 (1936); *Stanley v. Columbia Broadcasting System,* 35 Cal. 2d 653, 666, 221 P. 2d 73, 80 (1950); *Cole v. Phillips H. Lord, Inc.,* 262 App. Div. 116, 121, 28 N.Y.S. 2d 404, 409 (1941).

As to the hypothetical questions put to the experts with regard to the value of the idea, such questions must include the assumption that the idea was new and original. To require the witness to make this assumption was held not to prejudge the issue of newness, for the court had made it clear that the assumption was for the purpose of the hypothetical question, and that before considering value, the jury itself had to determine the issue of novelty.

253. *Hartford Charga-Plate Associates, Inc. v. Youth Centre-Cinderella Stores, Inc.,* 116 F. Supp. 148 (D. Conn. Oct. 24, 1953).

Action for unfair competition seeking to restrain defendant from continuing to use in its addressing machines identification plates issued by plaintiff to customers of its six member stores. The defendant was found to have encouraged its employees to utilize the plates in question and to have purchased the addressing machines with the express intention of using the plates issued by plaintiff. The evidence was held to be insufficient to sustain a finding that defendant was using the plates as credit information. The court also found that the use of the plates saved the defendant some expense and was a great convenience to defendant and its customers.

Held: For defendant. To the extent defendant saved money and found the use of the plates to be convenient, it was held to be taking a "free ride," but that such "ride" did not constitute unfair competition. There was no palming off of defendant's goods as those of the plaintiff or its members. The court felt that the case did not fall within the doctrine of *International News Service v. Associated Press,* 248 U.S. 215 (1918) or *Capitol Records, Inc. v. Mercury Record Corp.,* 109 F. Supp. 330 (S.D.N.Y. 1952) because of the factual differences. Plaintiff relied on the argument that defendant was invading a property right in the plates and that defendant was causing plaintiff's members' customers to breach a contract to use the plates solely in member stores. However, the court felt that the plates had been distributed in such a manner as to make it unlikely that the customers were aware of any property right reservation by plaintiff in the plates. The contract theory was held to be even more difficult to spell out. The court said: "In any case, neither the claimed property right nor the claimed contract seems a sufficient basis for extension of the doctrine of unfair competition by imposing the sanction of the courts to prevent the use of the identification tokens or plates, for the general purpose for which they were furnished the customer, in stores other than those sharing the burden of furnishing them. Restrictions on the use of idea and devices beneficial to the public should not be favored where no substantial harm is shown to the plaintiff, but only some incidental benefit to defendant, where there results no palming off or confusion of goods."

254. *Mills Music, Inc. v. Cromwell Music, Inc.,* 14 F.R.D. 411 (S.D.N.Y. Feb. 20, 1953).

Motion by defendant for an order compelling the witness, Zissu,

to answer questions propounded to him on his deposition and to be propounded to him in further deposition. Zissu was one of the attorneys for the plaintiff and was also the main functionary in the negotiations leading up to the plaintiff's acquisition of the song for publication and copyright. The refusal to answer was based on four grounds: (1) where defendant had opportunity to examine witness other than Zissu, it may not inquire of Zissu; (2) the questions constituted an invasion of privacy as an attorney and the freedom of preparation of a case; (3) the questions involve the work product of an attorney; and (4) the questions violate the attorney-client privilege. The questions concerned the events leading up to the plaintiff's acquiring rights in the song.

Held: Motion granted in part. Since none of the information sought was secured by Zissu in the course of preparing for trial and since all of the information dealt with circumstances prior to plaintiff's publication and copyright of the song, objections (1) through (3) were held to be invalid. Further, the questions related to information received from persons other than Zissu's client and, therefore, objection (4) was invalid. The motion as to questions propounded in further depositions necessarily was rejected because of the court's lack of knowledge of what these questions would entail.

255. *Overman v. Loesser,* noted in BULLETIN, *vol.* 1, *no.* 2, *item* 97.

Petition for writ of certiorari to Court of Appeals for the Ninth Circuit denied Dec. 7, 1953. Reported in 99 U.S.P.Q. No. 13 at III.

256. *Shapiro Bernstein & Co. v. Jerry Vogel Music Co.,* 99 U.S.P.Q. 381 (D.C.S.D.N.Y. Sept. 24, 1953).

Motions by both parties to amend the conclusions of law in an action for copyright infringement, opinion noted in BULLETIN, Vol. 1, No. 3, Item 180.

Defendant moved to strike the conclusions of law denying it any relief on its counterclaim and to strike that part of the judgment directing defendant to pay to plaintiff all of its legal costs and disbursements in the action, together with a reasonable attorney's fee for the legal services of plaintiff's attorney. In the alternative, defendant moved for a new trial on the grounds of error in the dismissal of its counterclaim. Plaintiff

moved that the conclusions of law be amended "so as to make specific that defendant Vogel never acquired from its assignor Sumner "any right, title or interest whatever in and to the title of the composition, '12th Street Rag.'"

Held: Both motions denied. In defendant's counterclaim it had prayed that it be declared a co-owner of an undivided 50% interest in the musical composition consisting of the lyrics by Sumner and the music by Bowman. The court had held that defendant was the sole owner of all rights in the lyric but had no interest in, nor could it make use of, the melody. Defendant contended that since it was declared sole owner of the lyric it must be considered as a prevailing party in the action along with the plaintiff. Thus, the defendant argued, neither party should be allowed costs or attorney's fees. In answer, the court pointed out that the question of who prevailed must be evaluated in the light of the proof adduced on the trial, and that the proof so adduced showed that whatever popularity the song retained was based on its appeal as an instrumental. Defendant had *failed in its main contention* that the "song" was a joint work and that it had the right to publish the whole. Plaintiff *prevailed in its main contention* that it owned the renewal copyright to the Bowman music.

In ascertaining what were reasonable attorney's fees, the court observed that it would take into account the fact that plaintiff spent a substantial amount of time attempting to prove its rights in the Sumner lyric, and that in this effort it was unsuccessful. In determining the costs and attorney's fees in a copyright infringement case, the basic fact to be considered was who infringed and not the technical outcome of various claims made. Defendant here was said to have been in no respect successful. "With knowledge of the consequences [defendant has been a litigant in several similar cases in this Court] some music publishers as part of their business, have at times sought to obtain an interest in popular musical compositions by acquiring the renewal right to the lyric or to the melody thereof. The decisions show that the loser in the subsequent copyright litigation generally has to pay the attorney fees of the successful party. Cases, such as this, show the need for that statutory provision. [T. 17 U.S.C.A. §116]"

Plaintiff's cross motion as to the title, "12th Street Rag," was denied because of the fact that titles to musical compositions are not protected by copyright. Since the copyright does not give the exclusive right to the use of the title of a song, relief is to be found in a suit for unfair competition and not, as here, for copyright infringement.

257. *Sloan v. Mud Products, Inc.,* 114 F. Supp. 916 (N.D. Okla. Aug. 11, 1953).

Action for an accounting for past sales and an injunction against future sales in regard to a novel disclosure alleged to have been made by J. I. Sloan, deceased, to whose rights plaintiff had succeeded, to officers of defendant, involving the adaption of butterfly valve principles to the control of the flow of drilling mud through lines and equipment used in drilling for oil and gas.

The court found that, even though the valve in use at present differed from the one developed by Sloan, it was at most only an improvement on Sloan's idea to control drilling mud. The basic value of Sloan's original idea was held to be at the heart of the valve in use at present. While the general principle of the butterfly valve had been common knowledge for several years prior to Sloan's idea, his original contribution was the discovery of a practical way in which to utilize the valve to control the flow of mud. Sloan was held to have been more than an artisan called in for practical aid in the development of the valve. He was held to be the discoverer. The court found that contracts entered into between Sloan and defendant calling for royalty payments to Sloan were very convincing evidence that Sloan had a proprietary interest as originator of the valve and that defendant recognized his position as such.

Held: For Plaintiffs. To establish their common law property right, plaintiffs had to establish that Sloan presented to Mudco an idea which was (1) novel, (2) presented in concrete form, and (3) disclosed in confidence under circumstances which imply that defendant is to pay for its use. The fact that the valve had never before been used in the particular application, that it was successfully marketed, that it was called Sloan Butterfly valve, and other facts led the court to say the idea was novel. The fact of a royalty contract reciting that Sloan had constructed the first units showed the idea was concrete. Circumstances of disclosure, including the royalty contract, indicated that it was intended by both parties that the idea would be paid for. All requirements were met and property rights established. Plaintiffs were entitled to reasonable royalties through the date of final accounting and to future royalties or an injunction against future sales, the exact relief not being designated.

2. State Court Decisions

258. *Carneval v. William Morris Agency, Inc.,* 124 N.Y.S. 2d 319 (Sup. Ct. June 29, 1953).

Action to recover for alleged infringement of plaintiff's property right in the slogan "American Sweepstakes." At the close of plaintiff's case, defendant moved for a dismissal or a directed verdict in its favor. This motion was renewed after all of the evidence was presented, and, after a jury verdict awarding $10,000 against the defendant Campbell Soup Company, defendant moved to have the verdict set aside.

Plaintiff did not allege copyright infringement, but sought recovery on the basis of a contract implied in law. There were no discussions or transactions between plaintiff and defendant prior to the alleged disclosure to the defendant which came via what the court called "basically a claim letter accusing defendant of a then presently infringing use of the slogan."

Held: Motions to set aside the verdict and to dismiss the complaint granted. The evidence disclosed no contractual relationship, and for "plaintiff to succeed as a matter of law . . . , he must prove independent creation of a new, novel, unique idea or combination of ideas reduced to concrete form, disclosed to the alleged user in the course of a confidential relationship; that is, he must have contractual protection against disclosure, or its equivalent." None of the circumstances of the present case disclosed such a relationship. The court cited *Grombach Productions, Inc. v. Waring,* 293 N.Y. 609, 616, 59 N.E. 2d 425, 428 (1944) as involving similar facts.

259. *Cliff May, Christian E. Choate and Ranch House Supply Corp. v. Ben H. Hardister, Carsten F. Dedekam, F & D Company, Inc., Doe One, Doe Two and Doe Three,* No. 37330, Dept. 2, Super. Ct. Cal. in and for County of Sonoma, Dec. 3, 1953.

Action to enjoin defendants from duplicating or disclosing to others any information, schemes, devices, plans, specifications, drawings or arrangements concerning certain panels and wood parts to be used in constructing homes. May and Choate, plaintiffs, contacted with Hardister concerning the subject matter whereby Hardister promised to hold the plans and information in confidence in trust for the plaintiffs. One month later, in a contract between plaintiffs and Hardister and Dedekam, it was

agreed that a corporation to be formed by the latter would manufacture the panels and wood parts only on order and for sale to the Ranch House Supply Corp., 100% of which was owned by plaintiffs May and Choate. Another contract was entered into between F & D Company and plaintiffs for the same service, the company being owned 100% by Hardister and Dedekam, all earlier contracts being cancelled.

Held: Injunction granted. The Company received the plans in confidence, to be used only for the same purposes as agreed to by the two individual defendants. The case, said the court, falls within the principle that "One who gains knowledge of the thing 'in confidence' or through another's breach of confidence, or with notice thereof, or subject to any equitable obligation not to use or disclose it, or who receives disclosures with the understanding that compensation is to be made for use, or under circumstances equivalent thereto in law, will be held to his obligation." The court recognized that the problem here involved was whether "equity will protect against an unauthorized breach of confidence or of contract where one, as a bailee of an article, accepts it under definite terms to hold it and use it for the benefit of the bailor." The court enjoined Hardister from making any disclosures, but did not enjoin Dedekam who was not active in the construction business and was of an age which made it unlikely that he would utilize his knowledge in any way.

PART IV.

BIBLIOGRAPHY

A. BOOKS AND TREATISES

1. United States Publications

260. Dubin, Joseph S.

Copyright—Formalities, Moral Rights and Protection for U.S. Works.

Universal City, California, Universal Pictures Co., Inc., 1953. 3 p.

2. Foreign Publications

261. Bogsch, Arpad L.

Il concetto di pubblicazione e la Convenzione Universale del diritto di autore.

Roma, Pubblicazioni della S. I. A. E., 1953. 36 p. (Estratto della Rivista Il Diritto di Autore, no. 2, Aprile-Giugno 1953).

262. Sanctis, Valerio de.

La Convenzione Universale del diritto di autore.

Roma, Pubblicazioni della S. I. A. E., 1953. 200 p. (Quaderni del Rivista "Il Diritto di Autore," no. 3).

This work originally appeared in installments in the 1951-1953 issues of the publication "Il Diritto di Autore." It reports on the evolution of the Universal Copyright Convention, including in the appendix the French, English, Spanish and Italian texts of the Convention signed at Geneva on Sept. 6, 1952.

B. LAW REVIEW ARTICLES

1. United States

263. Arnold, Thomas O.

Patent, Trade-Mark, Copyright Laws—Growth of Work in Texas is Indicative of Growth of Industry.

Texas Bar Journal, vol. 16 (*Dec.* 1953), *pp.* 737-738, 758-759.

Describing the growth of patent, trade-mark and copyright law practice in Texas.

264. Copyright Relations Between the United States and Japan.

American Patent Law Association Bulletin (*Nov.-Dec.* 1953), *p.* 225-226.

A brief note announcing the new presidential proclamation concerning copyright relations with Japan.

265. Derenberg, Walter J.

Copyright No-Man's Land: Fringe Rights in Literary and Artistic Property, Parts I, II, and III.

Journal of the Patent Office Society, vol. 35, *no.* 9 (*Sept.* 1953), *pp.* 627-657; *no.* 10 (*Oct.* 1953), *pp.* 690-707; *no.* 11 (*Nov.* 1953), *pp.* 770-788.

A reprint of the author's article in "1953 Copyright Problems Analyzed," Commerce Clearing House, Inc. (1953), see BULLETIN, *vol.* 1, *no.* 2, *item* 110(a).

266. Henn, Harry G.

The Quest for International Copyright Protection.

Cornell Law Quarterly, vol. 39, *no.* 1, *Fall,* 1953, *pp.* 43-73.

The scope of this article is aptly stated by the author:

"Presently awaiting ratification by the nations of the world, the Universal Copyright Convention is best understood by a knowledge of (1) the preceding century-long quest for international copyright protection; (2) the present systems of such protection; and (3) the improvement in such protection reasonably to be anticipated from acceptance of the Convention by the nations of the world."

267. Kaminstein, A. L.

The Universal Copyright Convention.

Federal Communications Bar Journal, vol. 13, *no.* 2, 1953, *pp.* 62-66.

The Chief of the Examining Division of the U. S. Copyright Office discusses the Convention and suggests that its ratification would serve an "important function in the battle of the mind."

268. Lassagne, Theodore H.

A Plagiarist Infringer, a Proposal for Legislation.

Journal of the Patent Office Society, vol. 35, *no.* 10 (*Oct.* 1953), *pp.* 687-689.

The author suggests that the requirement of "invention" in patent law is arbitrary and unreasonable and suggests that the "originality" test in the copyright field might profitably be utilized in sustaining patents.

269. Meek, M. R.

International Copyright and Musical Compositions.

De Paul Law Review, vol. 3, *no.* 1 (*Autumn-Winter* 1953), *pp.* 52-81.

270. Pogue, Richard W.

Borderland—Where Copyright and Design Patent Meet.

Michigan Law Review, vol. 52, *no.* 1 (*Nov.* 1953), *pp.* 33-70.

Tracing the statutory history of both the Copyright and Patent Acts with regard to works of the applied arts, the author analyzes the seeming overlap of the two jurisdictions. He suggests, among other things, that the design patent might best be eliminated, and that protection be extended via (1) a short term copyright, or (2) a new hybrid registration system for industrial works of art and design.

271. Schaeffer, Morton

The Universal Copyright Convention.

The Decalogue Journal, vol. 4, *no.* 2 (*Nov.-Dec.* 1953, *pp.* 3-5.

Mr. Schaeffer summarizes briefly the more important points of the Universal Copyright Convention and enumerates the sections of the Copyright Law which should be amended or revised in order to facilitate ratification by the United States.

272. Songwriters Sue Broadcasters in Antitrust Treble Damage Action.

American Patent Law Association Bulletin (*Nov.-Dec.* 1953), *p.* 226.

273. Woodhams, Robert E.

A Copyright Sketch for the General Lawyer.

Michigan State Bar Journal, vol. 32, *no.* 10 (*Oct.* 1953), *pp.* 15-18.

A concise presentation of the basic principles of United States copyright law is presented here for the general practitioner by a specialist in patent and trade-mark law.

2. Foreign

1. English

274. Rogers, S.

Copyright.

Canadian Patent Reporter, vol. 19, *sec.* 1 (*Dec.* 1953), *pp.* 73-83.

A review of Canadian copyright statutes pointing up the need for up-to-date legislation in this field in Canada. This was an address presented by Mr. Rogers, Q.C. at the annual meeting of the Patent Institute of Canada held at Toronto, Oct. 1, 1953.

275. Blackstock, R. W.

Copyright in Reports of Legal Proceedings.

The South African Law Journal, vol. 70, *part* IV (*Nov.* 1953), *pp.* 408-411.

In a review of an article by Prof. G. Sawer appearing in the *Australian Law Journal,* Mr. Blackstock suggests that since nearly all text-writers agree that the 1911 Copyright Act does not grant copyright protection to purely oral works, the British and Commonwealth legislatures, acting in unison, should extend copyright protection to oral works in express terms or provide that a verbatim report of any oral work should vest the copyright in the speaker and confer a non-exclusive license to publish the report in the reporter.

276. Blackstock, R. W.

Monopoly in a Title.

The South African Law Journal, vol. 70, *part* IV (*Nov.* 1953), *pp.* 412-413.

This is a commentary on the case note concerning *Massenet v. Societe Alcina* (Cour d'Appel de Paris, 1952, Dalloz Hebdomadaire (jur.) 749) which appeared in 66 *Harvard Law Review* 1324. Mr. Blackstock agrees that while unfair competition provides a more satisfactory protection for titles than copyright, a distinction should be made between

the protection enjoyed by a novelist or playwright during his term of copyright and after its expiration, and between those titles which have acquired a secondary or proprietary meaning and those which are merely descriptive.

277. Steyn, J. R.

Proprietary Rights in Inventive Ideas and Discoveries.

The South African Law Journal, vol. 70, *part* III, *Aug.* 1953, *pp.* 266-279.

Though dealing largely with certain aspects of Anglo-American patent law, the author does make a brief analysis of the requirements for originality as found in the copyright and design laws of England, Canada, the United States and the Union of South Africa.

2. In French

278. Abel, Paul

Lettre de Grande-Brétagne.

Le Droit d'Auteur, vol. 66, *no.* 11 (*Nov.* 15, 1953), *pp.* 135-138; *no.* 12 (*Dec.* 15, 1953), *pp.* 147-149.

Dr. Abel surveys developments in copyright for the year 1953, reporting on new legislation concerning libel and slander, recent judicial opinions, the Performing Right Society, articles dealing with the transfer of copyrights at the time of death, and a proposal to register titles of literary works. He adds a bibliography of material in the field.

279. Bogsch, Arpad

L'article XIX de la Convention universelle.

Le Droit d'Auteur, vol. 66, *no.* 12 (*Dec.* 15, 1953), *pp.* 144-147.

After tracing the evolution of Article XIX of the Universal Copyright Convention, Mr. Bogsch discusses the purpose of its provisions and explains the choice of terminology used therein.

280. Vaunois, Louis

Lettre de France (suite et fin).

Le Droit d'Auteur, vol. 66, *no.* 11 (*Nov.* 15, 1953), *pp.* 130-135.

In this second and concluding installment on the interesting judicial decisions on copyright in France, the author reports on cases dealing with designs, *droit moral* and the protection to be given to the titles of literary of artistic works.

3. In German

281. Baum, Alfred

Uber den Rom-Entwurf zum Schutze der vortragenden Künstler, der Hersteller von Phonogrammen und des Rundfunks, Vorgeschichte, Entwicklungen und Probleme.

Gewerblicher Rechtsschutz und Urheberrecht (*Auslands—und Internationaler Teil*) *no.* 6 (*Oct.* 1953), *pp.* 197-220.

The Rome Preliminary draft convention for the protection of performers, record manufacturers and broadcasting organizations. Background history, evolution and problems.

282. Bussmann, Kurt

Probleme der Urheberrechtsreform.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 55, *no.* 10 (*Oct.* 1953), *pp.* 427-432.

283. Goldbaum, Wenzel

Zur Genfer Universalkonvention über Urheberrecht vom 6. September 1952.

Oesterreichische Blätter für Gewerblichen Rechtsschutz und Urheberrecht, vol. 2, *no.* 5 (*Sept.-Oct.* 1953), *pp.* 49-51.

Dr. Goldbaum questions whether the UCC will become truly "universal."

284. Peter, Wilhelm

Neues Türkisches Urheberrecht.

Zeitschrift für ausländisches und internationales Privatrecht, vol. 18, *no.* 1 (1953), *pp.* 107-118.

An analysis of the rights encompassed by the new Turkish Copyright Law of 1952 is presented here from the viewpoint of Turkey's membership in the International Copyright Union.

285. Ulmer, Eugen

Kinematographie und Urheberrecht.

Gewerblicher Rechtsschutz und Urheberrecht (Auslands—und Internationaler Teil, no. 6 (*Oct.* 1953), *pp.* 182-197.

Note: This is the German text of Professor Ulmer's opinion. The International Bureau at Berne has asked the Editorial Board to call attention to the fact that the English version of this opinion, to which reference was made in the BULLETIN, *vol.* 1, *no.* 3, *item* 195, was prepared by the International Bureau and that copies of the opinion in the English language may be secured from the Bureau at Berne.

C. ARTICLES PERTAINING TO COPYRIGHT FROM TRADE MAGAZINES

1. United States

286. Abel.

Time for a change.

Variety, vol. 192, *no.* 9 (*Nov.* 4, 1953), *p.* 43.

Claiming that the relationship of the 1909 Copyright Act to modern electronic sound production is much the same as the Wright Brothers plane to modern jets, the writer of this editorial states that the question of who makes the hits—the writers or the jukeboxes—is comparable to the chicken-or-the-egg proposition, and concludes that modest royalty paid by jukebox owners is an equitable demand.

287. Afghan radio gives Tempo waxing rights.

The Billboard, vol. 66, *no.* 1 (*Jan.* 2, 1954), *p.* 12.

Tempo Records has an exclusive agreement with Afghanistan's government-owned radio station granting the firm exclusive recording rights in that country. Wide interest in the native music recorded was expressed by many universities and colleges. The records are also to be used by the motion picture and television film industries.

288. Allen, Harry

BMI Canada to enter cafe, ballroom licensing fields.

The Billboard, vol. 66, *no.* 1 (*Jan.* 2, 1954), *p.* 12.

BMI Canada has had a new licensing tariff schedule published in the Canada Gazette for the information of persons who may wish to make representation before the Copyright Appeal Board of Canada which approves the licensing rates charged by music licensing groups. The rates include those for cabarets, cafes, clubs, bars, dining rooms, taverns and the like.

289. Atlas, Ben

'53 Big year for music copyrights.

The Billboard, vol. 65, *no.* 52 (*Dec.* 26, 1953), *p.* 15.

As 1953 ends, the total registrations for both published and unpublished music show considerable increase over last year. An increase in motion picture photoplay registrations is also expected, while registrations in dramas and in works prepared for oral delivery have been showing a decline.

290. B'ham Methodist "King" typical of respectable piracy of stage rights.

Variety, vol. 192, *no.* 11 (*Nov.* 18, 1953), *pp.* 71, 73.

Richard Rodgers and Oscar Hammerstein are reported as considering bringing an infringement suit to make an example of such offenders. The composer and playwright get reports of around 100 copyright infringements a year by lecturers, amateur dramatic groups, soloists, etc. They have been in the habit of sending warning letters but the recipients rarely express regret, stating rather that they did not realize permission had to be secured or that the performance was for charity.

291. Carmichael in suit for songs.

The Billboard, vol. 65, *no.* 50 (*Dec.* 12, 1953), *p.* 1.

Hoagy Carmichael filed suit in Federal Court against Mills Music in an action to recover ownership of 14 songs upon renewal of copyrights. The songs involved include "Stardust," "In the Still of the Night," "Tell Me That You Love Me," "March of the Hoodlums," "Harvey," "South Breeze," "My Sweet," "One Morning in May," "What Kind of a Man is You?" "Manhattan Ray," "Washboard Blues," "Boneyard Shuffle," "Riverboat Shuffle" and "High and Dry."

292. Columbia reaches pact with BIEM on royalties.

The Billboard, vol. 65, *no.* 50 (*Dec.* 12, 1953), *p.* 16.

Columbia Records and BIEM are said to have reached an agreement whereby Columbia has agreed to recognize all BIEM works published after July 1, 1909, as copyrighted in this country even though they might have been published prior to U.S. international copyright agreements.

293. "Compulsory licensing" a graver problem, say Berlin and Max Dreyfus.

Variety, vol. 192, *no.* 13 (*Dec.* 2, 1953), *p.* 59.

Irving Berlin is said to have been advised to stay out of the ASCAP-BMI dispute by his attorney Godfrey Cohen. Both Berlin and Dreyfus are said to feel that it is important to revise the Copyright Law with regard to the compulsory licensing provision. Under the present provisions once one record manufacturer records a composition, all others may do so merely by filing a "notice of user" and paying a 2¢ copyright fee. Berlin says "the ASCAP money alone keeps us in business; we no longer sell sheet music to speak of, and recording income is ridiculous, so it's only from the public performances that we can exist."

294. Council interprets new law on broadcast permissions.

Publishers' Weekly, vol. 164, *no.* 20 (*Nov.* 14, 1953), *pp.* 2016-2017.

With regard to the application of Title 17, U.S.C., sec. 1(c), The American Book Publishers' Council has released through the ALA'S Audio-Visual Board an opinion of the Council's legal counsel on what constitutes a public performance for profit by radio stations, pointing out that the test is not only the length of the excerpt but also the purpose for which the literary work is being quoted, and advising that, when in doubt, it is best to seek permission.

295. Film litigation clogs italo courts; demand several pix be impounded.

Variety, vol. 193, *no.* 2 (*Dec.* 16, 1953), *p.* 15.

Among several films involved in litigation in Italy is one entitled "Ulysses." A producer, Sergio Schera, claims prior deposit with the Society of Authors and Editors of a story entitled "Ulysses and Polyphemus," which he has made into an animated cartoon. He seeks to enjoin the release of "Ulysses" on grounds he will be damaged and asks that it be impounded. In another case concerning a semi-biographical picture "Nazario Sauro," Sauro's heirs seek to have the film impounded alleging that it distorts the facts.

296. Government use of copyright material defined.

Publishers' Weekly, vol. 164, *no.* 21 (*Nov.* 21, 1953), *pp.* 2084-2085.

A directive has been issued to all branches of the Department of Defense, calling attention to the nature of copyright and the requirements for copyright notice. It sets up a standardized practice in the military departments and outlines simple procedures and forms for obtaining permissions.

297. Green, Abel

Songwriters to stress BMI subsidy to 1,300 pubs in $150,000,000 suit.

Variety, vol. 192, *no.* 13 (*Dec.* 2, 1953), *pp.* 59, 64.

The Songwriters of America, admittedly a group made up dominantly of ASCAP and Songwriters Protective Association members, are pointing out that while there are 600 publishers in ASCAP, BMI includes some 1300 publishers who did not exist prior to 1940. The claim is made that the latter publishers could not exist without support from BMI. Several of the music publishers are said to be frowning upon the ASCAP-BMI suit, claiming that more could be accomplished if the writers sat down with the radio group and talked things over.

298. Hauk, Charles J.

Printers' Ink chart of trade-mark, copyright and patent protection.

Printers' Ink Advertisers Annual 1954 *Number* (*Oct.* 23, 1953, section 2), *pp.* 426-428.

One page of the chart is devoted to each of the fields of trade-marks, copyrights and patents, and the information is arranged under such head-

ings as (1) What may be protected, (2) Degree of protection, (3) Prerequisites, (4) Procedure, (5) Government filing fee, (6) Duration of protection, (7) Renewal, and (8) Statutory notice.

299. McCarran to press juke bill. Urges industry get-together.

Variety, vol. 192, *no.* 13 (*Dec.* 2, 1953), *p.* 59.

Senator McCarran is quoted as stating that he is going to "press vigorously" next session for the passage of S. 1106. After studying the organization and economics of the industry he has reached the conclusion that there is no longer any reason why juke box operators should receive special treatment. "As to the fixing of a statutory fee, my firm belief is that under our American system it is always better for industry to negotiate its own agreements, subject only to general principles of law and fair practice, rather than be regulated in its every action by a Governmental body."

300. Plagiarism suit on "Dragnet" theme.

Variety, vol. 192, *no.* 12 (*Nov.* 25, 1953), *p.* 51.

Robbins Music, Feist & Miller have brought suit in behalf of Metro studio composer Miklos Rosza against Alamo Music and Walter Schumann, composer, alleging plagiarism of a theme composed by Rosza as background music for the motion picture "The Killers." The score of the motion picture is the copyright property of the plaintiffs and they charge that it has been plagiarized by defendant's "Dragnet."

301. Stasny sues two firms on "Never" infringe claim.

Variety, vol. 192, *no.* 10 (*Nov.* 11, 1953), *p.* 50.

Stasny Music has filed suit against Southern Music and Broadcast Music Inc. charging infringement of "There'll Never be Another You" by publication of a musical composition with the same title and melody as one written in 1927 and assigned to Stasny in 1929.

2. England

302. Copyright legislation.

The Bookseller, no. 2501 (*Nov.* 28, 1953), *p.* 1651.

"The President of the Board of Trade was asked in the House of Commons this week whether the Government intended, during the current session of Parliament, to introduce legislation to implement the recommendations of the Departmental Committee on Copyright. Mr. Henry Strauss replied that the President could not promise legislation during the present session."

303. "Everest" Copyright Case in France.

The Bookseller, no. 2502 (*Dec.* 5, 1953), *p.* 1719.

Le Figaro, the French publishers of Sir John Hunt's book, The Ascent of Everest, together with the Royal Geographical Society and the Times Publishing Co. have sought to enjoin *Les Editions du Scorpion* from publishing a book entitled "La Conquete de L'Everest par le Sherpa Tensing," on the basis that the latter infringes the copyright in the English work. The injunction issued by the Tribunal du Commerce has been amended on appeal by the appointment of an administrator to control all sales after the cover has been changed to show that Tensing is not the author.

304. Plant, Sir Arnold

The Publisher as monopolist.

The Bookseller, no. 2502 (*Dec.* 5, 1953), *p.* 1724-1726.

The Stamp Memorial Lecture at London University this year was given by Sir Arnold Plant whose subject was "The New Commerce in Ideas and Intellectual Property." Sir Arnold's contention is that the new media for communicating ideas developed since the passage of the 1911 Copyright Act calls for reconsideration of some of the basic principles of copyright. He feels that an important consideration is the distinction between the copyright for the authors and protection for the first industrial reproducers of copies of the work. He concludes that publishers and film producers should have a shortened period of protection.

APPENDIX

305. On November 28, 1953, the New York *Times* published an editorial entitled "Copyright Agreement." Because of its timeliness and because of the further fact that the subject of copyright is not often treated on the editorial pages of our leading newspapers, we are here reprinting two paragraphs from the editorial:

"The new convention, drawn up with especial consideration for American views, will, in Secretary Dulles' words, 'not only significantly improve the protection accorded to United States private interests abroad, but will make a substantial contribution to our general relations with other countries of the free world.' But before it can be effective, there would have to be modification of the so-called 'manufacturing clause' in American law. This requires, in general, that books in the English language by foreign authors be printed here if they are to enjoy the copyright privilege. The removal of this restriction is opposed by some segments of the printing trade for fear that it would result in a flood of foreign-manufactured books in English. But the great classics—Shakespeare, for example—are in the public domain, not copyrighted; and yet the bulk of such books sold in the United States are printed here despite the fact that the 'manufacturing clause' gives them no protection.

"The United States would gain greatly in goodwill if it proved its desire to protect the rights of foreign authors in this country through acceptance of the Universal Copyright Convention. It would also establish a much firmer basis for defense of the rights of American authors abroad. We have already been the subject of retaliation in this field, specifically in the Netherlands. As the leader of the free world, we ought to be in the forefront of every move to advance the orderly international exchange of thoughts, and ideas, and the printed word."

The New York *Times* published a second article on the subject under "Topics of the Times," on Jan. 19, 1954.

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CONTENTS

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PART I.

LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS

UNITED STATES OF AMERICA AND TERRITORIES

306. *U.S. Congress.*

Public Law 331, approved April 13, 1954.

1 *p.* (83d *Cong.*, 2d *Sess.*, H.R. 2747, S. Rep. 1050).

To amend title 17 of the U.S. Code entitled "Copyrights" with respect to the day for taking action when the last day for taking such action falls on Saturday, Sunday, or a holiday.

306(a). *U.S. Congress. Senate. Committee on the Judiciary.*

Committee report to accompany H.R. 2747. Washington, Government Printing Office, 1954.

2 *p.* (83d *Cong.*, 2d *Sess.*, *S. Rep.* 1050).

Favorably reporting on H.R. 2747 which would permit the Copyright Office to take action on the next succeeding business day when the last day for receiving materials or payments falls on a Saturday, Sunday or holiday. For House report, see BULLETIN, vol. 1, no. 1, item 2.

307. *U.S. Congress. Senate. Committee on the Judiciary.*

Hearings before a subcommittee of the Committee on the Judiciary, U.S. Senate, on S. 1106, July 15, 1953 and Oct. 26, 1953. Washington, Government Printing Office, 1954.

212 *p.* (83d *Cong.*, 1st *Sess.*, *S.* 1106).

Hearings on McCarran jukebox bill relating to the rendition of musical compositions on coin-operated machines.

308. *U.S. Congress. House. Judiciary Subcommittee No.* 3.

Hearings on H.R. 6670 and H.R. 6616, March 15 and 17, 1954.

Hearings were held on the identical bills to implement the Universal Copyright Convention. See BULLETIN, vol. 1, no. 2, items 89 and 90.

FOREIGN NATIONS

309. *Bulgaria. Laws, Statutes, etc.*

Loi sur le droit d'auteur (du 12 Nov. 1951).

Le Droit d'Auteur, vol. 67, no. 1 (Jan. 1954), pp. 4-7.

A French translation of a Bulgarian Copyright Law published in *Izvestia,* No. 92 of Nov. 16, 1951.

310. *Canada. Secretary of State.*

National Library Act—Amendment, National Library Book Deposit Regulations. (Mar. 16, 1953).

13 Fox Pat. C. 216.

Setting up a new list of classes of printed material which are not required to be deposited with the National Librarian unless such deposit is specifically requested. A new Class 12 consists of "books that are not manufactured wholly or in part in Canada, or written or illustrated by Canadians, and which do not relate in any substantial way to Canada."

311. *Germany. Bundesminister für Wirtschaft.*

Runderlass Aussenwirtschaft Nr. 102/53 vom 21. November 1953. Betr. II, 2; Erwerb und Aufrechterhaltung gewerblicher Schutzrechte und literarischer oder künstlerischer Urheberrechte im Ausland.

2 *p.* (hectograph).

An English translation of Foreign Trade Circular No. 102 of November 21, 1953, published in Bundesanzeiger No. 232 of December 2, 1953. The circular authorizes a person with a permanent residence in the Federal German territory to acquire and maintain industrial property rights and copyrights abroad and to effect payment for royalties and other expenses from Germany to those countries in which German industrial property rights and copyrights are legally protected. The authorization is granted to cover expenses for restoration of rights which had been abrogated by enemy property legislation abroad and not for those acquired by transfer. The German text may also be found in *Blatt für Patent, Muster und Zeichenwesen, mit Urheberrechts Teil,* vol. 55, no. 12 (Dec. 1953), pp. 413-414.

312. *Guatemala. Laws, Statutes, etc.*

Reglamento para la propiedad artistica.

El Guatemalteco, vol. 133, no. 79 (Oct. 4, 1951), p. 1409.

Regulation dealing with the protection of works of art; maps; globes; photographs; motion pictures; geographic, geologic and topographic reliefs; architecture and the like. A French translation appears in *Inter-Auteurs,* no. 113 (4me trimestre, 1953), pp. 160-162.

313. *Israel. Laws, Statutes, etc.*

Loi modifiant l'Ordonnance sur le droit d'auteur (No. 5713, de 1953).

Le Droit d'Auteur, vol. 67, no. 1 (Jan. 1954), pp. 7-8.

This law, adopted February 2, 1953, amends the provisions of the Israel Copyright Law dealing with the duration of the period of protection, foreign works, first publication and adaptation.

314. *Israel. Laws, Statutes, etc.*

Ordonnance ministérielle concernant la protection des oeuvres étrangères en vertu de la Convention de Berne (du 4 mars 1953).

Le Droit d'Auteur, vol. 67 no. 1 (Jan. 1954), p. 8.

This ministerial order deals with the extension of copyright protection to published and unpublished works in the Bern Union countries and is retroactive to March 24, 1950.

315. *Israel. Laws, Statutes, etc.*

Ordonnance ministérielle relative à la protection des oeuvres originaires des Etats-Unis d'Amérique (du 3 juin 1953).

Le Droit d'Auteur, vol. 67, no. 1 (Jan. 1954), pp. 8-9.

This ministerial order of June 3, 1953 extends copyright protection to published and unpublished works originating in the United States and is retroactive to May 14, 1948.

316. *Philippines. Laws, Statutes, etc.*

A bill "to require the printing and/or binding of books within the limits of the Philippines in order that copyright protection be given to them, amending for this purpose certain sections of Act numbered three thousand one hundred thirty-four, otherwise known as the 'Copyright Law.'"

4 *p.* (3d *Cong., Republic of the Philippines,* 1st *Sess., N. No.* 327).

This bill proposes to duplicate the "manufacturing" clause of the United States Copyright Law at a time when serious consideration is being given to its repeal in the United States.

317. *Switzerland. Bureau fédéral de la propriété intellectuelle.*

Avant-projet. Loi fédérale modifiant celle du 7 décembre 1922 concernant le droit d'auteur sur les oeuvres littéraires et artisiques. 28 Feb. 1953.

7 *p.* (mimeo.) 29 cm.

A preliminary draft of a Swiss federal law which would amend certain provisions of the 1922 Copyright Law in order to bring it in harmony with the Brussels revision of the Bern Convention.

318. *Switzerland. Bureau fédéral de la propriété intellectuelle.*

Rapport au sujet de la révision partielle de la loi fédérale concernant le droit d'auteur sur les oeuvres littéraires et artistiques.

55 *p.* (mimeo.) 29 cm.

The report discusses the areas of the Swiss Copyright Law which are not in harmony with the Brussels revision of the Bern Copyright Convention; the provisions to be revised for conformance with the Brussels text; the features to be reconsidered before Switzerland can ratify the UCC; and the provisions in need of urgent revision.

PART II.

CONVENTIONS, TREATIES AND PROCLAMATIONS

319. *Germany.*

Application au "Land" de Berlin de la Convention de Berne révisée à Rome le 2 juin 1928 (du 21 janvier 1954).

Le Droit d'Auteur, vol. 67, no. 2 (Feb. 1954), pp. 27-28.

The Swiss government has notified the Bern Union member countries as of Nov. 27, 1953, that the Bern Copyright Convention of 1886, as revised through 1928, is applicable to the territory of Berlin.

320. *International Copyright Union.*

Convenzione di Berna per la protezione delle opere letterarie ed artistiche firmata il 9 settembre 1886 completata a Parigi il 4 maggio 1896, riveduta a Berlino il 13 novembre 1908, completata a Berna il 20 marzo 1914, riveduta a Roma il 2 giugno 1928 e al Bruxelles il 26 giugno 1948.

Le Droit d'Auteur, vol. 67, no. 2 (Feb. 1954), pp. 21-27.

An authorized Italian translation of the Bern Copyright Convention of 1886 as revised at Brussels in 1948, prepared in accordance with the provision of Art. 31 at the request of the Italian Government.

PART III.

JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY

A. DECISIONS OF U.S. COURTS

1. Federal Court Decisions

321. *Mazer v. Stein,* 98 S. Ct. 373, 100 U.S.P.Q. 325 (U.S. Supreme Court, March 8, 1954). (This case has been previously noted in *vol.* 1, *no.* 1, *item* 20, *and vol* 1, *no.* 2, *item* 101. The Court of Appeals for the 4th Circuit had held that subsequent utilization of statuettes in the form of mass-produced lamps did not affect the right of the copyright owner to be protected against infringement. *Stein v. Mazer,* 204 F. 2d 472, reversing 111 F. Supp. 359.)

The United States Supreme Court has now affirmed the decision of the Court of Appeals. The majority opinion by Mr. Justice Reed states that the following two questions were submitted to the Court for review:

> "Can statuettes be protected in the United States by copyright when the copyright applicant intended primarily to use the statuettes in the form of lamp bases to be made and sold in quantity and carried the intentions into effect?
>
> "Stripped down to its essentials, the question presented is: Can a lamp manufacturer copyright his lamp bases?"

However, only the first of these questions was actually decided by the Court, thus leaving unanswered the much broader question whether the originators of designs for works of the applied arts may generally register claims for copyright with regard to the artistic aspects of their works under the present definition of a "work of art" under the Copyright Office's Rules and Regulations. In sustaining the copyright, the majority opinion emphasizes that a work of art, such as the statuettes here involved, may initially be capable of either design patent protection or copyright protection and that the artist may avail himself of the latter mode of protection even though the manufactured article might also qualify for protection under the design patent statute. The Court expressly left open the further question whether once having elected one form of protection, the

artist is bound by the election or whether in fact he may have protection under both acts at the same time. Justice Reed said:

> "As we have held the statuettes here involved copyrightable, we need not decide the question of their patentability. Though other courts have passed upon the issue as to whether allowance by the election of the author or patentee of one bars a grant of the other, we do not. We do hold that the patentability of the statuettes, fitted as lamps or unfitted, does not bar copyright as works of art. Neither the Copyright Statute nor any other says that because a thing is patentable it may not be copyrighted. We should not so hold."

He further said:

> "We find nothing in the copyright statute to support the argument that the intended use or use in industry of an article eligible for copyright bars or invalidates its registration. We do not read such a limitation into the copyright law.
>
> "Nor do we think the subsequent registration of a work of art published as an element in a manufactured article, is a misuse of the copyright. This is not different from the registration of a statuette and its later embodiment in an industrial article."

Justice Douglas, with whom Justice Black concurred, in a separate opinion raised the constitutional question whether works of this type came within the definition of the term "writing" under Article 1, Section 8 of the Constitution. He pointed out that the constitutional range of the meaning of the word "writing" had never been tested by the Court. The opinion states:

> "The interests involved in the category of 'works of art,' as used in the copyright law, are considerable. The Copyright Office has supplied us with a long list of such articles which have been copyrighted—statuettes, bookends, clocks, lamps, doorknockers, candlesticks, inkstands, chandeliers, piggy banks, sundials, salt and pepper shakers, fish bowls, casseroles, and ash trays. Perhaps these are all 'writings' in the constitutional sense. But to me, at least, they are not obviously so. It is time that we came to the problem full face. I would accordingly put the case down for reargument."

A petition for rehearing was filed and denied by the Court Apr. 12, 1954, 101 U.S.P.Q. p. III.

322. *David-Robertson Agency v. Duke,* 100 U.S.P.Q. 211 (E.D. Va. Nov. 17, 1953).

Action for damages and to enjoin defendant from representing that it had a copyright covering advertising material prepared by plaintiff; from employing the designation "Copyright Register No. A-132-204" or similar words on material which was in fact not copyrighted; and from threatening legal action against publishers of and subscribers to plaintiffs' advertising material. Defendant alleged that he had a valid copyright on the advertising material employed and that plaintiffs were infringing on his copyright. Defendant also relied on an employment contract he had with plaintiffs, former employees, whereby they had agreed that after their services had been terminated they would "refrain from carrying on a similar business . . . or in any manner using ideas or methods of advertising" used by defendant "for a period of five years after such services . . . shall be terminated."

Held: Injunctive relief and damages denied. The court, in disposing of defendant's charge of copyright infringement said: "The defendant had the burden of proving that he has a valid copyright on the publications which were introduced in evidence and alleged to have been infringed. This burden the defendant has failed to carry. . . . The evidence discloses that many of the 'cuts' which the defendant contends were copied by the plaintiffs were published by the defendant prior to any attempt on the part of the defendant to copyright them. This would vitiate a copyright subsequently obtained thereon. . . . Advertising of the general nature of that conducted by the defendant was carried on by persons other than either the defendant or the plaintiffs prior to the time the defendant applied for a copyright and material quite similar to those on which defendant alleges he has a copyright were used. Since the date on which the defendant alleges he obtained a copyright the defendant has published many of the 'cuts' alleged to have been copyrighted without giving statutory notice required by the statutes. . . . Even if the defendant had a valid copyright on the 'cuts' contended for . . . , each time they were published the wording of the 'cuts' were changed, causing the published advertisements to vary from the material on which it is alleged the defendant has a copyright. No effort was made by the defendant to have the varied publications copyrighted." For the reasons set forth above, the court concluded that the defendant had failed to prove that the plaintiffs had infringed a valid copyright owned by defendant.

The restrictive covenant contained in the employment contract, cov-

ering as it did a five year period and an unlimited area, was held to have been unnecessarily restrictive of plaintiffs' rights and injunctive relief was denied.

As for plaintiffs' request for affirmative relief, the court held that since the defendant had claimed copyright on the material in good faith and had believed that the covenant in the employment contract was valid, there was no need for an injunction. "To enjoin the defendant for his past activities would be an expression on my part that defendant would continue the same activities after discovering his errors. The evidence was does not justify such a belief."

323. *Marks Music Corp.v. Continental Record Co.,* 100 U.S.P.Q. 438 (S.D.N.Y. March 9, 1954).

In his decision, Judge Sugarman said:

> "The renewal of the copyright of the lyrics on May 23, 1929, and of the music on January 4, 1930 cannot, in the absence of any expression of Congressional intent so to do, be held to have created an author's control of mechanical reproduction, previously non-existent."

Note:

Forty-five years ago, the recording of a musical composition for purposes of manufacturing and selling piano rolls or phonograph records did not infringe the copyright owner's exclusive right to make "copies" of the work. That situation was finally corrected by the Copyright Act of 1909 which granted to the copyright owner the exclusive first right to make, and license others to make, recordings by means of which his music could be mechanically reproduced. But the Act restricted this new right so as to "include only compositions published and copyrighted after July 1, 1909."

The original copyright on all pre-1909 compositions has expired. Some publishers of such compositions have occasionally sought to obtain royalties from record manufacturers for their use of alleged mechanical rights under a renewal copyright obtained subsequent to 1909. In the absence of clear judicial determination, results of such negotiations have varied.

Now, in the above quoted decision a court has held against the copyright owner. Under this decision, a musical work can have mechanical protection only if it was copyrighted originally, and published, before July 1, 1909. Although a renewed copyright is frequently deemed to be a "new copyright," the "1909 limitation" on mechanical rights nevertheless prevails. Plaintiff will undoubtedly appeal.

A. L.

324. *Metro Associated Services, Inc. v. Webster City Graphic, Inc.,* 117 F. Supp. 224 (N.D. Iowa Dec. 31, 1953).

Action alleging 8 counts of copyright infringement and one count of unfair competition. Plaintiff, Metro, serviced 3,500 newspapers by publishing monthly booklets containing advertising illustrations accompanied by "mat" numbers whereby the subscriber could order the "mat" from Metro. Every issue of the monthly service was properly copyrighted under 17 U.S.C. §5(b). The component parts of the booklet and the illustrations were separately copyrighted under 17 U.S.C. §5(k), and, as such, were within the terms of 17 U.S.C. §3. Defendant inadvertently published several of Metro's advertisements.

Held: For Defendant. The monthly booklet being correctly copyrighted, the question to be answered was whether some event had intervened after such publication which brought about a dedication of the illustrations to the public. If the illustrations had not been so dedicated, the fact that defendant had not intended to infringe would not have been relevant.

Metro's subscribers were authorized to reproduce the copyrighted material without the name of the plaintiff appearing in connection therewith as copyright owner. In fact, the mats furnished by Metro did not contain its name on the portion intended for publication. In some cases, notice was given by the letter "M" being superimposed upon a "c" in a circle. The court said that this did not comply with the prescriptions of the statute, 17 U.S.C. §10, which states that ". . . the notice may consist of the letter C enclosed in a circle, thus ©, accompanied by the initials, monogram, mark, or symbol of the copyright proprietor: *Provided, That on some accessible portion of such copies . . . his name shall appear. . . .*" The plaintiff did not comply with the requirement of the proviso and thus the notice was inadequate. It also appeared that plaintiff's licensees continually published the illustrations without any copyright designation in violation of the statutory requirement that every reproduction of a copyrighted item must bear the statutory notice.

Metro asserted that even though the notice was inadequate, defendant, as a former employee of a subscriber, was familiar with Metro's material and symbol and should thus have been put on notice. The court rejected this argument, saying: "A copyright notice which does not comply in substance with the statutory requests is not rendered legally effective as to a particular alleged infringer by the fact that the circumstances were such as to direct his attention to sources from which information as to the copyrights might be obtained. The publication of copyrighted material without the statutory notice of copyright vitiates the copyright of it and renders it public property."

Plaintiff then asserted that even though defendant's knowledge of the circumstances would not bring his action within the copyright infringement counts, such knowledge, coupled with defendant's action, would constitute unfair competition. The court conceded that under the "free ride" doctrine of *International News Service v. Associated Press,* 248 U.S. 215 (1918), "the systematic appropriation of another's uncopyrighted work constitutes unfair competition." However, in the present case, there was no showing that defendant intended to misappropriate Metro's illustrations. The situation in which defendant found himself was said to have stemmed largely from Metro's authorization of acquiesence in the publication of its illustrations without notice of copyright or indication of their source.

Exercising its discretion, the court made no award of attorney's fees.

325. *Ziegelheim v. Flohr,* 119 F. Supp. 324, 100 U.S.P.Q. 189 (D.C.E.D.N.Y. Jan. 19, 1954).

Action for infringement of a copyrighted Hebrew prayer book and for unfair competition.

Plaintiff, in 1920, published in Vienna a Hebrew prayer book known as a "Sliccoth." When he came to the United States he brought the mats of the 1920 book with him. In preparing his 1943 book, plaintiff started with his old mats, correcting and changing approximately 300 of the 416 old mats, and making approximately 150 new mats. In making the changes and corrections, plaintiff used as his sources many other "Sliccoths" which were in the public domain. Several years later, defendant photographically reproduced 415 pages of plaintiff's copyrighted book, mistakes and all. He added 47 new pages and published the volume without the name of any publisher appearing.

Held: For plaintiff. In answer to defendant's argument that plaintiff had not contributed any original authorship in that he had merely copied from earlier "Sliccoths," all of which were in the public domain, the court said that the test to be applied was whether plaintiff's 1943 book was a "distinguishable variation" of his 1920 book and other books in the public domain. The plaintiff must have contributed something more than a "merely trivial" variation so that the volume could be recognized as "his own." After examining the book, Judge Inch said that the 1943 volume showed numerous instances where letters, words and lines of text had been added, deleted or rearranged, so that the differences between the 1920 and the 1943 editions and between all other editions and the 1943 edition were sufficiently "substantial and multitudinous to meet the standard of a 'distinguishable variation.' " Even though plaintiff had secured all of his material from the public domain, his 1943 edition was held to be a product of his own labor, judgment, money and skill, and, as such, was said to be copyrightable as a new version of a work in the public domain. The court said that defendant, by copying plaintiff's work, must have believed it to be superior to other versions.

As to other defenses, the following copyright notice was held to be a sufficient designation of the owner of the copyright:

Published and Printed by
"Ziegelheim," New York
Printed in U.S.A. Copyright 1943

Defendant contended that all the notice showed was that the book had been published by Ziegelheim and not that it had been copyrighted by him. The court held the notice to be sufficient in view of the fact that the name was in close proximity to the notice and in view of the fact that there was only one "Ziegelheim" in the publishing business in New York, citing *Shapiro Bernstein & Co. v. Jerry Vogel Music Co.,* 161 F. 2d 406, 409 (2d Cir. 1946), *cert. denied,* 331 U.S. 820 (1947).

Defendant pointed out that, although the application for copyright was dated December 20, 1943, the book had been published and sold prior to that time. The plaintiff, acting without the advice of an attorney, had used the December 20th date because it was at that time that he had completed the printing of 10,000 copies of the book. However, each volume had contained a notice of copyright, and the court said that the "inaccuracy as to the date of publication in the affidavit accompanying the application for copyright, standing alone, did not affect the validity of the copyright, particularly since it in no way prejudiced defendant."

Another issue raised by defendant was that plaintiff had not obtained the copyright certificate until 2 months after defendant had published his book. Defendant urged that such a delay constituted laches and showed abandonment. The court rejected this argument, saying that plaintiff's claim of copyright "came to fruition immediately upon publication" of his book with copyright notice, and further, that no one could be said to have been injured by the failure to deposit copies, for everyone had notice.

PART IV.

BIBLIOGRAPHY

A. BOOKS AND TREATISES

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326. American Society of Composers, Authors and Publishers.

Copyright Law Symposium: No. 5. Nathan Burkan Memorial Competition sponsored by the American Society of Composers, Authors and Publishers. Foreword by Judges Fuld, Court of Appeals, New York, and Yankwich, Chief Judge, District Court, Southern District, California; Preface by Stanley Adams, President of ASCAP; Introduction by Herman Finkelstein, General Attorney of ASCAP.

Columbia University Press, N. Y., 302 p.

The fifth symposium contains the following essays: Reeves, *Superman v. Captain Marvel, or, Loss of Literary Property in Comic Strips;* Schlattmann, *The Doctrine of Limited Publication in the Law of Literary Property Compared with the Doctrine of Experimental Use in the Law of Patents;* Bovard, *Copyright Protection in the Area of Scientific and Technical Works;* Birmingham, *A Critical Analysis of the Infringement of Ideas;* Burbank, *Television—a Public Performance for Profit;* Webster, *Protecting Things Valuable—Ideas;* Herr, *The Patentee v. the Copyrightee;* Young, *Plagiarism, Piracy, and the Common Law Copyright;* Fair, *Publication of Immoral and Indecent Works, with Regard to the Constitutional and Copyright Effects;* Wyckoff, *Defenses Peculiar to Actions Based on Infringement of Musical Copyrights.*

327. Canyes Santacana, Manuel

Copyright Protection in the Americas under National Legislation and Inter-American Treaties. Supplement to 1950 Edition.

Washington, Division of Legal Affairs, Dept. of International Law, Pan American Union, Feb. 1954. 12 p. (mimeo.).

Summarizing the recent amendments to the copyright laws of Chile, Colombia, Guatemala, Mexico and the United States and presenting a chart showing the relations presently existing between the American republics. The supplement also summarizes the events leading to the drafting of the Universal Copyright Convention.

328. Sargoy and Stein

United States Copyright Law Digest. Reprinted from Martindale-Hubbell Law Directory, 1954 edition.

Summit, N. J., Martindale-Hubbell, Inc., 1953. 141., unnumb.

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329. Delp, Ludwig

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Berlin-Frohnau, Hermann Luchterhand Verlag, 1953. 1 v. (looseleaf).

A comprehensive compilation of laws dealing with the press, publishers, radio and television, and the right of privacy. Among the texts included are the Organic Law of the Federal German Republic, the constitutions of the various states, the Declaration of Human Rights, pertinent provisions of the procedural codes, as well as regulatory codes for the representative interests, and comparable legislation for Switzerland and Austria.

330. Desbois, Henri

La Propriété littéraire et artistique.

Paris, Lib. Armand Colin, 1953 206 p.

This is a work by a French author on the characteristics of authorship; the complexity of author's rights; and the effect of recordings, radiodiffusion and film productions on these rights under French law, the Bern Copyright Convention, and the proposed Universal Copyright Convention.

331. Gérard, Paul-Daniel

Les Auteurs de l'Oeuvre Cinématographique et Leurs Droits.

Paris, Lib. Générale de Droit et de Jurisprudence, 1953. pp. 203. Preface by Professor M. R. Roblot.

A scholarly discussion of copyright in motion pictures. (See also items 334 and 336 and 366.)

332. Goldbaum, Wenzel

Berner Konvention oder Universalkonvention über des Urheberrecht der Unesco?

Berlin, Vereinigung der Deutschen Schriftstellerverbände e.V., 1954. 32 p.

The Bern Convention or Unesco's Universal Copyright Convention?

333. Plant, *Sir* Arnold

The New Commerce in Ideas and Intellectual Property.

London, The Athlone Press, 1953. 36 p.

Discussing the influence of new economic and technological processes upon the statutory rights which have attached to ideas and intellectual property given material form. Developing his observations from the point of view of the author, the publisher, and the owner or licensee of the performing right, Sir Arnold differs somewhat with the conclusions and recommendations of the Board of Trade Copyright Committee of 1951.

334. Savatier, René

Le Droit de l'Art et des Lettres (Les Travaux des Muses dans les Balances de la Justice).

Paris, Librairie Générale de Droit et de Jurisprudence, 1953. pp. 224.

A well-written book on the basic principles of copyright, giving special emphasis to moral right problems, the problems of copyright in motion pictures, and discussing many of the leading French cases of copyright. (See also items 331, 336 and 366.)

335. Taubert, Sigfrid

Grundriss des Buchhandels in aller Welt.

Hamburg, Dr. Ernst Hauswedell & Co., 1953. pp. 351.

A manual containing information on publishers' associations; publishing practices; production, import and export statistics; trade and national bibliographies; trade schools; and copyright provisions for all countries. In addition, it also contains information on the UNESCO Book Coupon Agreement and the texts of various international conventions affecting the book trade.

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Notre Dame Lawyer, vol. 29, *no.* 1 (*Fall,* 1953), *pp.* 121-124.

A note discussing the problems raised by the decision in *Belt v. Hamilton National Bank,* 108 F. Supp. 689 (D.D.C. 1952), as aff'd. 99 U.S.P.Q. 388 (C.A.D.C. Dec. 3, 1953), (see BULLETIN, *vol.* 1, *no.* 2, *item* 252).

338. Derenberg, Walter J.

Annual Survey of American Law. Copyright Law.

New York University Law Review, vol. 29, *no.* 2 (*Feb.* 1954), *pp.* 455-469.

A discussion of developments in copyright during 1953.

339. Fendler, Harold A.

The Present Status of Common Law Intellectual Property in California.

Journal of the Federal Communications Bar Association, vol. 13, *no.* 3 (1953), *pp.* 114-125.

Discussing the reasons behind the 1947 amendment to Section 980 of the California Civil Code and its effect on the applicability of the common law protection of intellectual property as viewed by the Supreme Court of California in several recent decisions.

340. Hoffman, Joseph V.

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An article prepared for the Nathan Burkan Memorial Competition. The author compares the protection granted under the United States Copyright Law with that granted by the laws of other countries and under various multilateral copyright agreements. He concludes that the United States should abolish the requirement of compliance with formalities as a condition precedent to the acquisition of a valid copyright and should also abolish the deposit requirements and the manufacturing clause.

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The Universal Copyright Convention.

Journal of the Federal Communications Bar Association, vol. 13, *no.* 2, 1953, *pp.* 62-66.

In an analysis of the Universal Copyright Convention, the author compares it with the Bern Copyright Convention. He discusses the effect that ratification of the Universal Convention will have on United States Copyright Law and on the production of books, music, motion pictures and the like.

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The whole issue deals with copyright problems and includes the following articles: Schulman, "International Copyright in the United States: A Critical Analysis"; Bodenhausen, "Protection of Neighborhood Rights"; Kupferman, "Rights in New Media"; Cohn, "Old Licenses and New Uses: Motion Picture and Television Rights"; Nimmer, "The Right of Publicity"; Katz, "Copyright Protection of Architectural Plans, Drawings and Designs"; Kaplan, "Literary and Artistic Property (Including Copyright) as Security: Problems Facing the Lender"; Finkelstein, "The Composer and the Public Interest—Regulation of Performing Right Societies"; Timberg, "The Antitrust Aspects of Merchandising Modern Music: The ASCAP Consent Judgment of 1950." Foreword by Prof. Robert Kramer, of Duke University Law School.

343. McKinney, James D.

Torts—Unfair Competition—Literary Property—Radio Broadcast as Artistic Performance.—*Loeb v. Turner,* 257 S.W. 2d 890 (Tex. Civ. App. —Dallas 1953).

Texas Law Review, vol. 32, *no.* 2 (*Dec.* 1953), *pp.* 248-250.

Discussing the recent Texas case involving the "re-creation" by radio broadcast of an automobile race. See BULLETIN, *vol.* 1, *no.* 3, *item* 184. The author concludes that the expense, labor and skill that go into the broadcast of a sporting event is such that it should be protected as an artistic performance.

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Rapports présentés par l'Association littéraire et artistique internationale sur la cinématographie et le droit d'auteur.

Le Droit d'Auteur, vol. 67, *no.* 2 (*Feb.* 1954), *pp.* 28-36.

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Revue Internationale du Droit d'Auteur, no. 2 (*Jan.* 1954), *pp.* 16-29.

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Revue Internationale du Droit d'Auteur, no. 2, (*Jan.* 1954), *pp.* 2-15.

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356. Wroczynski, Kasimierz

Les auteurs polonais et le droit d'auteur.

Inter-Auteurs, no. 113 (4me trimestre, 1953), *pp.* 142-147.

A French translation of an extract from a soon-to-be-published work entitled "A Half-Century of Souvenirs of Theatre and of Literature." The work has been written by the first president of the Polish Authors' Society, Stowarzyszenie Autorow (ZAIKS).

2. In German

357. Moll, Theodor

Die Rechte der ausübenden Künstler, der Hersteller von Phonogrammen und der Rundspruchorganisationen.

Schweizerische Mitteilungen über Gewerblichen Rechtsschutz und Urheberrecht, Heft 1 (*May* 1953), *pp.* 15-74.

A presentation of the objectives of the draft convention for the protection of performing artists, record manufacturers, and radio broadcasting organizations, together with its text as prepared for consideration by the Swiss Association for the Protection of Authors' Rights.

358. Reimer, Eduard

Zur künftigen Entwicklung des gewerblichen Rechtsschutzes und Urheberrechts in Gesetzgebung, internationalen Adkommen, Rechtsprechung und Wissenschaft.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 1 (*Jan.* 1954), *pp.* 1-6.

A brief review of the development of patents and copyright with respect to legislation, international agreements and judicial interpretations.

359. Schönherr, Fritz

Gewerblicher Rechtsschutz und Urheberrecht in Oesterreich. Eine Uebersicht über die Rechtsprechung der 2. Republik.

Auslands—und Internationaler Teil zu Gewerblicher Rechtsschutz und Urheberrecht, no. 1 (*Jan.* 1954), *pp.* 1-16.

In making an annual survey of developments in Austrian patent, trade-mark and copyright law, Dr. Schönherr discusses recent court decisions dealing with such aspects of copyright law as the protection of soccer game charts, titles, performances of recorded music, motion picture rights, and rights in photographs.

360. Troller, Alois

Das Recht am Filmwerk.

Schweizerische Mitteilungen über Gewerblichen Rechtsschutz und Urheberrecht, Heft 2 (*Nov.* 1953), *pp.* 163-173.

A discussion of the many interests concerned with the production of a motion picture photoplay or documentary, including mention of the analyses by Eugen Ulmer and Henri Desbois (see *items* 348 and 330).

361. Troller, Alois

Photokopie, Mikrokopie und privater Gebrauch.

Schweizerische Mitteilungen über Gewerblichen Rechtsschutz und Urheberrecht, Heft 2 (*Nov.* 1953), *pp.* 171-173.

A brief discussion of the problem of photocopying and the protection of the author under such circumstances, using as a basis the text of article 22 of the draft revision of the Swiss Copyright Law.

362. Werhahan, Jürgen W.

Urheberrecht am Tonfilm.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 1 (*Jan.* 1954), *pp.* 16-22.

Author's rights in sound film.

3. In Italian

363. Celli, Gian Carlo

Il Diritto di autore nella regia teatrale.

Il Diritto di Autore, vol. 24, *no.* 3 (*July-Sept.* 1953), *pp.* 322-377.

This issue consists of Chapters V through IX of a doctor's dissertation on the legal aspects of dramatic works and art.

364. Disciplina internazionale del film cinematografico, dibattiti al raguardo in recenti riunioni internazionali.

Il Diritto di Autore, vol. 24, *no.* 3 (*July-Sept.* 1953), *pp.* 378-383.

A report on a discussion of international protection of motion pictures at a meeting of the International Federation of Film-Producers Associations. The meeting was called by the Bern Bureau for the purpose of considering certain problems involved in a possible revision of Article 14 of the Bern Copyright Convention.

365. Giannini, Amedeo

La Protezione delle cosiddette "idee elaborate."

Il Diritto di Autore, vol. 24, *no.* 3 (*July-Sept.* 1953), *pp.* 317-321.

In his article entitled "The Protection of the So-Called 'Elaborated Idea,'" Prof. Giannini comments on the proposals submitted by Mr. Stanley Rubinstein at a recent meeting of the Legislative Committee of the International Federation of Authors' and Composers' Societies (CISAC).

4. In Spanish

366. Mouchet, Carlos and Radaelli, Sigfrido A.

El Autor de la Obra Cinematografica.

Madrid, Instituto Editorial Reus, 1953, *pp.* 26.

367. Radaelli, Sigfrido A.

Los gremiod olvidados: Problemas del trabajador intelectual.

Correo Literario, Madrid, 1952, *pp.* 7-14.

A discussion of the problems implicit in an association of authors, calling such an association "The Forgotten Guild."

368. Radaelli, Sigfrido A.

Los Derechos Intelectuales y el Folklore. (Intellectual Rights in Folklore.)

Madrid, Boletin de la Propiedad Intelectual, 1953, *pp.* 4.

C. ARTICLES PERTAINING TO COPYRIGHT FROM TRADE MAGAZINES

1. United States

369. ASCAP settles pacts with TV nets and indie outlets.

The Billboard, vol. 66, *no.* 10 (*Mar.* 6, 1954), *pp.* 13, 103.

The networks under the new four-year agreement with ASCAP secured a reduction in rate, with the stipulation that if ASCAP TV network income falls below the 1953 level, then ASCAP will be privileged to raise network rates to the former level plus 10 per cent. The new contract is retroactive to January 1, 1954.

370. Burton, Robert J.

Advertising Copyrights.

Advertising Requirements, vol. 2, *nos.* 2, 3, 4 (*Feb., March, April* 1954), *pp.* 15-19; *pp.* 27-30; *pp.* 25-26, 50-55.

A comprehensive series of articles by the vice president of BMI explaining the application of copyright to the various phases of advertising.

371. Chappell switches song title after rep threat; action surprises trade.

Variety (*Feb.* 3, 1954).

Chappell Music was required to change the song title "Johnny Guitar" after Republic Pictures threatened suit based on a forthcoming picture using the same title and starring Joan Crawford. Chappell asserted that the composer has letters from Miss Crawford granting permission to use the title but Republic Pictures claimed that the song title violated its motion picture rights in the novel of the same name by Roy Chanslor.

372. Japanese accused of U.S. book piracy.

The New York Times (*Friday, Feb.* 19, 1954), *p.* 5.

McGraw-Hill International filed a formal complaint with the Japanese police against the Natural Science Study Society and Jun Mori alleging that several of its books had been printed and sold in violation of copyright regulations. The copyright arrangement of Nov. 10, 1953, between the United States and Japan affords United States citizens the same protection given Japanese nationals in the United States.

373. Middleton, George

U.S. Collects $4,700,000.

The American Writer, vol. 2, *no.* 2 (*Nov.* 1953), *pp.* 12-16.

This comprehensive discussion of the administration of copyright interests in vested foreign works by the Office of Alien Property, with many illustrative examples, reveals how vested copyrights of foreign authors have been managed during World War II, and since that time.

MISCELLANEOUS

374. *Mr. Arpad L. Bogsch* of the Copyright Office, who attended the recent conference of the Inter-American Bar Association held in São Paulo, Brazil, March 15-22, reports that the Association adopted, with no opposing vote, a resolution urging the ratification of the Universal Copyright Convention by the countries of the Western Hemisphere. The text of the resolution follows:

> Considering that the Universal Copyright Convention (Geneva 1952) is the only possible means available to attain at present a world-wide protection for copyright, The VIIIth Conference of the Inter-American Bar Association RECOMMENDS the ratification of, or adherence to, the Universal Copyright Convention by the countries of the Western Hemisphere.

This action follows the approval by the House of Delegates of the American Bar Association on March 8 of a favorable resolution concerning the Universal Copyright Convention. (From the Library of Congress Information Bulletin, vol. 13, no. 14, April 5, 1954.)

OTHER TIMES, SAME PROBLEMS

375. The following item appeared in the New York *Times* February 28, 1954:

> "Sixty-five prominent Americans in literary, educational and communications fields joined yesterday to form a national committee that will seek early Congressional ratification of the Universal Copyright Convention."

Such committees are not novel to the American copyright scene. On August 12, 1880, the Hon. William M. Ewarts, then Secretary of State, passed on to James Russell Lowell, United States Minister to Great Britain, a famous letter with a request for a report on British sentiment regarding a proposed copyright treaty. The letter is reproduced here at the suggestion of Sydney M. Kaye, a member of the United States Delegation to the Geneva meeting and a recent witness before the House Committee on the Hearings on H.R. 6670 and 6616 (see this issue, item 308).

Instruction to Mr. Lowell
Aug 12 1880

Hon. Wm. M. Evarts, Secretary of State:

The undersigned American authors approve the International Copyright Treaty proposed by Messrs. Harper and Brothers, representing the American publishers, and respectfully petition that such action may be taken by the Department of State as will lead to the early negotiation of the Treaty.

Henry W. Longfellow
Oliver Wendell Holmes.
R. Waldo Emerson
James T. Fields
John G. Whittier
Thomas Bailey Aldrich.
W. D. Howells.
Chas. Dudley Warner
Saml L. Clemens (Mark Twain)
Charles Eliot Norton.
Geo. William Curtis.

Geo. Bancroft

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JUNE 1953 - JUNE 1954

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Bulletin of the Copyright Society of the U. S. A.

The Copyright Society of the U. S. A.

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LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS

UNITED STATES OF AMERICA AND TERRITORIES

376. *U.S. Congress. Senate.*

Library of Congress Information Bulletin, vol. 13, *no.* 21 (*May* 24, 1954), *p.* 12.

"On Thursday, May 20, the Senate Foreign Relations Committee unanimously reported out to the Senate the Universal Copyright Convention with a favorable recommendation. It is understood that the Senate may take action on the Convention in the very near future. As of May 20, however, the Senate Judiciary Committee had not issued any report regarding the implementing legislation that is necessary before the treaty can go into effect. The House Judiciary Committee also must act on the implementing legislation."

On June 25th the U.S. Senate voted by vote of 65 to 3 to ratify the Universal Convention.

377. *U.S. Register of Copyrights.*

Fifty-Fifth Annual Report of the Register of Copyrights for the Fiscal Year ending June 30, 1953.

Copyright Office, The Library of Congress, Washington, 1954, 16 p.

FOREIGN NATIONS

378. *Hungary. Laws, statutes, etc.*

Décret du Conseil de ministres de la République populaire Hongroise sur l'établissement de l'Office pour la protection des droits d'auteur (No. 106, du 31 decembre 1952).

Le Droit d'Auteur, vol. 67, *no.* 3 (*Mar.* 1954), *pp.* 43-45.

A French translation of a decree by the Council of Ministers of the People's Hungarian Republic providing for the establishment of an Office for the Protection of Authors' Rights. The Office is to be under the direction of the Ministry of National Education and is to supervise the publication, performance, recording and utilization rights of Hungarian authors and artists.

379. *Italy. Laws, statutes, etc.*

Décret du Président de la République italienne relatif à la prorogation des délais de dépôt prévus à l'article 35 du décret royal no 1369, du 18 mai 1942, en ce qui concerne les oeuvres publiées pour la première fois aux Etats-Unis d'Amérique (No. 1527, du 11 décembre 1951).

Le Droit d'Auteur, vol. 67, *no.* 3 (*Mar.* 1954), *p.* 42.

A French translation of the Italian Presidential Decree extending until the completion of the calendar year following effective date of the decree, the time for making deposits referred to in Article 105 of Law No. 633, dated Apr. 22, 1941, in favor of works first published in the United States between Sept. 3, 1939 and the date of the decree.

380. *Philippines. Laws, statutes, etc.*

The following telegram was sent to the Secretary of State by the American Embassy in Manila relative to the proposed addition of a manufacturing clause to the Philippine copyright law. (Cf., reported in BULLETIN, Vol. 1, No. 5, Item 316.)

> "Senate Committee Revision Laws yesterday (May 11) reported out House bill 327 (copyright) recommending its approval with following new Section 4:
>
> > 'The provisions of this act shall not prejudice nationals of countries which have, as of the date of the approval of this act, ratified and have not thereafter denounced the Berne Convention . . . and shall be subsisting and valid only as long as the Republic of the Philippines has not denounced said convention.'"

PART II.

CONVENTIONS, TREATIES AND PROCLAMATIONS

381. *Belgium. Ministère de l'Instruction Publique.*

Réponse du gouvernment Belge a la consultation du Bureau de l'Union Internationale pour la Protection des Oeuvres Littéraires et Artistiques en ce qui concerne la protection des artistes interpretes ou executants des fabricants de phonogrammes et des organismes de radiodiffusion. Berne, 1954.

The text of the Belgian reply commenting on the Preliminary Draft Convention for the Protection of Performers' Rights, Phonograph Record Manufacturers and Radio Broadcasting Organizations.

382. *Berne.*

Bureau de l'Union Internationale pour la Protection des Oeuvres Littéraires et Artistiques.

Reponses des gouvernements a la consultation du Bureau de l'Union Internationale pour la Protection des Oeuvres Littéraires et Artistiques en ce qui concerne la protection des artistes interpretes ou executants des fabricants de phonogrammes et des organismes de radiodiffusion. Réponses adressées avant le 1er janvier 1954. Textes originaux et traductions françaises. Berne, 1954.

This compilation contains replies to a letter sent out by the Bern Bureau requesting comments by the various governments on the preliminary draft convention for the protection of Performers' Rights, Phonograph Record Manufacturers and Radio Broadcasting Organizations. The original texts of 18 governments' replies are reproduced together with a French translation of each.

383. *Caracas.*

Inter-American Conference. 10th, Caracas. 1954.

Final Act, tenth Inter-American Conference, Caracas, Venezuela, 1954. Resolution XIII, Copyright Protection.

Resolution XIII recommends to all member states that have not yet done so, that they consider the advisability of ratifying the Inter-American Convention on the Rights of the Author, signed at Washington in June 1946.

384. *Germany.*

Accord commercial entre le Gouvernement de la République fédérale d'Allemagne et le Gouvernement de la République du Pérou (du 20 juillet 1951).

Le Droit d'Auteur, vol. 67, *no.* 3 (*Mar.* 1954), *pp.* 41-42.

A French translation of Article III of the Accord between West Germany and Peru providing for national treatment in the acquisition, possession and renewal of authors' rights and the publication of literary, musical and artistic works.

385. *Germany.*

Avis concernant la ratification de l'Accord commercial signé par le Gouvernement de la République fédérale d'Allemagne et le Gouvernement de la République du Pérou (du 8 juillet 1952).

Le Droit d'Auteur, vol. 67, *no.* 3 (*Mar.* 1954), *pp.* 41-42.

A French translation of an announcement by the German Foreign Minister of the exchange of instruments of ratification at Bonn on June 14, 1952, bringing the Commercial Accord between Germany and Peru into force as of that date.

386. *Netherlands. Ministere de la Justice.*

Réponse du gouvernement Neerlandais a la consultation du Bureau de l'Union Internationale pour la Protection des Oeuvres Littéraires et Artistiques en ce qui concerne la protection des artistes interpretes ou executants des fabricants de phonogrammes et des organismes de radiodiffusion. Berne, 1954.

This is the original text of the Netherlands government's reply, commenting on the Preliminary Draft Convention for the Protection of Performers' Rights, Phonograph Record Manufacturers and Radio Broadcasting Organizations.

387. *Switzerland. Department Politique Fédéral.*

Réponse du gouvernement suisse a la consultation du Bureau de l'Union Internationale pour la Protection des Oeuvres Littéraires et Artistiques en ce qui concerne la Protection des Artistes Interpretes ou Executants des Fabricants de Phonogrammes et des Organismes de Radiodiffusion. Berne 1954.

A copy of the Swiss government's reply to the request for comments on the Preliminary draft convention for the Protection of Performers' Rights, Phonograph Record Manufacturers and Radio Broadcasting Organizations.

PART III.

JUDICIAL DEVELOPMENTS IN LITERARY AND ARTISTIC PROPERTY

A. DECISIONS OF U.S. COURTS

1. Federal Court Decisions

388. *Marks Music Corp. v. Continental Record Co.* (S.D.N.Y. April 23, 1954), 120 F. Supp. 275.

In his decision of March 9, 1954, noted in BULLETIN, Vol. 1, No. 5, Item 323, Judge Sugarman concluded that a renewed copyright obtained after July 1, 1909, in a musical composition originally published and copyrighted before that date, could not "be held to have created an author's control of mechanical reproduction, previously non-existent." On re-argument, he further held (April 23, 1954):

> "I cannot accept the tenuous argument, obviously an afterthought, now urged by the plaintiff that the right to mechanically reproduce 'In the Good Old Summertime' cast into the public domain prior to the amendment of the Copyright Act in 1909 is to be strictly construed to limit that right solely to the precise words and piano score appearing on the original copyright sheet music to the

exclusion of orchestrations and modern arrangements for multiple instrument performances of the theme. The original decision is adhered to."

In continuation of the *Note* at Item 323, it should be pointed out that owners of pre-1909 compositions have sometimes asked for mechanical royalties from recording companies on theories generally related to the one urged by plaintiff in the re-argument. No court decisions had been reported on the point which involves potentially broader ramifications than plaintiff's initial argument based on a renewal of copyright after 1909. In the actual practice of recording popular music today, the recording company almost always devises and uses some sort of "arrangement" of the copyrighted composition. Whether or not the mechanical license from the copyright owner specifically mentions such right (and practically none do), the right is realistically recognized by the parties. Judge Sugarman has now stated that no limitation to the contrary prevails with respect to a composition which in the first place, because of its pre-1909 status, had no mechanical protection at all. An appeal has been filed.

N.B. In the Note at Item 323, Vol. 1, No. 5, the word "after" should be substituted for the first word in the fourth line on page 124.

A. L.

388(a). *Carmichael v. Mills Music, Inc.,* 101 U.S.P.Q. 279 (S.D.N.Y. May 11, 1954).

Edelstein, D. J.:

"The plaintiff, a composer of songs, has brought an action against his publisher for a declaratory judgment on the rights to copyright renewals for fourteen of his compositions. The original copyright terms of three of the songs have already expired, but the original terms of the others have not. Plaintiff contends that under the contracts of publication the rights to copyright renewals were not transferred to defendant's predecessors, and he contends in the alternative that such transfers should not be enforced because of inadequacy of consideration. He now seeks a declaration that he is the owner (or co-owner, where appropriate) of the accrued renewal copyrights on the first three songs, and that he will be the owner (or co-owner) of the renewal rights on the remaining songs, if he is living at the time of their accrual as provided in section 24 of the Copyright Law. The defendant has moved to dismiss for failure to

state a claim, under Rule 12(b) (6), but both parties have submitted affidavits presenting matters outside the pleading, so that the speaking motion must be treated as one for summary judgment under Rule 56.

"The first problem presented is whether a justiciable controversy exists. Title to renewal rights in a musical composition may be established by an action for a declaratory judgment, *Rossiter v. Vogel* (2 Cir.), 134 F. 2d 908, and there is clearly a justiciable issue concerning such rights for the songs whose original copyright terms have already expired, with plaintiff and defendant both claiming title. The fact that plaintiff might sue for coercive relief is, of course, no bar to this action. See Borchard, Declaratory Judgments (2nd ed.), pp. 336-7. But whether a justiciable issue is presented by suit on title to the renewal expectancies on the other songs is not as clear. 'Basically, the question * * * is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.' *Maryland Casualty Co. v. Pacific Coal & Oil Co.,* 312 U.S. 270, 273. The test generally applied by the courts, it has been suggested, is whether 'it is relatively certain that coercive litigation will eventually ensue between the same parties if a declaration is refused.' 62 Harv. L. Rev. 787, 794. There is no doubt that, in the dispute over the title to renewal rights not yet accrued, there is a substantial controversy between parties having adverse legal interests. But section 24 of the Copyright Law, 17 U.S.C. section 24, introduces a contingency that casts some doubt on whether the dispute is ripe for declaratory action. Under this section, if the author is not living at a time one year prior to the expiration of the original term of copyright, then designated successors are entitled to the renewal, and an assignment of a renewal expectancy rests upon the author's survival until the time of the accrual of renewal rights. See *Witmark v. Fisher,* 318 U.S. 643. Thus, if the plaintiff author should not survive that time, and the court entertains a suit for declaratory judgment, its judgment would be of no operative effect, whichever party prevailed. There is, consequently, the distinct possibility that the court is being called upon for a decision of an abstract or hypothetical question. But, as pointed out in the *Maryland Casualty Co.* case, supra, the distinction between a 'controversy' and an abstract question is one of degree. It is settled that where there is an actual controversy over contingent rights, a declaratory judgment may nevertheless be granted. *American Machine & Metals v. DeBothezat Impeller Co.* (2 Cir.), 166 F. 2d 535; Borchard, op. cit. supra, pp. 422-3. The contingency of a

defendant's survival was held, in *Franklin Life Ins. Co. v. Johnson* (10th Cir.) 157 F. 2d 653, to be no bar to an action for a declaratory judgment. If the purpose of the declaratory judgment procedure would be well served by the application of that procedure to the case at bar, the existence of the contingency of the plaintiff's survival should not preclude a declaration. 'The very purpose of the declaratory judgment procedure is to prevent the accrual of * * * avoidable damages.' *American Machine & Metals v. DeBothezat Impeller Co.,* supra, 166 F. 2d at p. 536. It should be unnecessary for the plaintiff, as a party to a contract, to act on his own interpretation of its meaning and incur the consequent risks 'as a prerequisite to judicial cognizance for construction and interpretation.' Borchard, op. cit. supra, p. 28. The immediate damage which the plaintiff seeks to avoid is the adverse effect of the unsettled legal issue on the present value of his claimed renewal expectancies. But that is merely a present reflection of the risk of future damage sought to be avoided by him or his assignees as a result of acting upon contracts at future expiration without judicial construction and interpretation. I am persuaded that there is an 'actual' controversy which is justiciable in the light of the purpose of the Declaratory Judgment Act.

"Furthermore, the fact that eleven unexpired copyright terms will expire at intervals within the next seven years confirms my opinion that this court ought to entertain the single action now, rather than to require a multiplicity of additional suits to be filed in the future, involving identical legal problems and similar fact situations.

"While the controversy involving all fourteen compositions is ripe for declaratory judgment, it is not ripe for summary judgment. In addition to contending that an absence of consideration negatived a transfer of renewal rights, the plaintiff maintains that any transfer should not be enforced because of alleged inadequacy of consideration and unconscionable advantage taken of him at the time of the publication contract transactions. *Witmark v. Fisher,* supra, decided that an author's renewal expectancy may be assigned, but it expressly left open the questions of fraud and the failure of consideration. In *Rossiter v. Vogel,* supra, 134 F. 2d at p. 912, the Court of Appeals held that 'evidence of inadequate consideration, especially when taken in connection with the allegations of deceit, presents a triable issue at least as to the enforceability of plaintiff's assignment.' On this basis, therefore, summary judgment for the defendant must be denied, and it is unnecessary at this time to consider the question of lack of consideration.

"Accordingly, the defendant's motion will be denied."

389. *Shulsinger v. Grossman,* 119 F. Supp. 691 (S.D.N.Y. March 4, 1954).

Motion for an injunction pendente lite against the publication by defendants of a set of books entitled "The Pentateuch Mikraoth Gedoloth With Many Commentaries" which included a copy of most of the text of a set of books published by plaintiffs under a title beginning "Mikroath Gedoloth The Pentateuch With 60 Commentaries." Plaintiffs' books were copyrighted and consisted of the five books of Moses printed in the Hebrew language with commentaries in the margins and in an appendix. The text and the marginal notes of plaintiffs' books were produced by photographing an edition of the five books of Moses published in Vilna in 1899. The Vilna publication was an exact copy of a book published in 1889, except for a few changes in the notes. Plaintiffs claimed to have spent $50,000 in editing and changing the Vilna edition and to have produced the first absolutely accurate edition of the five books of Moses. The plaintiffs made no claim that their books were creative, but claimed that they were original in that they were the product of the editors. The defendants' books were exact facsimiles of plaintiff's books, including the pagination and marginal comments. Only the appendices were different. The court held, as a matter of fact that the defendants' book had been produced by photographing plaintiffs' books.

Held: Injunction pendente lite will issue. In answer to defendants' argument that the five books of Moses were in the public domain and not subject to copyright, the court said: "The law is to the contrary as to an edition . . . with accents and cantillation marks supplied by the scholarship of the authors." The court likened the work to a set of logarithmic tables which were said to be subject to copyright. Had the defendants used the Vilna edition as a basis and employed scholars to make the same corrections as plaintiff had made, the court felt that there would have been no infringement.

390. *Turton v. United States,* 101 U.S.P.Q. 164 (6th Cir. April 28, 1954).

Action by the author of a treatise "For the formation and operation of a world government under the name, 'United Nations,'" against the United States, alleging that the appellee was publishing various books and pamphlets entitled "United Nations," which were compiled largely from appellant's copyrighted material. The complaint charged copyright infringement and unfair competition, and sought damages in the sum of $10,000, and injunctive relief. The lower court dismissed the complaint.

Held: Judgment affirmed. The court said that the action sounded in tort and that the United States had not consented to be sued in claims sounding in tort. The Federal Tort Claims Act had not been invoked by the plaintiff and was not considered. The fact that the United States had consented to being sued for patent infringement, 28 U.S.C. Sec. 1498, was held to have no effect on the copyright action.

B. DECISIONS AND RULINGS FROM OTHER NATIONS

1. Canadian Decisions

391. *Composers, Authors and Publishers Association of Canada, Ltd. v. Maple Leaf Broadcasting Co., Ltd.,* 13 Fox Pat. C. 101 (Exch. Ct. Feb. 23, 1953).

Action for infringement of copyright. Defendant counterclaimed, alleging that plaintiff's schedule of fees, based on a percentage of the gross income of a radio station, was not a statement of "fees, charges or royalties" within the meaning of the Copyright Amendment Act. Further, the defendant asserted that the Copyright Appeal Board's authorization, permitting a representative of the performing right society to examine the books of the licensee regarding income, was *ultra vires.*

Held: For Plaintiff. The court said that the function of approving the rates to be charged for the performance of musical and dramatico-musical compositions was lodged in the Copyright Appeals Board and was purely administrative and not subject to review. Further, the court said that it was perfectly proper to fix rates for annual licenses on a portion of the annual gross income of a broadcasting station. The Board, having the power to fix tariff rates on the basis of income of a licensee, was said to have the power to impose reasonable conditions upon the licensee with respect to the examination of its accounts by representatives of plaintiff.

392. *Durand & Cie. v. His Majesty's Theatre Co., Ltd.,* 13 Fox Pat. C. 195 (Exch. Ct. July 29, 1953).

Judgment had been given January 12, 1951 and the question here decided related to the amount of damages, that question having been referred to a master. Plaintiff demanded $125 in Canadian currency as rental for the authentic material used for two presentations of the opera

"Samson et Delila"; 10% of the gross receipts for the two performances; and a forfeiture of the score used by defendants or its monetary value. After comparing charges made for performances of similar operas by the Metropolitan Opera Company and by The Opera Guild, damages were set at $400.

393. *Muzak Corporation v. Composers, Authors and Publishers Association of Canada,* 13 Fox Pat. C. 168 (Sup. Ct. June 26, 1953).

Action for copyright infringement against the Associated Broadcasting Company, joining the present appellant who made the recordings complained of in the United States. Associated was operating under a "territorial" franchise with appellant, and the appeal was taken from an order of the Exchequer Court allowing respondent to issue a notice of claim for services outside of the jurisdiction.

Held: For appellant. According to the Supreme Court, the order should not have issued unless plaintiff had made out a prima facie case which was not completely displaced by the evidence on the other side. The mere leasing of recordings by appellant to Associated did not amount to appellant's authorizing their use to infringe copyrights unless such a leasing agreement is said to sanction, approve or countenance actual performances.

PART IV.

BIBLIOGRAPHY

A. BOOKS AND TREATISES

Foreign Publications

394. Plaisant, Robert

Propriété littéraire et artistique (Droit interne et conventions internationales).

Paris, Librairies Techniques, Libraire de la Cour de Cassation, 1954. 416 p. (Extrait du Juris-Classeur Civil Annexes).

A new and completely revised edition of the Copyright chapter of the "Juris-Classeur," consisting of two main parts. The first, dealing with French copyright law, was written by Robert Plaisant, Professor, Faculty of Law, University of Caen, France. Except for a few brief legislative provisions, French copyright law is mainly case law and the 300 large pages of the first part give as complete a coverage as possible to this phase of the development. It deals with matters in a framework established according to the usual European method: Definition and Nature of Copyright; Works Protected; Persons Protected; Moral Rights; Pecuniary Rights; Infringements and Sanctions. The first section also deals with the "connex rights" and other new problems of copyright. In discussing the question of "moral rights," Professor Plaisant takes a novel approach, considering it to be dangerous to restrict the obligatory nature of contracts because of the mere existence of the "moral rights," and insisting on the necessity of judicial control of these rights to prevent abuse of them.

The second portion of the volume is dedicated to a discussion of international copyright law dealing with the Berne and Universal Copyright Conventions. The part dealing with the Berne Convention was written in collaboration with Maître Marcel Boutet, while Professor Plaisant was joined by Dr. Marcel Saporta in preparing the discussion of the Universal Copyright Convention. In this second part is found a complete coverage of the work of the 1948 Brussels and the 1952 Geneva Conferences. The work not only gives a complete survey of France's bilateral copyright relations and of copyright problems in parts of the French Union other than Metropolitan France, but it frequently refers to laws of countries other than France.

The treatise, together with Professor Desbois' recent book, will probably be the standard reference work in French copyright law.

B. LAW REVIEW ARTICLES

1. United States

395. Law and the Entertainment Industry.

California Law Review, vol. 42, *no.* 1 (*Spring* 1954).

The whole issue is dedicated to a symposium on current legal problems of actors, writers, motion picture producers, broadcasters and telecasters. The following articles dealing with copyright are found: Kaplan,

"Implied Contract and the Law of Literary Property"; Selvin, "Should Performance Dedicate?"; Carman, "The Function of the Judge and Jury in the 'Literary Property' Lawsuit"; Callmann, "Unfair Competition in Ideas and Titles"; Dubin, "The Universal Copyright Convention," (with a series of comprehensive charts on copyright).

396. Coulter, Robert L.

Typewritten Library Manuscripts Are Not "Printed Publications."

Journal of the Patent Office Society, vol. 36, *no.* 4 (*Apr.* 1954), *pp.* 258-274.

In this article a patent attorney expresses the opinion that a typewritten manuscript or thesis deposited in a public or university library is not a "printed publication" within the meaning of the United States Patent Law, claiming that in many instances typewriting has been considered a substitute for handwriting rather than for printing.

397. Monetary Recovery for Copyright Infringement.

Harvard Law Review, vol. 67, *no.* 6 (*Apr.* 1954), *pp.* 1044-1059.

A comprehensive note considering the civil liability section of the Copyright Code and discussing "the meaning of 'damages' and 'profits' of which the statute speaks, the interrelationship of those measures of recovery, and the significance and proper use of statutory award 'in lieu of actual damages.'"

398. Kaps, W. J.

Plagiarism of Ideas and Protection Against Spurious Claims.

Rutgers Law Review, vol. 8, *no.* 2 (*Spring* 1954), *pp.* 388-396.

Noting the trend towards the recognition of the creators' right of recovery and discussing methods of insulation against the claims of "idea" men.

2. FOREIGN

1. In French

399. Bogsch, Arpad

L'article XIX de la Convention universelle.

Le Droit d'Auteur, vol. 67, *no.* 4 (*April* 1954), *pp.* 67-71.

The fourth and last installment of a study of the possible effects of the Universal Copyright Convention on existing bilateral copyright treaties and other international agreements.

The present installment deals with the possible effect of the Convention on the status of the proclamations issued by the President of the United States in respect of some 32 foreign countries. The author discusses the possible changes in the protection to be afforded to the literary and artistic works of United States citizens in these foreign countries in the event the Convention is adopted.

400. deBoor

Lettre d'Allemagne.

Le Droit d'Auteur, vol. 67, *no.* 4 (*April* 1954), *pp.* 71-74.

A review of the latest copyright developments in Germany analyzing three recent cases in which the courts examined the question whether tape recording and photocopying come within the scope of Section 15, Paragraph 2 of the German Literary and Musical Copyright Act which allows reproduction (Vervielfaeltigung-multiplication) for personal use if the reproduction does not serve the purpose of obtaining revenue.

401. Fernay, Roger

L'Etat et les auteurs.

Revue Internationale du Droit d'Auteur, no. 3 (*April* 1954), *pp.* 19-35.

Discussing the problems faced by authors against the pressures of the totalitarian state and against what the author calls the "capitalistic current: powerful industries increasingly well built up, organized and supported, which endeavor to impose their will" on the author.

402. Laurens, Marcel

De la notion de "désignation" dans l'exploitation des oeuvres de l'esprit.

Revue Internationale du Droit d'Auteur, no. 3 (*April* 1954), *pp.* 37-47.

Discussing the problems involved in the attempt of authors to control the ultimate destination or use of their works.

403. Masouyé, Claude

Les prorogations de guerre.

Revue Internationale du Droit d'Auteur, no. 3 (*April* 1954), *pp.* 49-73.

A discussion of the extension of the period of protection afforded literary property in France due to the intervention of World Wars I and II.

404. Matthyssens and Charini

Rapports de la Federation internationale des auteurs de films sur la cinématographie et le droit d'auteur.

Le Droit d'Auteur, vol. 67, *no.* 4 (*April* 1954) *pp.* 61-66.

Two reports, one by Mr. Matthyssens, the other by Mr. Charini, on copyright and motion pictures, presented to the Congress of the International Federation of Film Authors meeting in Venice in August of 1953. The authors of these two reports were members of the French and Italian Delegations, respectively.

405. Plaisant, Robert

Lettre de France.

Le Droit d'Auteur, vol. 67, *no.* 4 (*April* 1954), *pp.* 75-80.

A review of the latest copyright developments in France, dealing mainly with the recent court decisions.

406. Plaisant, Robert

Vers la protection mondiale des "droits voison."

Revue Internationale du Droit d'Auteur, no. 3 (*April* 1954), *pp.* 75-107.

A discussion of the attempt to establish world protection for "ancillary rights."

407. Whale, Royce

La Télévision commerciale en Grande-Bretagne.

Inter-Auteurs, no. 114 (1*er trimestre,* 1954), *pp.* 12-15.

An article on the commercial and administrative aspects of television programs emanating from the B. B. C.

2. In German

408. Bappert, [Walter]

Urheberrechtsschutz oder Leistungsschutz für die Photographie? Von . . . und Wagner.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 3 (*Mar.* 1954), *pp.* 194-107.

Copyright or "protection of technical achievement in photographs."

409. Bobsin, Peter

Das Recht des Rundfunks an der Sendung.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 2 (*Feb.* 1954), *pp.* 57-61.

The right of the Broadcaster in the broadcast.

410. Haeger, Siegfried

Zur Gefahr der Urheberrechtsverletzung durch Tonband-Vervielfältigung gemäss Sec. 15 Abs. 2 LUG.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 2 (*Feb.* 1954), *pp.* 52-57.

Discussing the risk of copyright infringement by tape recording under Section 15, paragraph 2 of the German Literary and Musical Copyright Act.

411. Neumann-Duesberg, Horst

Vergütungsansprüche wegen unbefugter Reklameverwendung von Lichtbildern.

Gewerblicher Rechtsschutz und Urheberrecht, vol. 56, *no.* 2 (*Feb.* 1954), *pp.* 45-52.

Claims remuneration for unauthorized use of photographs for advertising purposes.

412. Schulze, von Erich

Tonjaeger.

Revue Internationale du Droit d'Auteur, no. 3 (*April* 1954), *pp.* 3-18.

A discussion of the legal problems growing out of the current "sport" of "sound hunting" with tape recorders.

3. In Italian

413. Giannini, Amadeo

Problemi Di Diritto d'Autore.

Il Diritto Di Autore, vol. 24, *no.* 4 (*Oct.-Dec.* 1953), *pp.* 474-503.

Seven different problems of copyright law analyzed:

(1) Works of several authors who are not co-authors.

(2) Protection of immoral works, and of works contrary to public order or law.

(3) The independence of the author's various exclusive rights and the independence of their use.

(4) Maps.

(5) Limits of lawful transformation.

(6) Freedom of performances by military bands.

(7) Protection of critically annotated editions.

414. Henrion, Marcel

La Protexione Preventiva Dei Diritti Di Autore (Rappresentazioni Ed Esecuzioni Pubbliche) in Alcune Legislazioni Nazionali.

Il Diritto Di Autore, vol. 24, *no.* 4 (*Oct.-Dec.* 1953), *pp.* 530-547.

Discussing the preventive protection of the right of public performance in the Spanish, Brazilian, Colombian, Portuguese, Italian and Mexican laws. The author points out situations in which the police forces may prohibit performances not authorized by the author of the work intended to be performed.

415. Hepp, François

La Proprietá Scientifica.

Il Diritto Di Autore, vol. 24, *no.* 4 (*Oct.-Dec.* 1953), *pp.* 457-473.

Discussing the efforts of the League of Nations and, since 1953, of UNESCO to define "scientist's rights" and to explore the desirability of their protection on the international level.

C. ARTICLES PERTAINING TO COPYRIGHT FROM TRADE MAGAZINES

1. United States

416. Authors: J. K. Lasser needs your help.

Saturday Review, vol. 36, *no.* 14 (*Apr.* 3, 1954), *p.* 25.

In a contribution to "Letters to the Editor," the late Mr. Lasser who published materials on taxation, urged authors to supply him with information necessary to convince Congressmen that authors need assistance under the Internal Revenue Law equal to that proposed for inventors. (H. R. 7645).

417. Brown, Karline

Copyright clarification, with statement by Dan Lacy.

Library Journal, vol. 79, *no.* 3 (*Feb.* 1, 1954), *pp.* 154-156.

A statement by the American Book Publishers Council concerning its interpretation of Sec. 1(c) of the Copyright Law, as amended last year.

418. Burton, Robert J.

Advertising Copyrights.

Advertising Requirements, vol. 2, *no.* 5 (*May* 1954), *pp.* 25-28; *no.* 6 (*June* 1954), *pp.* 19-20, and 29.

In the fourth and fifth installments of a series of articles on advertising copyrights, Mr. Burton analyzes "the bundle of rights included in a copyright . . . from the point of view of commercial trade practices in the graphic arts field," and problems involved in the reproduction of previously created works of art.

419. Copyright before Senate committee.

Publishers' Weekly, vol. 165, *no.* 15 (*Apr.* 10, 1954), *p.* 1685.

A brief comment on the hearings before the joint subcommittee of the Senate (Judiciary and Foreign Relations) on the Universal Copyright Convention and S. 2559 which would amend the copyright law in order to permit ratification of the convention. A brief quotation is taken from the testimony of John Schulman.

420. Copyright discussions move to the Senate.

Publishers' Weekly, vol. 165, *no.* 14 (*Apr.* 3, 1954), *p.* 1600.

Reporting that hearings on the bills which would amend the Copyright Act and facilitate ratification of the Universal Copyright Convention were to be held before a Senate Subcommittee beginning April 7. Recent action by the Philippine legislature in support of a bill requiring domestic manufacture for books to be given copyright protection there will probably be a significant issue.

421. ECCO set up to serve U.S. pubbers abroad.

The Billboard, vol. 66, *no.* 15 (*Apr.* 10, 1954), *pp.* 22, 28.

A European Copyright Control Office has recently been set up in Paris for the purpose of assisting American music publishers in the collection of royalties accruing from the release of records abroad. Pub-

lisher contracts are for a ten-year period, and the Office works with the mechanical rights societies affiliated with BIEM on a one-year basis. It is thought that the ECCO will be able to facilitate payments by overcoming some of the obstacles of the foreign exchange control regulations.

422. Joint Committee of Senate holds Copyright Hearings.

Publishers' Weekly, vol. 165, *no.* 16 (*Apr.* 17, 1954), *pp.* 1739-1741.

A summary of the testimony given at the hearings held by the joint subcommittee of the Senate (Judiciary and Foreign Relations Committees) on S. 2559 and the Universal Copyright Convention, and at the final House hearings on H. R. 6670 and 6616.

423. Kupferman, Theodore R.

Practical Copyright Problems.

The Advocate, vol. 1, *no.* 2 (*May* 1954), *p.* 44.

Some simple pointers concerning literary property dealing mainly with protection of ideas.

424. Melcher, Frederic G.

Case for international copyright well argued.

Publishers' Weekly, vol. 165, *no.* 16 (*Apr.* 17, 1954), *p.* 1746.

A brief editorial on the Senate hearings on the Universal Copyright Convention and the effect that its ratification would have on the United States book industry. The editor concludes that the testimony presented by Robert Frase was a complete answer to the objections raised by the representatives of the printing trade unions.

425. Pubs set back on "renewals"—Carmichael's big point vs. Mills.

Variety, vol. 194, *no.* 11 (*May* 19, 1954), *p.* 45.

In what "Variety" calls "a precedent-setting" decision, Judge Edelstein ruled that "original renewal assignments are not necessarily binding as contracts." It is pointed out that the decision is important in that it opens the door for many challenges to the validity of renewal assignments made prior to the existence of the Songwriters Protective Association. (See item 388, *supra.*)

426. Rosenberg, James N.

Artists' reproduction rights.

Art Digest, vol. 28, *no.* 9 (*Feb.* 1, 1954), *p.* 5.

The editorial refers to the advent of color television as raising a number of questions as to an artist's right in the color reproduction of his painting or work of art. Alluding to a recent case which held that the "unrestricted sale" of a painting gave the owner "untrammeled right to reproduce," the writer concludes that the artist will have little or no benefit from color television.

2. England

427. "A Tax on every publication."

The Bookseller, no. 2519 (*Apr.* 3, 1954), *p.* 1076.

An Irish publishing firm was prosecuted in the Cork District Court for failure to send copies of certain new publications first published in Ireland to the National Library in Dublin, contrary to the provisions of the Industrial and Commercial Property (Protection) Act. The books were translations. The publisher's counsel claimed that the statutory requirement worked a hardship since copies were also required to be sent to Trinity College, the University Colleges of Dublin, Cork and Galway as well as to the British Museum; and, on demand, to Bodleian Library, Oxford, Cambridge and the National Libraries of Scotland and Wales.

428. Brown, A. J.

Authors and libraries.

The Author, vol. 64, *no.* 3 (*Spring* 1954), *pp.* 59-63.

In furthering the discussion of the problem of whether authors should be subsidized by libraries, the author points out 150-200 people can read a single copy of a modern popular book, thereby decreasing the royalties an author might expect from the sale of his work. He suggests that authors should organize and promote discussion of the problem with the library associations in order to see if a satisfactory system of royalty payments could be worked out.

429. U.S. Copyright committee.

The Bookseller, no. 2517 (*Mar.* 20, 1954), *p.* 943.

In a note commenting on the formation of an American group for the support of ratification of the Universal Copyright Convention, Mr. Rex Stout, one of the co-chairmen of the committee, is quoted as saying that adoption of the U. C. C. would "reduce literary anarchy all over the world."

ANNOUNCEMENT

The Practising Law Institute will offer under the co-sponsorship of The Copyright Society of the U.S.A. a two-day program on copyright law as part of its Summer schedule. The course, entitled "Current Problems in Copyright Law," will be held on July 22 and 23 at the Hotel Statler in air-conditioned rooms. The program will be under the chairmanship of Professor Walter J. Derenberg of New York University Law School.

The copyright program will be as follows:

Thursday, July 22

9 to 10:55 a.m.—Dealing with the Copyright Office

ABRAHAM L. KAMINSTEIN, *Chief, Examining Division, Copyright Office*

Problems in considering works of art, designs, and prints and labels; applications for titles, slogans, names, blank forms, ideas, plans, formats, and trade-marks.

11:05 to 11:55 a.m.—Books, Magazines, Newspapers and Cartoons

ALFRED H. WASSERSTROM, *McCauley & Henry*

Nature and acquisition of rights to copyrightable material; enigma of serial rights; copyright notice questions and publishing risks; newspaper syndication problems; licensing copyrighted material, especially three-dimensional cartoon reproductions.

12:05 to 1 p.m.—Practical Problems in Advertising

SIGRID H. PEDERSEN, *Attorney, J. Walter Thompson Company*

Protection of printed advertisements, cartoon characters, art work, labels, titles, slogans and ideas; live and transcribed commercials; musical jingles; license of literary and musical works for adaptation and broadcast performance.

1:10 to 2:25 p.m.—Group Luncheon-Discussion: Protection of Industrial Designs

ROBERT J. BURTON, *Vice President and Resident Counsel, Broadcast Music, Inc.*

2:30 to 3:25 p.m.—Motion Picture Industry

THEODORE R. KUPFERMAN, *Vice President and General Attorney, Cinerama Productions Corp.*

Place and form of copyright notice and registration for film; motion picture vs. television rights; kinescopes; synchronization (recording) rights for music in motion pictures; titles; renewal rights; liens and encumbrances; clearing foreign and domestic rights in story properties; infringement claims and damages.

3:30 to 4:30 p.m.—Radio and Television.

JOSEPH A. MCDONALD, *of the New York Bar; Treasurer, National Broadcasting Company, Inc.*

Copyright in radio and television: nature of material used and rights required to be cleared; source of rights and types of licenses; recordings and film; conflicting successive grants; unfair competition.

Friday, July 23

9 to 11:55 a.m.—How to Handle a Copyright Case

JULIAN T. ABELES, *Abeles & Bernstein*
CHARLES S. ROSENSCHEIN, *member of the New York Bar*
PHILIP WITTENBERG, *Wittenberg, Carrington & Farnsworth*

From the initial interview to complete garnering of the facts; is there a case; does the amount recoverable warrant suit; basis and types of retainers; efforts to avoid suit by conference and settlement; selecting the court; pleadings, jury or no jury; bills of particulars and discovery; presenting proof of access, similarities and comparisons, and damages and profits; proceedings before trial by defendant; summary judgment; defenses and their proof.

12:05 to 1 p.m.—Panel Discussion and Questions

1:10 to 2:25 p.m.—Group Luncheon-Discussion: Legal Protection of Titles of Literary and Artistic Properties

SAMUEL W. TANNENBAUM, *Johnson & Tannenbaum; President, The Copyright Society of the U.S.A.*

2:30 to 4:30 p.m.—Protecting U.S. Copyrights Abroad

JOHN SCHULMAN, *Hays, St. John, Abramson & Schulman; member of U.S. Delegation, Geneva Conference, on the Universal Copyright Convention*

The rights of American nationals abroad and of foreign authors in the U.S.; international copyright protection by bilateral arrangements; Berne and Buenos Aires Conventions; progress of the Universal Copyright Convention.

The fee for the copyright course, which will follow a similar three-day session on the law of trade-marks, will be $30. This fee includes the two group luncheon discussions on July 22 and 23.

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